Chamber of Tax Consultants – Direct Tax Committee

UNSETTLED/CONTROVERSIAL ISSUES ON DIRECT TAX

PRESENTED BY:

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1. Section 45(4) - Applicability on stock- in-trade appreciation ;
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SECTION 45(4) APPLICABILITY ON STOCK- IN- TRADE APPRECIATION

THE ISSUE UNDER CONSIDERATION

- Section 45(4) is actually capital gains of the partner but chargeable to tax in the hands of the firm; - the formula is A=B (Cash)+C (value of capital asset)-D (Balance in Capital A/c)
- Income computed u/s 45(4) is chargeable under the head “capital gains”.
- Under the Scheme of the Act, capital gains are classified into “short-term” and “long-term” and its taxation depends on such classification
- Rule 8AA(5) of the Income Tax Rules, 1962. provides the mechanism of determining how much of section 45(4) is long-term and short-term;
- This classification depends upon how the 45(4) gains are attributed under Rule 8AB;
- There can be instances where the attribution of gains u/s 45(4) is neither to long-term nor to short-term assets.
- In such cases, question arises as regards determination of the nature of gains u/s 45(4) whether short-term or long-term;
- Following illustration is one such situation

ILLUSTRATION

Particulars:-

- M/s. XYZ is a partnership firm comprising of three partners, Mr. X, Mr. Y and Mr. Z.
- Mr. X retired from the firm with effect from November 30, 2022. He will be paid Rs. 700 in cash upon retirement.
- The assets and liabilities of the firm at their carrying values and at their respective fair values (determined by registered valuer/s as defined Rule 11U(g) are as follows:

Balance sheet of M/s. XYZ as on November 30, 2022

Liabilities	Carrying amount	FMV	Assets	Carrying amount	FMV	Appropriation
Capital			**Capital Assets**			
Partner X	100	700	Depreciable assets (Book WDV)	50	60	10
Partner Y	100	700	Land - Urban	30	300	270
Partner Z	100	700	Land – Rural Agricultural	20	200	180
			Goodwill	0	500	500
Others Liabilities	100	100	Other current assets	190	130	-60
			Money			
			Cash & Bank	10	10	-
			Stock in trade	100	1000	900
Total	**400**	**2200**	**Total:**	**400**	**2200**	**1800**

CALCULATION OF PROFIT CHARGEABLE U/S. 45(4)

Particulars	Amount
B = Money received by retiring partner	700
C = FMV of capital asset	0
D = Balance in Capital A/c	
(D1+D2)	100
D1 = Opening Balance..	100
D2 = Share of profit on transfer of assets/S-I-T to retiring partners	0*
A = Gains u/s. 45(4)	
(B+C-D)	600

* Determination of Book Profits to be credited to Capital Account of Mr. X:

Since only cash is paid to Mr. X, there are no book profits. Also, there is no tax u/s. 9B.

ATTRIBUTION OF GAINS U/S.45(4) OVER REMAINING CAPITAL ASSETS

Particulars	Before retirement	Distributed on retirement	After Retirement	Reval'n Amount	Allocation of 45(4) Gains	Attributed u/r 8AB
a	b	c	d	e	f	g
Capital Asset Depreciable assets	50		50	10	3	3
Land - Urban	30		30	270	90	90
Land - Rural Agricultural	20		20	180	60	0
Goodwill	0		0	500	167	167
Other Current Assets	190		190	-60	-20	0
Money	10	700				
Stock in trade	100		100	900	300	0
Total:	**400**			**1800**	**600**	

*** f = 600 x $\frac{e}{1800}$**

COMPUTATION UNDER RULE 8AA(5)

(5). In case of the amount which is chargeable to income-tax as income of specified entity under sub-section (4) of section 45 under the head - "Capital gains",-

(i). the amount or a part of it shall be deemed to be from transfer of short-term capital asset, if it is attributed to,-

a.capital asset which is short term capital asset at the time of taxation of amount under sub-section (4) of section 45; or

b.capital asset forming part of block of asset; or

c.capital asset being self-generated asset and self-generated goodwill as defined in clause (ii) of *Explanation 1* to sub-section (4) of section 45; and

(ii). the amount or a part of it shall be deemed to be from transfer of long-term capital asset or assets, if it is attributed to capital asset which is not covered by clause (i) and is long term capital asset at the time of taxation of amount under sub-section (4) of section 45

COMPUTATION UNDER RULE 8AB

Attribution of income taxable under sub-section (4) of section 45 to the capital assets remaining with the specified entity, under section 48.

8AB. *(1) For the purposes of clause (iii) of section 48, where the amount is chargeable to income-tax as income of specified entity under sub-section (4) of section 45, the specified entity shall attribute such amount to capital asset remaining with the specified entity in a manner provided in this rule.*

(2) Where the aggregate of the value of money and the fair market value of the capital asset received by the specified person from the specified entity, in excess of the balance in his capital account, chargeable to tax under sub-section (4) of section 45, relates to revaluation of any capital asset or valuation of self-generated asset or self-generated goodwill, of the specified entity, the amount attributable to the capital asset remaining with the specified entity for purpose of clause (iii) of section 48 shall be the amount which bears to the amount charged under sub-section (4) of section 45 the same proportion as the increase in, or recognition of, value of that asset because of revaluation or valuation bears to the aggregate of increase in, or recognition of, value of all assets because of the revaluation or valuation.

COMPUTATION UNDER RULE 8AB

(3) Where the aggregate of the value of money and the fair market value of the capital asset received by the specified person from the specified entity, in excess of the balance in his capital account, charged to tax under sub-section (4) of section 45 does not relate to revaluation of any capital asset or valuation of self_generated asset or self-generated goodwill, of the specified entity, the amount charged to tax under sub-section (4) of section 45 shall not be attributed to any capital asset for the purposes of clause (iii) of section 48.

(4) Notwithstanding anything contained in sub-rules (2) or (3), where the aggregate of the value of money and the fair market value of the capital asset received by the specified person from the specified entity, in excess of the balance in his capital account, charged to tax under sub-section (4) of section 45 relate only to the capital asset received by the specified person from the specified entity, the amount charged to tax under sub-section (4) of section 45 shall not be attributed to any capital asset for the purposes of clause (iii) of section 48.

DETERMINATION OF NATURE OF GAINS U/S. 45(4) – LONG TERM OR SHORT TERM

The Capital Gain u/s. 45(4) can be classified as short term and long term as follows:

Particulars	Allocation of gains u/s. 45(4)	Short Term	Long Term	Un-identified category
Capital Asset- Short Term:				
Other Current Assets	-20	-20		
Capital Asset-Depreciable	3	3		
Goodwill	167	167		
Capital Assets – Long Term:				
Land-Urban	90		90	
Other than capital asset:				
Rural Agricultural Land	60			60
Stock-in-trade	300			300
Total:	**600**	**150**	**90**	**360**

How would the gain of Rs. 360 be classified, short term or long term?

Can it be contended that since such gain is classified neither as long term nor as long term, the tax computation mechanism under the Act fails and hence the charge also fails.

SECTION 194R- SOME ISSUES

SECTION 194R: TDS ON BENEFIT/PERQUISITE U/S.28(IV)

- Person responsible for providing to a resident → benefit or perquisite → **arising from** business or exercise of profession – whether convertible into money or not → deduct TDS @ 10% of value/aggregate value of benefit/perquisite;

- Benefit/perquisite → wholly in kind or partly in cash & kind → cash not sufficient to meet liability of TDS → entire value of benefit/perquisite → Person providing benefit/perquisite → ensure TDS is paid ;

- "person responsible for providing" → person providing such benefit or perquisite; or in case of Company → the Company including principal officer;

- Provisions shall not apply:
  - Value of benefit/perquisite < Rs.20,000/- in a FY.
  - If the person providing is an Individual / HUF – Business – gross receipts < Rs. 1 crore & in case of profession – gross receipts < Rs. 50 lakhs (in preceding financial year)

Applicability w.e.f. 1 July 2022

SECTION 194R: IMPORTANT PRINCIPLES

- Benefit or perquisite should **"arise from"** business or exercise of profession. Supreme Court decision on **Universal Radiators v CIT [1993] 201 ITR 800 (SC)** in context of Section. 10(3).
- If requiring to do something under the agreement is an **"obligation"** then, there is no "benefit or perquisite".
- TDS is triggered "before **providing** such benefit or perquisite"
- Benefit wholly in "cash" can't get covered based on decisions on section 28(iv). But CBDT Circular has taken a different view.

SECTION 194R

Sr No.	Particulars	A plausible legal view	CBDT views	Remarks
1	**Foreign Trip or Local trip : with or without spouse** (In the nature of incentive and not a trip for business meeting / conference)	➢ Incentive trip on t/o achieved = 194R Applies ➢ At the time of providing the benefit. Not on provision in Books of Account ➢ Legally linked to utilisation – view based on **Excel Industries (358 ITR 295)(SC)**	➢ TDS u/s 194R Applies (Q. No. 4); ➢ Covered under Q. No. 5 for valuation as cost to company ➢ Covered in Q. No. 8 – clause (i) of items included – 194R Applies.	
2	**Brand Building items** (like Board, standees, stationary, dangler, wall clocks, ashtrays etc. with company logo/ name)	Placed at prominent places in dealers premises at the behest of the company by way of an obligation under the agreement or a letter issued by the company. Then, no benefit- 194R NA	Silent	

SECTION 194R

Sr No.	Particulars	A plausible legal view	CBDT views	Remarks
3	Training sessions / conferences.	Company is imparting training so as to ensure cordial customer relationship. Knowledge of the product at dealers level enhances companies goodwill. It is an **obligation** of the dealer to attend training sessions. No Benefit- 194R NA.	Teaching sales techniques to dealer/customers are excluded for TDS u/s 194R. (Q8) – Item (iv)	
4	Loyalty Points	➢ To credit card customers/airline passengers etc – whether arising out of business or profession- not possible to determine – section not capable of implementation ; ➢ Transactions of this type are normally accounted for by the Banks/Airlines/3rd party merchants. Therefore, the objective of widening the tax base is not relevant in such cases, Hence, arguably, not intended to be covered.	Silent	

SECTION 194R

Sr No.	Particulars	A plausible legal view	CBDT views	Remarks
5	Providing of free samples products to Wholesalers / Retailers	With an **obligation:** • to report efficacy / acceptability in the market; • to not sell or obtain any personal benefit; and • to return unused material – It is an **obligation** and not a benefit.	Q 4: If there is a discounted price, 194R is NA. But if given as Free samples, section 194R applies.	For customers, consider structuring as a discount.
6	Promotion of assessee company's products (a) Putting up a name board on Wholesalers' / Retailers' shop with company's name / logo along with dealer's name. (b) Putting up any type of machine at Wholesalers' / Retailers' shop free of cost / rentals so that he can sell company's products.	➢ In the contract with the Wholesalers / Retailers, if these points be shown either as a right of the company or an **obligation** of the Wholesalers / Retailers, then the question of benefit to the Wholesalers / Retailers would not arise. ➢ Put items like this in the contract by stating that it is essential for the purposes of their reputation/goodwill.	Silent	

SECTION 194R

Sr No.	Particulars	A plausible legal view	CBDT views	Remarks
	(c) Providing any other material / product catalogue to the Wholesalers' / Retailers'.	-	Silent	
	(d) Expenses incurred by the company for sharing of shop renovation/painting expenses of a Wholesalers' / Retailers'.			
	(e) Cost of company's technical person deputed at Wholesalers' / Retailers' shop for resolving customer queries and promoting company's product.			
	(f) Giving performance-based gifts to Wholesalers'/Retailers'.	TDS under section 194R is applicable	Silent	
7	Gift on festival or occasions	Not **arising from** business or exercise of profession. Hence not covered		
8	Conferences organized by a Company to educate a section of society in respect of certain products.	Not **arising from** business or exercise of profession. Hence not covered		

Issues due to *Explanation* to section 37(1)

ISSUES DUE TO EXPLANATION TO SEC. 37(1)

S. 37(1): EXP I EXPLAINED BY NEW EXP 3 -ISSUES

- Expenditure for the "purpose which is an offence or prohibited by law" shall include and shall be deemed to have always included
  - Purpose which is an offence under or which is prohibited by any law – in India or outside India
  - Provide benefit or perquisite – and acceptance of such benefit is in violation of any law or rule or regulation or guideline – governing the conduct of such person
  - To compound an offence under any law – in India or outside India.
- EM: Not intended to be allowed under this section. Background discussed with case laws.

ISSUES DUE TO EXPLANATION TO SEC. 37(1)

S. 37(1): Disallowance - OFFENCES prohibited UNDER LAW/RULE/GUIDELINES

Recent ruling in Apex Laboratories Private Limited (442 ITR 1) (SC)

- Question of Law before Supreme Court:
  - Whether expenditure incurred on freebies given to medical practitioners by the pharma companies is hit by Explanation 1 to section 37(1)
- Assessees Contention before Supreme Court:
  - Pharma companies not covered by the MCI Regulations
  - Tax Department can not deny tax benefit on the 'Nature' of expenditure incurred
- Tax Departments Contention:
  - Assessee cannot claim tax benefit in respect of expenditure incurred in violation of CBDT Circular of 2012 read with MCI Regulations of 2002
- Held:
  - Pharma Companies gifting freebies to medical practitioners, although not prohibited under MCI Regulations, such expenditure falls within "prohibited by law" as envisaged under Explanation 1 to section 37(1) as allowing the same would wholly undermine the public policy

ISSUES DUE TO EXPLANATION TO SEC. 37(1)

- **ACIT v. A. K. Menon (215 ITR 364)(SC):**"the authority entrusted under the concerned statute / law alone can determine or adjudicate the violation of that law or liability or consequences thereof and no other authority can do so"
- **Vadilal Chemicals Ltd. v. State of Andhra Pradesh (192 ELT 33)(SC):** Eligibility certificates issued by the Department of Industries and Commerce cannot be cancelled by the Sales Tax Authorities."*The Department of Industries & Commerce having exercised its mind, and having granted the final eligibility certificate (which was valid at all material times), the Commercial Taxes Department could not go beyond the same... "*
- **Bombay Chemicals (P.) Ltd. v. Union of India (1981 taxmann.com 58)(Bom HC)**

- In the footing that there is an admitted/proven violation of the MCI guidelines. However, the proposition based on the foregoing the case of Apex Laboratories, the assessee, the department and all judicial authorities have proceeded on case laws was not in question before the Supreme Court
- Sun Engineering 198 ITR 297 (SC)

ISSUES DUE TO EXPLANATION TO SEC. 37(1)

- Expenses on product reminders – has advertisement value – hence arguably outside the scope of MCI Regulations [ICPA Health Products Pvt Ltd (ITA No. 6244, 6245/MUM/2017, Dated 20.04.2018)]
- Free samples given to doctors – if coupled with an obligation to test their efficacy and report the results, then it can not be brought within the ambit of MCI Regulations. Giving of free samples is actually permitted under clause (ix) of Section 96 of Drugs and Cosmetics Act, 1940, with a condition that the packet should prominently say "not for sale".
- Conference Expenses – Doctors prohibited from attending conferences as delegates under MCI Regulations. Attending as speakers is not prohibited.

ISSUES DUE TO EXPLANATION TO SEC. 37(1)

- Implementation in case of foreign law:
  - Vendors of goods or services – undertaking that they are not prohibited by any law from dealing in such goods or services in their home country or anywhere else in the world.
  - India Tax Officer to decide whether the vendor has violated any law in his country!
- **Indian & Eastern Newspaper Society v. CIT (119 ITR 996)(SC)**
  - *Law may be "statutory law" or "judge made law". In every case, therefore, to be law it must be a creation by a formal source either legislative or judicial authority. A statement by a person or body not competent to create or define the law cannot be regarded as law.* [relevant for clauses (i) and (iii)]

ISSUES DUE TO EXPLANATION TO SEC. 37(1)

- Clause (ii) – “law or rule or regulation or guideline…” – implies all private rules, regulations, guidelines also covered!!
- Advisable to have a clause in the contract with every vendor/customer giving representation as regards their internal rules, regulations and code of conduct concerning acceptance of freebies, etc.
- Advisable to have as a procedure, proper documentation from the websites of the vendor/customer, especially the internal code of conduct

ISSUES DUE TO EXPLANATION TO SEC. 37(1)

- Clauses (iii) expands the scope of Explanation (i). Compounding an offense is not "prohibited by law". On the contrary it is provided by law.
- Compounding of Offence Amendment → without admission of Guilt → case ITO v. Reliance Share and Stock Brokers Private Limited ([2014] 51 taxmann.com 215 (Mumbai - Trib.) - Over-ruled?
- As per FAQs issued by SEBI with reference to Circular No. EFD/ED/Cir -1/2007 dated 20 April 2007:
  - At what stage can Consent Orders be passed?

    Consent Order can be passed at any stage where probable cause of violation has been found. In the event of a serious and intentional violation, the process cannot be completed till the fact finding process is completed whether by way of investigation or otherwise.
  - At what stage Compounding of Offence can take place?

    At any stage after filing criminal complaint by SEBI. Where a criminal complaint has not yet been filed but is envisaged, the process for consent orders will be followed rather than the one for compounding.

NON-COMPLIANT CONVERSION OF COMPANY INTO LLP

NON-COMPLIANT CONVERSION OF COMPANY INTO LLP

Tax implications on the Company

No transfer :

–- CIT vs Texspin Engg. & Mfg. Works (129 Taxman 1) (Bom HC)

–- DCIT v R.L. Kalathia & Co [2016] (66 taxmann.com 249)(Guj HC)

– - Umicore Finance Luxemborg ((189 Taxman 250)(AAR) New Delhi) upheld by Hon'ble Bombay High Court in (244 Taxman 43)

–- ACIT v. Celerity Power LLP [100 taxmann.com 129]

Transfer:-

- ACIT v. Celerity Power LLP [100 taxmann.com 129]

- Aum Chemicals vs. ACIT (26 SOT 50)

NON-COMPLIANT CONVERSION OF COMPANY INTO LLP

Tax implications on the Company

1)No Consideration

2)- CIT vs Texspin Engg. & Mfg. Works (129 Taxman 1) (Bom HC)

Consideration

- Aum Chemicals vs. ACIT (26 SOT 50) ;

—- ACIT v. Celerity Power LLP [100 taxmann.com 129]

NON-COMPLIANT CONVERSION OF COMPANY INTO LLP

Tax Implications on the LLP

1)<u>Implications of Section 56(2)(x)</u>

Not Applicable

- R C Cooper vs UOI (SCR(3)530) (1970)

NON-COMPLIANT CONVERSION OF COMPANY INTO LLP

Tax implications on the Shareholders / Partners

1)<u>Implications of Section 45</u>

1. Transfer

- CIT v Grace Collis (115 Taxmann 326) [2001] (SC)

2. No Consideration

- Sunil Siddharthbhai v. CIT [1985] 23 Taxman 14 (SC)

<u>Implications of Section</u> 50D

- Sunil Siddarthbhai's decision is overruled

- Section 50CA to be applied to determine the Fair Value of the shares extinguished ?

1.

LOSS OF INVESTMENT IN SUBSDIARY- WHETHER ALLOWABLE ?

LOSS OF INVESTMENT IN SUBSDIARY- WHETHER ALLOWABLE ?

Refer decision of the Supreme Court in the case of **Ramnarain and Sons (41 ITR 534)** which was rendered in the context of allowability of loss arising on sale of shares held in the company managed by the assessee. In that case, the assessee-company carried on business as brokers, managing agents and dealers in shares and securities and one of the objects for which the assessee was incorporated was to acquire managing agencies. The assessee purchased some shares of a company (Mills) at a price which was higher than the prevailing market price and having obtained a controlling voting right, acquired the managing agency rights of the Mills. Subsequently, the loss arising on the sale of shares was claimed as a "business loss" by the assessee. The SC affirming the view of the HC, held the shares acquired by the assessee were capital asset and the loss suffered by sale of some of those shares in the year of account being a capital loss, was not a permissible deduction in computing business income. The relevant extracts from the said decision are as under:

- *"The agency was acquired by virtue of the voting power which the assessee obtained having purchased a very large block of shares, and for acquiring the managing agency the assessee did not pay any distinct consideration. The managing agency was manifestly the source of profit of the assessee; but the shares purchased and the managing agency acquired were both assets of a capital nature and did not constitute stock-in-trade of a trading venture. If the shares were acquired for* ***obtaining control over the managing agency*** *of the Mills, the fact that the acquisition of the shares was integrated with the acquisition of the managing agency did not affect the character of the acquisition of the shares. Subsequent disposal of some out of the shares by the assessee could also not convert what was a capital acquisition into an acquisition in the nature of trade.*

LOSS OF INVESTMENT IN SUBSDIARY- WHETHER ALLOWABLE ?

- *The High Court was, therefore, right in holding that the acquisition of the managing agency was an acquisition of a capital asset and the loss incurred by sale of the 400 shares was of a capital nature. If the acquisition of the shares was not acquisition of a stock-in-trade, but of a capital asset, the assessee, by valuing the shares at cost or market price whichever was lower, could not bring the difference between the purchase price and the valuation made by them into their trading account."*

- **C.A. Natarajan v CIT (1973) (92 ITR 347) (Mad)** has held that diminution in value of investment is not allowable

- The SC in case of **Patnaik & Co Ltd (161 ITR 365)** held that loss arising on disposing of certain government securities was a revenue loss. This was so held on the ground that the said government securities were acquired with a view to acquire business from the government agency. It was held that such securities were held for the purposes of business and hence loss on sale of such securities was a loss allowable in computing income under the head "Business".

- Following Patnaik's case, the Karnataka HC, in the case of **ACE Designers Ltd (120 taxmann.com 321)**, has taken a view favourable to the assessee and has held that loss arising from write off of the investment made in its wholly owned subsidiary outside India was to be allowed as "business loss" in the hands of the holding Company. It may be pertinent to note here that the Karnataka HC has relied on the decision of the SC in the Patnaik & Co Ltd. and also the Bombay HC in the case of **Colgate Palmolive (India) Ltd (370 ITR 728)**. The Bombay High Court has held in the latter case that the loss arising on sale of shares held in its subsidiary company is an allowable "business loss". The Karnataka HC has extended the same analogy in case of "write- off" of investments as well.

LOSS OF INVESTMENT IN SUBSDIARY- WHETHER ALLOWABLE ?

- Also, decision of Rajasthan HC in case of **Vaibhav Global Ltd (138 taxmann.com 506)**, held that dimunition in investment value in subsidiary is allowable as revenue expenditure u/s 37(1).

Similarly, the following decisions of various tribunal benches have held that loss arising on "write-off" of investments in subsidiaries is an allowable business loss:-

1) Maneesh Pharmaceuticals Ltd. ITA 4024/MUM/2019.
2) Sahara Global Vision Pvt. Ltd. ITA No. 2514/Del/2014
3)Cosmos Industries Ltd. ITA No.3730/Del/2015

However, interestingly, we observe that none of the aforesaid decisions have considered the decision of the SC in case of Ramnarain and Sons case or the decisions in **C.A. Natarajan v CIT (1973) (92 ITR 347) (Mad).**

Impact of Wipro’s (SC’s) decision

PCIT V. WIPRO LTD [2022] 288 TAXMAN 491 (SC)– LOSS RETURN – IMPACT

The Hon'ble Supreme Court held that -

- The requirement to file declaration u/s. 10B(8) of the IT Act before the due date is mandatory in nature.
- Further, the revised return filed by the assessee u/s 139(5) can only substitute its original return u/s 139(1) and cannot transform it into a return u/s 139(3). The assessee can file a revised return in a case where there is an omission or a wrong statement. But a revised return of income u/s 139(5) cannot be filed, to withdraw the claim and subsequently claiming the carried forward or set-off of any loss.
- Filing a revised return u/s 139(5) of the IT Act and taking a contrary stand and/or claiming the exemption, which was specifically not claimed earlier while filing the original return of income is not permissible.
- By filing the revised return of income, the assessee cannot be permitted to substitute the original return of income filed u/s 139(1) of the IT Act. Therefore, claiming benefit u/s 10B (8) and furnishing the declaration as required u/s 10B (8) in the revised return of income which was much after the due date of filing the original return of income u/s 139(1) of the IT Act, cannot mean that the assessee has complied with the condition of furnishing the declaration before the due date of filing the original return of income u/s 139(1) of the Act.

PCIT V. WIPRO LTD [2022] 288 TAXMAN 491 (SC)– LOSS RETURN – IMPACT

- SC in G. M. Knitting Industries (P) Ltd case 376 ITR 456 (SC) has held that "along with the return of income" is directory and not mandatory. This decision was on section 80IB / additional depreciation claim.
- Whether these cases will be affected by this decision?
- Wipro's case distinguishes G. M. Knitting's case on the grounds that:
  - S. 10B is an exemption provision while S. 80IB is a deduction provision and the two cannot be compared; and
  - S. 32(1)(iia) cannot be compared with exemption provision.
- There are many provisions requiring filing of audit report along with the ROI both, in Chapter III and in Chapter VIA and at other places. Will the interpretation be different for different sections?
- Difference in language is not noted by the SC. Can it be argued that all cases where due date u/s. 139(1) is not the absolute time limit, but the requirement is merely to submit "along with the ROI", it would still be directory and not mandatory?

PRESCRIBED DATES- UNDER VARIOUS PROVISIONS

The language as prescribed under various provisions for filing of reports, Certificates, forms are broadly under different categories

- Before the specified date referred to in section 44AB
- On or before the due date specified under sub- section (1) of section 139
- Before the due date for furnishing the return of his income under sub-section (1) of section 139;
- Alongwith the ROI

ON OR BEFORE THE DUE DATE (1 OF 2)

SR. NO.	SECTION	PARTICULARS
1	80-IA	The deduction under sub-section (1) from profits and gains derived from an undertaking shall not be admissible unless the accounts of the undertaking for the previous year relevant to the assessment year for which the deduction is claimed have been audited by an accountant, as defined in the Explanation below sub-section (2) of section 288, [**before the specified date referred to in section 44AB and the assessee furnishes by that date**] the report of such audit in the prescribed form duly signed and verified by such accountant.
2	80-IB	The deduction under clause (a) shall be allowable only if the assessee furnishes the report of audit in such form and containing such particulars, as may be prescribed, duly signed and verified by an accountant, as defined in the Explanation below sub-section (2) of section 288, **before the specified date referred to in section 44AB**, certifying that the deduction has been correctly claimed.
3	10C	Notwithstanding anything contained in the foregoing provisions of this section, where the assessee **before the due date for furnishing the return of his income under sub-section (1) of section 139**, furnishes to the Assessing Officer a declaration in writing that the provisions of this section may not be made applicable to him, the provisions of this section shall not apply to him in any of the relevant assessment years
4	10A(1A)	No deduction under this section shall be allowed to an assessee who does not furnish a return of his income **on or before the due date** specified under sub-section (1) of section 139
5	10B(1)	No deduction under this section shall be allowed to an assessee who does not furnish a return of his income **on or before the due date** specified under sub-section (1) of section 139

ON OR BEFORE THE DUE DATE (2 OF 2)

SR. NO.	SECTION	PARTICULARS
6	115BAA	No deduction under this section shall be allowed to an assessee who does not furnish a return of his income **on or before the due date** specified under sub-section (1) of section 139
7	80AC	No deduction under this section shall be allowed to an assessee who does not furnish a return of his income **on or before the due date** specified under sub-section (1) of section 139
8	11	The statement referred to in clause (a) is furnished **on or before the due date specified under sub-section (1) of section 139** for furnishing the return of income for the previous year
9	13	Nothing contained in sub-section (2) of section 11 shall operate so as to exclude any income from the total income of the previous year of a person in receipt thereof, if— (i) the statement referred to in clause (a) of the said sub-section in respect of such income is not furnished **on or before the due date specified under sub-section (1) of section 139** for furnishing the return of income for the previous year; or (ii) the return of income for the previous year is not furnished by such person **on or before the due date specified under sub-section (1) of section 139 for furnishing the return of income for the said previous year.**

…….“ALONG WITH THE ROI” (1 OF 10)

Sr. No.	Section no.	Particulars
1	80U	(2) Every individual claiming a deduction under this section shall furnish a copy of the certificate issued by the medical authority in the form and manner, as may be prescribed, **along with the return of income** under section 139, in respect of the assessment year for which the deduction is claimed
2	115VU	(2) The tonnage tax company shall be required to furnish a copy of the certificate issued by the Director-General of Shipping **along with the return of income**[87] under section 139 to the effect that such company has complied with the minimum training requirement in accordance with the guidelines referred to in sub-section (1) for the previous year.
3	80DD	(4) The assessee, claiming a deduction under this section, shall furnish a copy of the certificate issued by the medical authority in the prescribed form and manner95, **along with the return of income** under section 139, in respect of the assessment year for which the deduction is claimed:
4	80QQB	(3) No deduction under this section shall be allowed unless the assessee furnishes a certificate in the prescribed form and in the prescribed manner, duly verified by any person responsible for making such payment to the assessee as referred to in sub-section (1), **along with the return of income**, setting forth such particulars as may be prescribed. (4) No deduction under this section shall be allowed in respect of any income earned from any source outside India, unless the assessee furnishes a certificate, in the prescribed form56 from the prescribed authority57, along with the return of income in the prescribed manner.

……."ALONG WITH THE ROI" (2 OF 10)

Sr. No.	Section no.	Particulars
5	80RRB	(2) No deduction under this section shall be allowed unless the assessee furnishes a certificate in the prescribed form62, duly signed by the prescribed authority, **along with the return of income** setting forth such particulars as may be prescribed. (3) No deduction under this section shall be allowed in respect of any income earned from any source outside India, unless the assessee furnishes a certificate in the prescribed form64, from the authority or authorities, as may be prescribed65, **along with the return of income**.
6	115H	Where a person, who is a non-resident Indian in any previous year, becomes assessable as resident in India in respect of the total income of any subsequent year, he may furnish to the Assessing Officer a declaration in writing **along with his return of income** under section 139 for the assessment year for which he is so assessable,
7	80HHB	(3) The deduction under this section shall be allowed only if the following conditions are fulfilled, namely :— (ia) the assessee furnishes, **along with his return of income**, a certificate in the prescribed form from an accountant as defined in the Explanation below sub-section (2) of section 288, duly signed and verified by such accountant, certifying that the deduction has been correctly claimed in accordance with the provisions of this section
8	80RRA	Provided that no deduction under this sub-section shall be allowed unless the assessee furnishes a certificate, in the prescribed form60, **along with the return of income**, certifying that the deduction has been correctly claimed in accordance with the provisions of this section.

……."ALONG WITH THE ROI"(3 OF 10)

Sl No.	Section No.	Particulars
9	80HHE	(4) The deduction under sub-section (1) shall not be admissible unless the assessee furnishes in the prescribed form, **along with the return of income**, the report of an accountant, as defined in the Explanation below sub-section (2) of section 288, certifying that the deduction has been correctly claimed in accordance with the provisions of this section.
10	80HHC	(4) The deduction under sub-section (1) shall not be admissible unless the assessee furnishes in the prescribed form, **along with the return of income**, the report of an accountant, as defined in the Explanation below sub-section (2) of section 288, certifying that the deduction has been correctly claimed in accordance with the provisions of this section: Provided that in the case of an undertaking referred to in sub-section (4C), the assessee shall also furnish along with the return of income, a certificate from the undertaking in the special economic zone containing such particulars as may be prescribed, duly certified by the auditor auditing the accounts of the undertaking in the special economic zone under the provisions of this Act or under any other law for the time being in force.

…….“ALONG WITH THE ROI”(4 OF 10)

Sr. No.	Section no.	Particulars
11	80-O	Provided further that no deduction under this section shall be allowed unless the assessee furnishes a certificate, in the prescribed form, **along with the return of income**, certifying that the deduction has been correctly claimed in accordance with the provisions of this section.
12	80R	Provided that no deduction under this section shall be allowed unless the assessee furnishes a certificate, in the prescribed form58, **along with the return of income**, certifying that the deduction has been correctly claimed in accordance with the provisions of this section
13	80RR	Provided that no deduction under this section shall be allowed unless the assessee furnishes a certificate, in the prescribed form59, **along with the return of income**, certifying that the deduction has been correctly claimed in accordance with the provisions of this section.
14	80LA	(3) No deduction under this section shall be allowed unless the assessee furnishes **along with the return of income**,—

…….“ALONG WITH THE ROI”(5 OF 10)

Sr. No.	Section no.	Particulars
15	88E	(1) Where the total income of an assessee in a previous year includes any income, chargeable under the head "Profits and gains of business or profession", arising from taxable securities transactions, he shall be entitled to a deduction, from the amount of income-tax on such income arising from such transactions, computed in the manner provided in sub-section (2), of an amount equal to the securities transaction tax paid by him in respect of the taxable securities transactions entered into in the course of his business during that previous year: Provided that no deduction under this sub-section shall be allowed unless the assessee furnishes **along with the return of income**, evidence of payment of securities transaction tax in the prescribed form: Provided further that the amount of deduction under this sub-section shall not exceed the amount of income-tax on such income computed in the manner provided in sub-section (2).
16	10A	**Provided** that no deduction under this section shall be allowed to an assessee who does not furnish a return of his income on or **before the due date specified** under sub-section (1) of section 139(1B) The deduction under clause (ii) of sub-section (1A) shall be allowed only if the following conditions are fulfilled, namely (b) the particulars, as may be prescribed in this behalf, have been furnished by the assessee in respect of new machinery or plant **along with the return of income** for the assessment year relevant to the previous year in which such plant or machinery was first put to use.

……."ALONG WITH THE ROI"(6 OF 10)

Sr. No.	Section no.	Particulars
16	43B	Provided that nothing contained in this section shall apply in relation to any sum which is actually paid by the assessee on or before the due date applicable in his case for furnishing the return of income under sub-section (1) of section 139 in respect of the previous year in which the liability to pay such sum was incurred as aforesaid and the evidence of such payment is furnished by the assessee **along with such return**
17	115JB	(4) Every company to which this section applies, shall furnish a report in the prescribed form56 from an accountant as defined in the Explanation below sub-section (2) of section 288, certifying that the book profit has been computed in accordance with the provisions of this section 57[**before the specified date** referred to in section 44AB] or **along with the return of income** furnished in response to a notice under clause (i) of sub-section (1) of section 142
18	36	(1) The deductions provided for in the following clauses shall be allowed in respect of the matters dealt with therein, in computing the income referred to in section 28— (xi) …….. Provided that no such deduction shall be allowed in respect of such expenditure under any other provisions of this Act : Provided further that no such deduction shall be admissible unless the assessee furnishes in the prescribed form, **along with the return of income**, the report of an accountant, as defined in the Explanation below sub-section (2) of section 288, certifying that the deduction has been correctly claimed in accordance with the provisions of this clause

……."ALONG WITH THE ROI"(7 OF 11)

Sr. No.	Section no.	Particulars
19	80HHC	(4) The deduction under sub-section (1) shall not be admissible unless the assessee furnishes in the prescribed form, **along with the return of income**, the report of an accountant, as defined in the Explanation below sub-section (2) of section 288, certifying that the deduction has been correctly claimed in accordance with the provisions of this section: Provided that in the case of an undertaking referred to in sub-section (4C), the assessee shall also furnish along with the return of income, a certificate from the undertaking in the special economic zone containing such particulars as may be prescribed, duly certified by the auditor auditing the accounts of the undertaking in the special economic zone under the provisions of this Act or under any other law for the time being in force.
20	32A	(2B) Where any new machinery or plant is installed after the 30th day of June, 1977, but before the 1st day of April, 1987, for the purposes of business of manufacture or production of any article or thing and such article or thing— (b)(ii) the assessee furnishes, **along with his return of income** for the assessment year for which the deduction is claimed, a certificate from the prescribed authority20 to the effect that such article or thing is manufactured or produced by using such technology (including any process) or other know-how developed in such laboratory or is an article or thing invented in such laboratory;
21	80HHD	(6) The deduction under sub-section (1) shall not be admissible unless the assessee furnishes in the prescribed form, **along with the return of income**, the report of an accountant, as defined in the Explanation below sub-section (2) of section 288, certifying that the deduction has been correctly claimed on the basis of the amount of convertible foreign exchange received by the assessee for services provided by him to foreign tourists, payments made by him to any assessee referred to in sub-section (2A) and the payments received by him in Indian currency as referred to in the Explanation 1 to sub-section (2)

…….“ALONG WITH THE ROI”(8 OF 10)

Sr. No.	Section no.	Particulars
20	10B	**Provided also** that no deduction under this section shall be allowed to an assessee who does not furnish a return of his income on or before the due date specified under sub-section (1) of section 139 (5) The deduction under sub-section (1) shall not be admissible for any assessment year beginning on or after the 1st day of April, 2001, unless the assessee furnishes in the prescribed form, **along with the return of income,** the report of an accountant, as defined in the Explanation below sub-section (2) of section 288, certifying that the deduction has been correctly claimed in accordance with the provisions of this section
21	80HHA	(4) Where the assessee is a person, other than a company or a co-operative society, the deduction under sub-section (1) shall not be admissible unless the accounts of the small-scale industrial undertaking for the previous year relevant to the assessment year for which the deduction is claimed have been audited by an accountant as defined in the Explanation below sub-section (2) of section 288 and the assessee furnishes, **along with his return of income**, the report of such audit in the prescribed form duly signed and verified by such accountant
22	10BA	(5) The deduction under sub-section (1) shall not be admissible, unless the assessee furnishes in the prescribed form, **along with the return of income**, the report of an accountant, as defined in the Explanation below sub-section (2) of section 288, certifying that the deduction has been correctly claimed in accordance with the provisions of this section
23	10AA	(2) The deduction under clause (ii) of sub-section (1) shall be allowed only if the following conditions are fulfilled, namely :— (b) the particulars, as may be specified by the Central Board of Direct Taxes in this behalf, under clause (b) of sub-section (1B) of section 10A have been furnished by the assessee in respect of machinery or plant **along with the return of income** for the assessment year relevant to the previous year in which such plant or machinery was first put to use

……."ALONG WITH THE ROI"(9 OF 10)

Sr. No.	Section no.	Particulars
24	80HHF	(4) The deduction under sub-section (1) shall not be admissible unless the assessee furnishes in the prescribed form, **along with the return of income**, the report of an accountant, as defined in the Explanation below sub-section (2) of section 288, certifying that the deduction has been correctly claimed in accordance with the provisions of this section
25	80HHBA	(2) The deductions under this section shall be allowed only if the following conditions are fulfilled, namely :— (i) the assessee maintains separate accounts in respect of the profits and gains derived from the business of the execution of the housing project undertaken by him and, where the assessee is a person other than an Indian company or a co-operative society, such accounts have been audited by an accountant as defined in the Explanation below sub-section (2) of section 288 and the assessee furnishes **along with his return of income** the report of such audit in the prescribed form duly signed and verified by such accountant;
26	80-ID	(3) The deduction under sub-section (1) shall be available only if— (iv) the assessee furnishes **along with the return of income,** the report of an audit in such form and containing such particulars as may be prescribed42, and duly signed and verified by an accountant, as defined in the Explanation below sub-section (2) of section 288, certifying that the deduction has been correctly claimed
27	35AC	(2) The deduction under sub-section (1) shall not be allowed unless the assessee furnishes **along with his return of income** a certificate— 47(a) where the payment is to a public sector company or a local authority or an association or institution referred to in sub-section (1), from such public sector company or local authority or, as the case may be, association or institution; 48(b) in any other case, from an accountant, as defined in the Explanation below sub-section (2) of section 288,

ALONG WITH (10 OF 10)

Sr. No.	Section no.	Particulars
		in such form, manner and containing such particulars (including particulars relating to the progress in the work relating to the eligible project or scheme during the previous year) as may be prescribed
28	80HH	(5) Where the assessee is a person other than a company or a co-operative society, the deduction under sub-section (1) shall not be admissible unless the accounts of the industrial undertaking or the business of the hotel for the previous year relevant to the assessment year for which the deduction is claimed have been audited by an accountant as defined in the Explanation below sub-section (2) of section 288 and the assessee furnishes, **along with his return of income**, the report of such audit in the prescribed form duly signed and verified by such accountant
29	80-I	(7) Where the assessee is a person other than a company or a co-operative society, the deduction under sub-section (1) from profits and gains derived from an industrial undertaking shall not be admissible unless the accounts of the industrial undertaking for the previous year relevant to the assessment year for which the deduction is claimed have been audited by an accountant, as defined in the Explanation below sub-section (2) of section 288, and the assessee furnishes, **along with his return of income**, the report of such audit in the prescribed form15 duly signed and verified by such accountant
30	10	(31) Provided that the assessee furnishes to the Assessing Officer, **along with his return of income** for the assessment year concerned or within such further time as the Assessing Officer may allow, a certificate from the concerned Board, as to the amount of such subsidy paid to the assessee during the previous year

SUMANJEET AGARWAL V. ITO [2022] 143 TAXMANN.COM 11 (DELHI)

The Hon'ble Supreme Court held that:

1. The impugned notices of the Act dated 31st March 2021 would not meet test of 'issued' under section 149 and would be time barred.

2. Where notice u/s. 148 was dated 31st March 2021 but had been digitally signed on 1st April 2021, date of notice will be 1st April 2021.

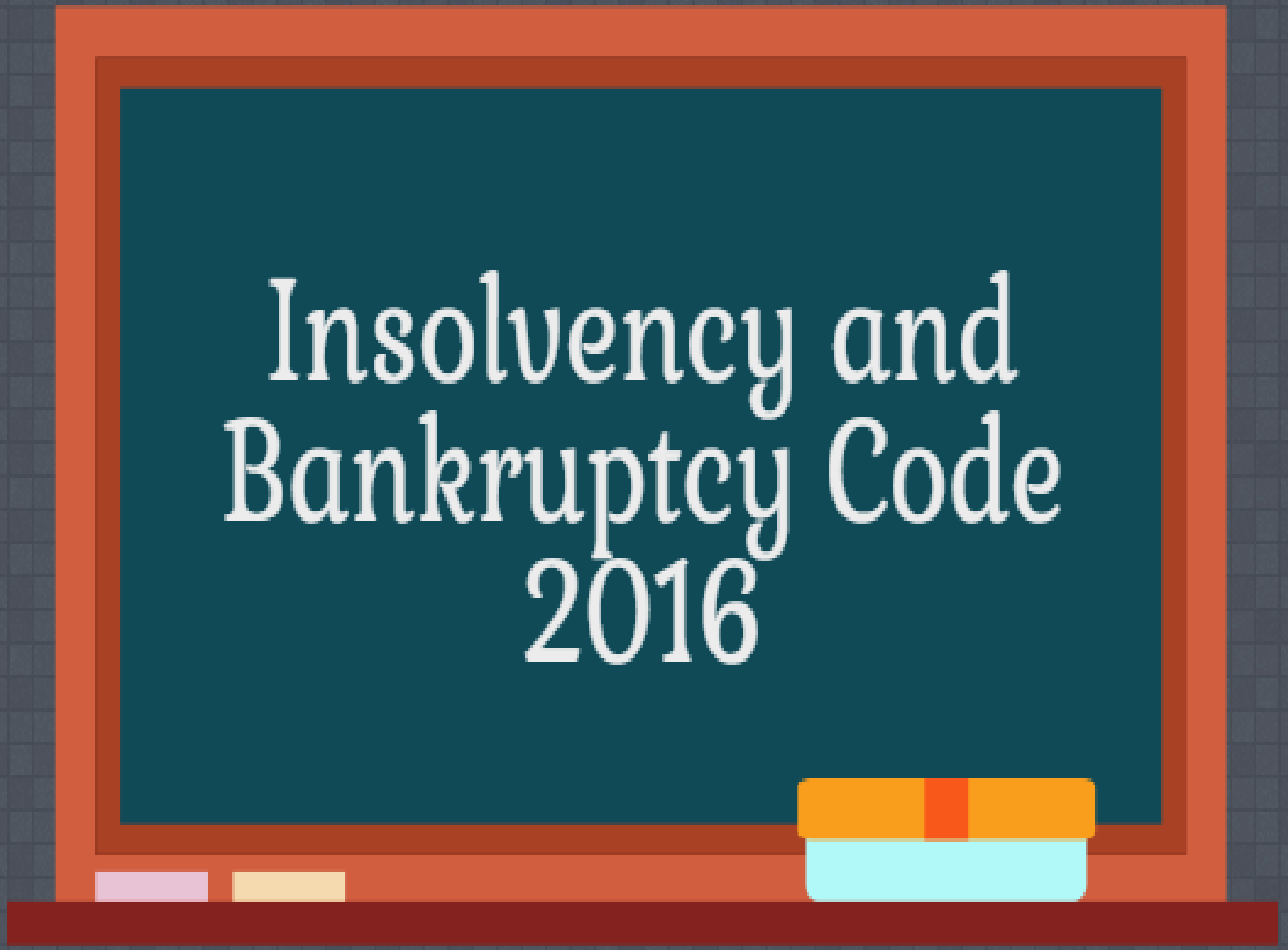
3. Where notices under section 148 are sent through registered email ID of respective Assessing Officers, though not digitally signed, it will be held to be valid service of notice. however, date and time of dispatch as recorded in ITBA portal will be taken as date of issuance of notice in this regard

4. Whether where notices under section 148 were only uploaded in E-filing portal of assessee without any real time alert, date and time when assessee viewed notices in E-filing portal, as recorded in ITBA portal will be construed as date of service of notice

5. Where notices under section 148 were manually despatched, date and time when notices were delivered to post office for dispatch was to be construed as date of issuance of notice

6. Whether where notices were sent to unrelated e-mail addresses, date on which notice was first viewed by assessee on E-filing portal was to be construed as date of issuance of notice

DO'S AND DON'TS OF IBC TAKEOVER



RELEVANT PROVISIONS OF THE ERSTWHILE SICK INDUSTRIAL COMPANIES (SPECIAL PROVISIONS) ACT ["SICA"], 1985

32. Effect of the Act on other laws.

1) The provisions of this Act and of any rules or schemes made thereunder shall have effect notwithstanding anything inconsistent therewith contained in any other law except the provisions of the Foreign Exchange Regulation Act, 1973 (46 of 1973) and the Urban Land (Ceiling and Regulation) Act, 1976 (33 of 1976) for the time being in force or in the Memorandum or Articles of Association of an industrial company or in any other instrument having effect by virtue of any law other than this Act.

(2)Where there has been under any scheme under this Act an amalgamation of a sick industrial company with another company, the provisions of section 72A of the Income-tax Act, 1961 (43 of 1961), shall, subject to the modifications that the power of the Central Government under that section may be exercised by the Board without any recommendation by the specified authority referred to in that section, apply in relation to such amalgamation as they apply in relation to the amalgamation of a company owning an industrial undertaking with another company.

EXEMPTIONS UNDER THE ERSTWHILE SICK INDUSTRIAL COMPANIES (SPECIAL PROVISIONS) ACT, 1985 IN RELATION TO THE INCOME TAX ACT, 1961

- The transfer of land by said company under a scheme sanctioned under the SICA, would also be exempt from capital gain tax on fulfilment of certain conditions (refer section 47(xii) of the Act)

RELEVANT PROVISIONS OF THE INSOLVENCY AND BANKCRUPTCY CODE, 2016 (IBC, 2016)

31. Approval of resolution plan. –

"(1) If the Adjudicating Authority is satisfied that the resolution plan as approved by the committee of creditors under sub-section (4) of section 30 meets the requirements as referred to in sub-section (2) of section 30 it shall by order approve the resolution plan which shall be binding on the corporate debtor and its employees, members, creditors, [3][including the Central Government, any State Government or any local authority to whom a debt in respect of the payment of dues arising under any law for the time being in force, such as authorities to whom statutory dues are owed,] guarantors and other stakeholders involved in the resolution plan.

Provided that the Adjudicating Authority shall, before passing an order for approval of resolution plan under this sub-section, satisfy that the resolution plan has provisions for its effective implementation.

(2) Where the Adjudicating Authority is satisfied that the resolution plan does not confirm to the requirements referred to in sub-section (1), it may, by an order, reject the resolution plan.

RELEVANT PROVISIONS OF THE IBC, 2016

238. Provisions of this Code to override other laws. –

The provisions of this Code shall have effect, notwithstanding anything inconsistent therewith contained in any other law for the time being in force or any instrument having effect by virtue of any such law.

EXEMPTIONS UNDER THE IBC, 2016 IN RELATION TO THE INCOME TAX ACT

Section no. of Income Tax Act	Provisions
79	(2) Nothing contained in sub-section (1) shall apply,— (*c*) to a company where a change in the shareholding takes place in a previous year pursuant to a resolution plan approved under the Insolvency and Bankruptcy Code, 2016 (31 of 2016), after affording a reasonable opportunity of being heard to the jurisdictional Principal Commissioner or Commissioner;
115JB	if any amount referred to in clauses (*a*) to (*i*) is debited to the statement of profit and loss or if any amount referred to in clause (*j*) is not credited to the statement of profit and loss, and as reduced by,— (*iih*) the aggregate amount of unabsorbed depreciation and loss brought forward in case of a— (*B*) company against whom an application for corporate insolvency resolution process has been admitted by the Adjudicating Authority under section 7 or section 9 or section 10 of the Insolvency and Bankruptcy Code, 2016 (31 of 2016)

SPECIFIC EXEMPTIONS THAT SHOULD BE PROVIDED UNDER THE IBC, 2016 IN RELATION TO THE INCOME TAX ACT

The following exemptions need to be examined for a company against whom an application for CIRP has been accepted:

Provision Applicable under the Act	Exemption to be Provided
Section 41(1)	On amount of write back of amounts due to creditors by the company
Section 115JB	On amount of write back of debts of creditors by the Company from MAT
Section 45	On transfer of assets
Section 56	On receipt of any property under Section 56(2)(x) or on issue of shares under section 56(2)(viib)

THANK YOU