

SPCM & ASSOCIATES

Chartered Accountants



SPCM
LEGAL

SAMĀCĀRA SEPTEMBER 2023






SAMĀCĀRA – SEPTEMBER 2023

TEAM SAMĀCĀRA

INCOME TAX

			
CA. Suhas P. Bora	CA. Pradeep M. Katariya	CA. Disha M. Shah	Mrs. Ruchi R. Bhandari

GOODS AND SERVICES TAX


Adv. Abhay H. Bora



SAMĀCĀRA – SEPTEMBER 2023

COMPANY LAW, BANKING AND FINANCE

			
CA. Manoj R. Jain	CA. Chetan R. Parakh	CA. Vishnu S. Rathi	CA. Prerna S. Bora

CIVIL, CRIMINAL, REAL ESTATE AND OTHER LAWS



**Adv. Sanket
S. Bora**



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SAMĀCĀRA – SEPTEMBER 2023

EDITORIAL

Dear All,

It is true that three years ago we were facing one of the most challenging business environments of all times. Stakeholders including government, investors, entrepreneurs, professionals, employees, and customers were trying their best to navigate the uncharted waters and reach the shore safely. Organizations were focused on survival rather than growth. The impact of pandemic was evidently visible at each stage of supply chain right from manufacturer, distributors, retailers, and customers. However, see the change that has come over! In the first three months of 2023-24, which concluded on June 30, 2023, India's gross domestic product (GDP) increased by 7.8%, according to information issued by the Ministry of Statistics and Programme Implementation (MoSPI) and for the first time in a month, India's quick payment system Unified Payment Interface (UPI) exceeded 10 billion transactions in August. According to data supplied by the National Payments Corporation of India (NPCI) up until (August 30th, 2023) the transaction volume hit 10.24 billion. In terms of value, UPI transactions are also on track to surpass the previous milestone of US\$ 183.68 billion (Rs. 15.18 trillion), just below the previous high of US\$ 185.62 billion (Rs. 15.34 trillion), which was registered in July of this year.

India's 76th Independence Day celebrations were celebrated with enthusiasm and on this historic day the Prime Minister in his address, paid tributes to Mangal Pandey, Bhagat Singh and Chandrashekhar Azad and countless such revolutionaries who shook the foundations of British rule. He also said that India is grateful to Rani Lakshmibai, Jhalkari Bai, Durga Bhabhi, Rani Gaidinliu, Rani Chennamma, and Begum Hazrat Mahal, who showed the mettle of women's power of the country. Further, the Prime Minister threw light on the Centre's '**Azadi Ka Amrit Mahotsav**', and said the event is an opportunity to recall the contributions made by those who dedicated their lives to the country during the last 75 years.

At SPCM also we are working on exploring the new opportunities on effective scale of operation on the belief and premise that **“when we are no longer able to change a situation, we are challenging to change ourselves”** I had a wonderful opportunity to share my views on the panel discussion on the subject of Mindset of Alliances and Networking amongst the Professionals organized by the Pune Branch of WIRC and I am very proud to share that 4 members of SPCM family participated in the Mock Tribunal organized by Pune Branch, where in they have marked the presence of SPCM. Hearty congratulations to CA. Chetan R. Parakh, CA. Prerna Desarda, CA. Vidhi Shah and CA. Sidharth Bora for their contribution at very short notice.

Month of August/September are the months of festivals. Eid-ul-Fitr, Raksha Bandhan, Gokul Ashtami, Paryushan, Parsi New Year and Ganesh Chaturthi are being celebrated by all as per their belief in different faiths. Though the faith may be different, the ultimate lesson of each faith is the same i. e. compassion, humanity, love for all.

In the month of September two festivals viz. **Paryushan Parv** and **Ganesh Utsav** are going to be celebrated and I pray to Bhagwan Mahavir and Lord Ganesh to visit house of all with bag full of

happiness, prosperity and peace and give us strength to face the challenge in life.

I would like to conclude with a message that let us look to the future with positive mind set with confidence as well as determination that we will continue to work, supporting the clients by providing timely service and complete their compliances under various statutes and strive for the betterment of the fraternity.

With Warm Regards,



CA. Suhas P. Bora
Founder Partner,
SPCM and Associates,
Chartered Accountants

GLIMPSE OF EVENTS

Our mentor, CA Suhas P. Bora sir, expressing his opinion as panelist on mind set for alliances and networking amongst professional organized by Pune Branch of WIRC on 28.08.2023



CA Pritesh Munot and CA Rajesh Agarwal felicitating CA Suhas P. Bora sir on the 28.08.2023



A memorable evening for our mentor CA Suhas P. Bora sir with seniors, fellow colleagues and team SPCM on the occasion of speaking at National Direct Tax Conference on the subject "Simulation of Tribunal"





DUE DATES

Income Tax, PF and ESIC due date calendar for the month of September 2023:

DATE	DUE DATE FOR
07-09-2023	<ul style="list-style-type: none"> • Deposit of Tax deducted/collected for the month of August, 2023.
14-09-2023	<ul style="list-style-type: none"> • Due date for issue of TDS Certificate for tax deducted under section 194-IA, 194-IB, 194M, 194S in the month of July, 2023. (Note: Applicable in case of specified person as mentioned under section 194S.) • Payment of ESI Contribution for the month of August, 2023. • Payment of PF for the month of August, 2023.
15-09-2023	<ul style="list-style-type: none"> • Second instalment of advance tax Assessment year 2024-25 (FY 2023-24)
30-09-2023	<ul style="list-style-type: none"> • Furnishing of challan-cum-statement in respect of tax deducted under section 194-IA, 194-IB, 194M, 194S in the month of August, 2023. (Note: Applicable in case of specified person as mentioned under section 194S.) • Due date for filing of audit report under section 44AB for the assessment year 2023-24 in the case of a corporate-assessee or non-corporate assessee (who is required to submit his/its return of income on October 31, 2023)



DATE	DUE DATE FOR
	<ul style="list-style-type: none"><li data-bbox="491 427 1369 618">• Quarterly statement of TDS deposited for the quarter ending June 30, 2023 (Note: The due date of furnishing TDS statement has been extended from June 30, 2023 to September 30, 2023 vide Circular no. 9/2023, dated 28-06-2023)<li data-bbox="491 674 1369 864">• Quarterly statement of TCS deposited for the quarter ending June 30, 2023 (Note: The due date of furnishing TCS statement has been extended from June 30, 2023 to September 30, 2023 vide Circular no. 9/2023, dated 28-06-2023)

GST due dates for the month September 2023: -

DUE DATE	RETURN	PERIOD	DESCRIPTION
10 th September	GSTR-7 (Monthly)	August'23	Summary of Tax Deducted at Source (TDS) and deposited under GST laws.
10 th September	GSTR-8 (Monthly)	August'23	Summary of Tax Collected at Source (TCS) and deposited by E-commerce operators under GST laws.
11 th September	GSTR-1 (Monthly)	August'23	Summary of outward supplies where turnover exceeds Rs.5 crore or have not chosen the QRMP scheme for the quarter of July-September 2023
13 th September	Furnishing Invoices in IFF Facility (Quarterly)	July-September 2023	Taxpayers who have opted for the Invoice Furnishing Facility (IFF) and choose to upload B2B outward supply invoices for first two months of the quarter. The B2B invoices relating to last month of the quarter are too uploaded while filing GSTR – 1 along with B2C invoices of entire quarter.
13 th September	GSTR-6	August'23	Details of ITC received and distributed by ISD.



DUE DATE	RETURN	PERIOD	DESCRIPTION
20 th September	GSTR-3B (Monthly)	August'23	Summary of outward supplies, ITC claimed, and net tax payable for taxpayers with turnover more than Rs.5 crore in the last FY or have not chosen the QRMP scheme for the quarter of July-September 2023
13 th September	GSTR-5 (Monthly)	August'23	Summary of outward taxable supplies & tax payable by a non-resident taxable person.
20 th September	GSTR-5A (Monthly)	August'23	Summary of outward taxable supplies and tax payable by OIDAR.
25 th August	GST Challan for all Quarterly filers	July- September 2023	GST Challan Payment if no sufficient ITC for July 2023, (for all Quarterly Filers).
25 th September	GST Challan for all Quarterly filers	July- September 2023	GST Challan Payment if no sufficient ITC for August 2023, (for all Quarterly Filers).

**INCOME TAX****Income Tax Unreported Tribunal Decisions**

- 1) **Smt. Nandini Sharma vs. ACIT/DCIT Central Circle, Amritsar [ITA No.148/Asr/2022, dated 10/10/2022] [AY 2019-20]**

Tax under section 115BBE-Excess stock found during survey surrendered as business income applicability of section 115BBE

Facts:

AO sought to invoke section 69 read with section 115BBE as regards excess stock found during survey. Assessee contended that excess stock found during survey was nothing but business stock carried on by assessee which was not declared in the books of accounts and since there was direct nexus between stock found during survey and business carried on by assessee, therefore, excess stock was only to be treated as income under the head business and not under deemed income, further excess stock found during the survey was not separately and clearly identifiable but was part of mixed lots of stock found at the premises which included the declared stock and stock of sister concern also. In these circumstances, section 69 could not be invoked and it was taxable as business income.

Held:

Section 115BBE could not be made applicable particularly where assessee made a statement that excess stock was a result of suppression of profit in respect of sales made outside the books of accounts, therefore, investment in excess stock computed by department was liable to be treated as business income and to be taxed under normal provisions and not under the Chapter No. XII.



2) DCIT v. M/s Welspun Steel Ltd. [ITA No. 2137/Mum/2021; dated 03/08/2022] [A.Y.: 2015-16]

Disallowance under section 14A-Amendments to section 14A by Finance Act, 2022-No retrospective effect

Facts:

The assessee earned exempt income to the tune of Rs. 7,43,185 against which it claimed deduction of expenses of Rs. 3,02,08,627. In course of scrutiny proceedings, the AO invoked section 14A read with rule 8D, keeping in view the amendment, brought in this section w.e.f. 1-4-2022 and restricted the deduction to the exempt income of Rs. 7,43,185. On appeal, however, CIT(A) allowed the claim of deduction fully on the ground that the amendment to section 14A was prospective in nature.

Held:

The amendments to section 14A introduced by the Finance Act, 2022 shall apply from assessment year 2022-23 and onwards, and shall not have retrospective effect. In view of this, the order of CIT(A) was upheld.

3) Anagha Vijay Deshmukh v. DCIT, CPC, Bengaluru [ITA No. 35/Pun/2022; dated 30/01/2023] [A.Y.: 2015-16]

ITR can't be treated as invalid until assessee's request for condonation of delay in furnishing ITR-V is pending

Facts:

Assessee, a non-resident, filed its return of income by declaring income from rent and interest and claimed to carry forward of losses under the head 'Capital Gains'. Further, the claim of carry forward of losses was enhanced by assessee by filing revised return. The return was processed under section 143(1), and the claim for carry forward of



loss was denied contending the original return filed was invalid as the assessee failed to submit the acknowledgement of the original return to the Central Processing Centre (CPC).

The aggrieved assessee preferred an appeal to the CIT(A) but all in vain. The matter then reached the Tribunal.

Held:

The Tribunal held that the assessee had furnished its original return well within the prescribed time, and the claim of carry forward of losses was denied only on the ground that the original return filed by the assessee was invalid for non-sending of acknowledgement to CPC. The requirement of furnishing the return electronically had another procedural requirement of taking a printout of such electronically filed return and sending it to the CPC as an acknowledgement of having furnished the return electronically. This second requirement of sending an acknowledgement of filed return to the CPC is only directory, and non-compliance, or late compliance of that cannot invalidate the compliance of the first mandatory requirement, to make an otherwise valid return a non-est. Since the procedural requirement of furnishing the acknowledgement is only a directory requirement, one cannot equate its non-submission on the one hand with not filing the return at all. Further, the assessee filed the request to condone the delay for non-furnishing acknowledgement in the material time, which was still pending before the board. Thus, the original return filed by the assessee can't be treated as invalid.



GST

GIST OF GST NOTIFICATIONS

NOTIFICATION NO.	DATE	SUBJECT / HIGHLIGHTS
44/2023-Central Tax	25-08-2023	CBIC extends the due date for furnishing FORM GSTR-7 for April, May, June and July, 2023 for registered persons whose principal place of business is in the State of Manipur.
43/2023-Central Tax	25-08-2023	CBIC extends the due date for furnishing FORM GSTR-3B for quarter ending June, 2023 for registered persons whose principal place of business is in the State of Manipur.
42/2023-Central Tax	25-08-2023	CBIC extends the due date for furnishing FORM GSTR-3B for April, May, June and July, 2023 for registered persons whose principal place of business is in the State of Manipur.
41/2023-Central Tax	25-08-2023	CBIC extends the due date for furnishing FORM GSTR-1 for April, May, June and July, 2023 for registered persons whose principal place of business is in the State of Manipur.
40/2023-Central Tax	17-08-2023	CBIC appoints common adjudicating authority for notice issued to M/s United Spirits Ltd. The notification outlines specifics about the appointment of a common adjudicating authority for the indicated notice and entity.
39/2023-Central Tax	17-08-2023	GST Notification No. 39/2023 pertains to the introduction of amendments to the previous notification, namely No. 02/2017-

NOTIFICATION NO.	DATE	SUBJECT / HIGHLIGHTS
		Central Tax dtd 19.06.2017. The key revisions predominantly revolve around the territorial jurisdiction. These modifications will come into force starting from the 4th of April 2022. Amendment made in table II serial no. 39, 101 and 107 with effect from 4th April 2022.
38/2023-Central Tax	04-08-2023	CBIC to make amendments (Second Amendment, 2023) to the CGST Rules, 2017 – change in rules related to registration, bank details for registration, cancellation and new rule insertion – rule 88D.
37/2023-Central Tax	04-08-2023	CBIC notified special procedure to be followed by the electronic commerce operators in respect of supplies of goods through them by unregistered persons. E Commerce operator will not allow if unregistered person don't have enrolment number on common portal, Interstate supply will not be allowed, and TCS shall not be collected by E Commerce operator and mandatory submission of details in form GSTR 8 on common Portal. This notification will be applicable from 1st October 2023.
36/2023-Central Tax	04-08-2023	CBIC notified special procedure to be followed by the electronic commerce operators in respect of supplies of goods through them by composition taxpayers. Interstate supply will not be allowed, TCS Will be collected by E Commerce operator and mandatory submission of details in form GSTR -8 on common Portal.



GST UPDATES

1. Advisory: Mera Bill Mera Adhikaar Scheme:

1. As per the direction from the Government, the GSTN has developed and launched a mobile application (available on iOS and Android platforms) and also a web portal for the “Mera Bill Mera Adhikaar” scheme.
2. This scheme will be implemented from 1st September, 2023 initially in the States of Gujarat, Assam, Haryana and UTs of Puducherry and Daman & Diu and Dadra & Nagar Haveli, as per the policy decision of the Government.
3. Please refer to the Policy Document for MBMA related policy matters with reference to broad guidelines for its implementation.

2. Advisory for applicants where GST Registration application marked for Biometric-based Aadhaar Authentication:

1. Rule 8 of CGST Rules had been amended to provide that those applicants who had opted for authentication of Aadhaar number and identified on the common portal, based on data analysis and risk parameters, shall be placed for biometric-based Aadhaar authentication and taking photograph(s) of the applicant.
2. After submission of application in Form GST REG-01 and before generation of ARN, the applicant will either get the message for visiting GST Suvidha Kendra (GSK) or a link on the declared Mobile and Email ID; as may be applicable at TRN stage, based on identification by common portal so that registration process may be completed.

3. Those applicants who get the link on Mobile & Email ID for Aadhaar Authentication, they can proceed for completing their application as per existing implementation, however, those applicants who get message for visiting GSK, will be required to visit at the designated GSK as conveyed on Mobile/Email and get biometric authentication for all required persons as per the GST Application Form REG-01. The applicants should to visit the GSK before the TRN expiry date as detailed in Email for Biometric-based Aadhaar Authentication process. In this case, Application Reference Number (ARN) will be generated only after the completion of Biometric-based Aadhaar Authentication process

3. Introducing Electronic Credit Reversal and Reclaimed statement:

“Vide Notification No. 14/2022 – Central Tax dated 05th July, 2022 (read with circular 170/02/2022-GST, Dated 6th July,2022), the Government introduced certain changes in Table 4 of Form GSTR-3B so as to enable the taxpayers in reporting correct information regarding ITC availed, ITC reversal, ITC re-claimed and ineligible ITC. The re-claimable ITC earlier reversed in Table 4(B)2 may be subsequently claimed in Table 4(A)5 on fulfilment of necessary conditions. Such reclaimed ITC in Table 4(A)5 also needs to be explicitly reported in Table 4D (1).

In order to facilitate the taxpayers in correct and accurate reporting of ITC reversal and reclaim thereof and to avoid clerical mistakes, a new ledger namely Electronic Credit and Re-claimed Statement is being introduced on the GST portal. This statement will help the taxpayers in tracking of their ITC that has been reversed in Table 4B (2) and thereafter re-claimed in Table 4D(1) and 4A(5) for each return period, starting from August return period.



Capital Budgeting for Corporate Financial Planning

What is capital Budgeting?

Capital budgeting involves choosing projects that add value to a company. The capital budgeting process can involve almost anything including acquiring land or purchasing fixed assets like a new truck or machinery. Corporations are typically required, or at least recommended, to undertake those projects which will increase profitability and thus enhance shareholders' wealth. However, what rate of return is deemed acceptable or unacceptable is influenced by other factors that are specific to the company as well as the project.

Capital budgeting is important to Corporate Financial Planning because it creates accountability and measurability. Any business that seeks to invest its resources in a project, without understanding the risks and returns involved, would be held as irresponsible by its owners or shareholders. Furthermore, if a business has no way of measuring the effectiveness of its investment decisions, chances are that the business will have little chance of surviving in the competitive marketplace.

A capital budgeting decision is both a financial commitment and an investment. By taking on a project, the business is making a financial commitment, but it is also investing in its longer-term direction that will likely have an influence on future projects the company considers.

How capital Budgeting works?

When a firm is presented with a capital budgeting decision, one of its first tasks is to determine whether or not the project will prove to be profitable. The payback period (PB), internal rate of return (IRR) and net present value (NPV) methods are the most common approaches to project selection. Although an ideal capital budgeting solution is such that all three metrics will indicate the same decision, these approaches will often



produce contradictory results. Depending on management's preferences and selection criteria, more emphasis will be put on one approach over another. Nonetheless, there are common advantages and disadvantage associated with these widely used valuation methods.

Capital Budgeting Techniques

1. Payback Period

The payback period calculates the length of time required to recoup the original investment. For example, if a capital budgeting project requires an initial cash outlay of Rs. 1 million, the PB reveals how many years are required for the cash inflows to equate to the one million outflows. A short PB period is preferred as it indicates that the project would "pay for itself" within a smaller time frame.

Payback periods are typically used when liquidity presents a major concern. If a company only has a limited amount of funds, they might be able to only undertake one major project at a time. Therefore, management will heavily focus on recovering their initial investment in order to undertake subsequent projects. Another major advantage of using the PB is that it is easy to calculate once the cash flow forecasts have been established.

There are drawbacks to using the PB metric to determine capital budgeting decisions. Firstly, the payback period does not account for the time value of money (TVM). Simply calculating the PB provides a metric which places the same emphasis on payments received in year one and year two. Such an error violates one of the basic fundamental principles of finance. Luckily, this problem can easily be amended by implementing a discounted payback period model. Basically, the discounted PB period factors in TVM and allows one to determine how long it takes for the investment to be recovered on a discounted cash flow basis.

Another drawback is that both payback periods and discounted payback periods ignore the cash flows that occur towards the end of a project's life, such as the salvage value. Thus, the PB is not a direct measure of profitability.

There are other drawbacks to the payback method that include the possibility that cash investments might be needed at different stages of the project. Also, the life of the asset that was purchased should be considered. If the asset's life does not extend much beyond the payback period, there might not be enough time to generate profits from the project.

Since the payback period does not reflect the added value of a capital budgeting decision, it is usually considered the least relevant valuation approach. However, if liquidity is a vital consideration, PB periods are of major importance.

2. Internal Rate of Return:

The internal rate of return (or expected return on a project) is the discount rate that would result in a net present value of zero. Since the NPV of a project is inversely correlated with the discount rate – if the discount rate increases then future cash flows become more uncertain and thus become worthless in value – the benchmark for IRR calculations is the actual rate used by the firm to discount after-tax cash flows.

An IRR which is higher than the weighted average cost of capital suggests that the capital project is a profitable endeavor and vice versa.

The IRR rule is as follows:

IRR > cost of capital = accept project

IRR < cost of capital = reject project



The primary advantage of implementing the internal rate of return as a decision-making tool is that it provides a benchmark figure for every project that can be assessed in reference to a company's capital structure. The IRR will usually produce the same types of decisions as net present value models and allows firms to compare projects on the basis of returns on invested capital.

Despite that the IRR is easy to compute with either a financial calculator or software packages, there are some downfalls to using this metric. Similar to the PB method, the IRR does not give a true sense of the value that a project will add to a firm – it simply provides a benchmark figure for what projects should be accepted based on the firm's cost of capital. The internal rate of return does not allow for an appropriate comparison of mutually exclusive projects; therefore, managers might be able to determine that project A and project B are both beneficial to the firm, but they would not be able to decide which one is better if only one may be accepted.

Another error arising with the use of IRR analysis presents itself when the cash flow streams from a project are unconventional, meaning that there are additional cash outflows following the initial investment. Unconventional cash flows are common in capital budgeting since many projects require future capital outlays for maintenance and repairs. In such a scenario, an IRR might not exist, or there might be multiple internal rates of return.

3. Net Present Value

The net present value approach is the most intuitive and accurate valuation approach to capital budgeting problems. Discounting the after-tax cash flows by the weighted average cost of capital (WACC) allows managers to determine whether a project will be profitable or not. And unlike the IRR method, NPVs reveal exactly how profitable a project will be in comparison to alternatives.

The NPV rule states that all projects which have a positive net present value should be accepted while those that are negative should be rejected. If funds are limited and all positive NPV projects cannot be initiated, those with the high discounted value should be accepted. This method also takes into consideration the effect of salvage value at the end of the project. The calculation of WACC plays a great role in calculating the NPV of the project as incorrect calculation will lead to incorrect results on the acceptability of a project.

Some of the major advantages of the NPV approach include its overall usefulness and that the NPV provides a direct measure of added profitability. It allows one to compare multiple mutually exclusive projects simultaneously, and even though the discount rate is subject to change, a sensitivity analysis of the NPV can typically signal any overwhelming potential future concerns. Although the NPV approach is subject to fair criticisms that the value-added figure does not factor in the overall magnitude of the project, the profitability index (PI), a metric derived from discounted cash flow calculations can easily fix this concern.

The **profitability index** is calculated by dividing the present value of future cash flows by the initial investment.

A PI greater than 1 indicates that the NPV is positive.

PI of less than 1 indicates a negative NPV.

Conclusion:

A capital budget is a long-term plan that outlines the financial demands of an investment, development, or major purchase. As opposed to an operational budget that tracks revenue and expenses, a capital budget must be prepared to analyze whether or not the long-term endeavor will be profitable.



PARTNERSHIP FIRM CONTROVERSIAL ISSUES – ALLIED LAWS

Introduction:

The introduction of sections 9B and 45(4) of the Act has raised a number of issues. In a country like India, the majority of family businesses and businesses are in the form of partnerships. Therefore, it is imperative to understand the implications of the amendments in the Income-tax Act, 1961 and other developments in the jurisprudence governing these entities.

With respect to sections 9B and 45(4) of the Act, the Central Board of Direct Taxes issued a **Circular No. 14 of 2021, dated July 2, 2021 [2021] 436 ITR 25 (St)** which serves as a guide to understanding the computation of Capital Gains and the newly introduced Rule 8AA and Rule 8AB of the Income-tax Rules, 1962 for the purpose of computing the profits/gains arising on account of section 45(4) of the Act.

In this article, we have discussed few issues having impact of allied laws other than direct tax laws, particularly other than Income Tax Act 1961

1. Is the Registrar of Firms duty-bound to look into a complaint raised before it?

The Hon'ble High Court of Andhra Pradesh in the case of **Sri Ganesh Sai Granites and Minerals v. Commissioner and Inspector General AIR 2023 (NOC) 14 (AP)** Where a dispute arose between the partners of a partnership firm claiming that one of the partners forged the signatures of the other partners and created a deed of reconstitution of the Firm. The said deed was registered before the Registrar of the Firms. One of the partners filed a complaint before the Registrar of Firms explaining the details, requesting the registrar not to act on the reconstitution deed filed



before it and to rectify the same. There was no enquiry or rectification done by the Registrar of Firms.

On a Writ Petition it was held that As per section 64 of the Indian Contract Act 1932 and State Rules thereof, the partners are entitled to approach the Registrar of Firms to ascertain the correct facts. The Registrar is duty-bound to conduct an enquiry and pass necessary orders. Refusal or inaction by the Registrar is not proper. The Registrar of Firms was directed to conduct an enquiry as per the complaint.

Therefore, it can be said that the Registrar of Firms is duty-bound to look into a complaint raised before it.

2. Can the partners of an unregistered firm refer its issues for arbitration?

The Hon'ble High Court of Calcutta in the case of **Md. Wasim & Anr v. Bengal Refrigeration and Company & Ors AIR 2022 CALCUTTA 382** where a dispute arose between the partners of an unregistered firm, after which, one of the partners invoked the arbitration clause. The respondent-partner denied the appointment of an arbitrator alleging that the allegations raised by the applicants in their initial notice were false. The applicants (partners) filed the application under Section 11 of the Arbitration Act for the appointment of an arbitrator.

It was held that arbitral proceedings shall not come under the expression 'other proceedings' of Section 69(3) of the Partnership Act, 1932 and that the ban imposed under Section 69 of the Act can have no application to arbitration proceedings and as well of the arbitral award under Section 11 of the Arbitration Act.

3. Can an arbitration clause be enforced by the legal heirs of a deceased partner?

Section 40 of the Arbitration Act, 1996 clearly provides that arbitration The agreement will not be discharged by the death of the party thereto and will be enforceable by or against the legal representatives of the deceased.

Section 42 of the Partnership Act, 1932 provides for the dissolution of partnership firms by the death of a partner.

In terms of Section 46 of the Partnership Act, 1932 on the dissolution of the firm, every partner or his legal representative is entitled to, as against all the other partners or their representatives, to have the property of the firm applied in payment of the debts and liabilities of the firm and to have the surplus is distributed amongst the partners or their representatives according to their rights.

Therefore, an arbitration clause be enforced by the legal heirs of a deceased partner. [Refer to the case of **Papiya Mukherjee v. Aruna Banerjea and another AIR 2022 Calcutta 201**]

4. Can a retired partner be held liable under the Negotiable Instruments Act, 1881? Whether the proceedings can be quashed under section 482 of the Code of Criminal Procedure, 1974? Can criminal proceedings be initiated only against a partner?

A partner cannot be vicariously held liable for the acts of the firm after his retirement.

The accused-retired partner would have to demonstrate that at the time of issuance of the cheque or at the time of the commission of the offence, he was in no manner concerned with the firm or he was not in charge or responsible for the day-to-day affairs of the firm. The same cannot be made on mere bald assertion.

Where a retired partner took recourse under section 482 of the Code of Criminal Procedure, 1974 for quashing the proceedings it was held that the same cannot be done without furnishing some sterling incontrovertible material. [Refer **S.P. Mani and Mohan Dairy v. Dr. Snehalatha Elangovan AIR 2022 SUPREME COURT 4883**]

Further, in such criminal cases, it is imperative to make the Firm as the primary accused as the cheques are issued by the Partner, not in his personal capacity.

The Hon'ble Supreme Court in the case of **Dilip Hariramani v. Bank of Baroda AIR 2022 SUPREME COURT 2258** held that the provisions of Section 141 impose vicarious liability by deeming fiction which presupposes and requires the commission of the offence by the company or firm. Therefore, unless the company or firm has committed the offence as a principal accused, the persons mentioned in sub-section (1) or (2) would not be liable and convicted as vicariously liable. Section 141 of the Act extends vicarious criminal liability to officers associated with the company or firm when one of the twin requirements of Section 141 of the Act has been satisfied, which person(s) then, by deeming fiction, is made vicariously liable and punished. However, such vicarious liability arises only when the company or firm commits the offence as the primary offender. The conviction was set aside.

5. Is an unregistered partnership firm barred from filing a suit on a transaction which is not in course of business?

The Hon'ble Supreme Court in the case of **Shiv Developers through its partner Sunil bhai Somabhai Ajmer v. Aksharay Developers & Ors. MANU/ SC/ 0111/ 2022 (SC)** where an unregistered partnership firm instituted a suit seeking a perpetual injunction and declaration of a sale deed as null and void. The Trial Court rejected the application of the defendants stating that the suit was filed by and on behalf of an unregistered partnership firm which was barred by law.



On appeal, the High Court held that the plaintiff, being an unregistered firm, would be barred to enforce a right arising out of the contract in terms of Section 69(2) of the Act of the Partnership Act, 1932.

It was held that to attract the bar of Section 69(2) of the Act, the contract in question must be the one entered into by the unregistered partnership firm with a 3rd party and must also be in the course of its business dealings. Section 69(2) of the Act is not attracted to each and every contract. The sale transaction in question is not arising out of the business of the appellant firm. The subject suit is one where the plaintiff seeks common law remedies with the allegations of fraud and misrepresentation as also as the statutory rights of injunction and declaration in terms of the provisions of the Specific Relief Act, 1963 as also the Transfer of Property Act, 1882 (while alleging want of the sale consideration). Therefore, the bar of Section 69(2) of the Act of 1932 does not apply to the case.

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