

# DEVMANTRA TIMES

## SEPTEMBER EDITION

ISSUE NO.43, DATED 5<sup>TH</sup> SEPTEMBER, 2024



### Road developers to see slower revenue growth of 5-7 pc next fiscal: Crisil

Road engineering, procurement, and construction (EPC) companies are expected to see a moderate revenue growth of 5-7 per cent next fiscal due to lower national highway awarding impacting their order books.

### Brazil Supreme Court panel unanimously upholds judge's decision to block X nationwide

The panel that voted in a virtual session was comprised of five of the full bench's 11 justices, including de Moraes, who last Friday ordered the platform blocked for refusing to name a local legal representative, as required by law. It will stay suspended until it complies with his orders.



Dear Readers,

We welcome you to the Forty-third edition of DevMantra Times for the month of September 2024. This grand finale encapsulates the essence of a dynamic governance period, paving the way for what promises, to be an equally eventful new chapter in our regulatory journey, with pride we present an update on regulatory announcements.

### 1. Industry & Economic Updates

#### Personal loan sees 14% growth; cards, gold major factors behind surge

Credit card dues have increased the fastest among bank loans, reaching nearly Rs 2.8 lakh crore by July's end, seeing a 22% year-on-year growth. Personal loans now make up the largest share of non-food credit at 32.9%, growing by 14.4%. Loans against gold jewellery increased the most within personal loans,

#### WazirX parent looking for 'white knights' to rescue crypto exchange

"There are several ideas from 'white knights' to collaborate ... there are creative ways to do this rather than acquiring the platform (by a third party), which is not possible in this case because the ownership is disputed," WazirX cofounder and CEO Nischal Shetty said in a townhall on Monday.

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### 2. Startup Updates

#### **Removed Angel Tax, taking policy measures to promote fintech sector: PM Modi**

Prime Minister Narendra Modi on Friday said that the govt is making policy changes like the removal of Angel Tax to boost the fintech sector. Speaking at the Global Fintech Fest 2024, Modi asked regulators to address cyber frauds and highlighted fintech's role in promoting financial transparency and inclusion.

#### **DPI dependent Indian startups valued at \$100 billion: Nandan Nilekani**

Speaking at the annual Global Fintech Fest here, Nilekani said the very idea while building an Aadhar or unified payments interface (UPI) was to build the rails that could be used by the private sector or entrepreneurs to come out with innovative offerings.



#### **PhonePe posts 74% jump in FY24 revenue to Rs 5,064 crore**

“We believe a focus on disciplined financial management will help us continue in the progression towards profitability of our payments business which by itself is a unique feat in the Indian context,” said founder and CEO Sameer Nigam.

#### **Tamil Nadu-based space startup successfully launches first reusable hybrid rocket RHUMI**

Space Zone India successfully launched its reusable hybrid rocket, Mission RHUMI-2024, from Chennai, focusing on research related to global warming & climate change. The rocket, which carried multiple satellites for atmospheric data collection, exemplifies India's growing prominence & commitment to sustainable space missions.

#### **Bluestone bags Rs 900 crore in pre-IPO round, to file draft papers this year**

Bluestone, a jewellery retailer, completed a Rs 900-crore funding round, boosting its valuation to \$970 million. Key investors included Prosus and Peak XV Partners. Kalaari Capital – one of the early investors in the Bengaluru-based firm – has earned about Rs 300 crore by selling a part of its stake.

#### **Why this Volume of Newsletter is important for reader?**

Through the series of this newsletter, we aim at covering all relevant Income Tax, Goods & Service Tax and Companies Act, Start-up Update, notification, circulars and case laws which may directly or indirectly impact our readers.

At DevMantra, it is our utmost priority to help our readers to be informed with respect to the changes in relevant laws for a smoother compliance.

DevMantra was founded based on the unalterable premise of excellence, acuity, integrity and an unwavering commitment to delivery. These principles continue to form the edifice of our approach as an organization, to our clients, our professionals and our community, and this has served us well in our journey so far.

This approach has allowed DevMantra to work with and advise the very best clients, both in India and internationally. We encourage our people to strive for excellence and innovation within a meritocratic working environment & support their entrepreneurial spirit. It is our consistent endeavor with our people, to ensure that they imbibe the culture of the firm and form part of the weft & we have of the fabric of DevMantra.

Our core values remain the guiding principles for everything we do, & we would like to emphasize “Knowledge” as one of the fundamental beliefs which drive the success of our operations. As we keep on reiterating, Knowledge is our number one priority. We don't count time when it comes to gain any new knowledge or to reinstate the earlier one. Our clients trust our expertise & putting countless hours in keeping ourselves up to date on the subject we are advising on, deserve their trust.

Regards & Best Wishes,  
Editorial Team

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### 3. Judicial Updates

#### **Issuance of notice in Form ASMT-10 is mandatory if discrepancies are noticed upon scrutiny of GST returns: HC**

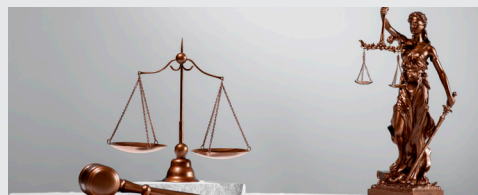
Editorial Note: Upon fulfilment of two conditions, namely, selection of returns for scrutiny and discovery of discrepancies on such scrutiny, there is a mandatory obligation to issue ASMT-10; however, scrutiny of returns and issuance of notice in Form ASMT-10 do not constitute a mandatory pre-requisite for adjudication even in cases where returns were scrutinized

#### **Gauhati HC set aside SCN since buyer can't be punished if selling dealer had failed to deposit the tax collected by it**

Editorial Note: Show cause notice issued against assessee was to be set aside on following case of On Quest Merchandising India Pvt Ltd. Government of NCT of Delhi [2017] 87 taxmann.com 179 (Delhi) where in it was categorically held that a purchasing dealer could not be punished for act of selling dealer in case selling dealer had failed to deposit the tax collected by it

#### **HC held that principle of natural justice is not followed where another SCN was issued without considering pervious reply**

Editorial Note: Where revenue issued a notice highlighting discrepancies between assessee's GSTR 2A and GSTR 3B, despite assessee's detailed replies, including clarification that a notice mistakenly addressed to M/s Paridhee did not pertain to them, revenue issued a demand notice under Section 73; instant writ petition was to be disposed of directing revenue consider assessee's earlier reply regarding its own returns only



#### **Opportunity of personal hearing is mandatory for adjudicating SCN under Section 74 of the CGST Act: HC**

Editorial Note: Opportunity of personal hearing must be granted before passing order under Section 74 of GST Act; order passed without such hearing liable to be quashed and remanded

#### **Order passed during pendency of IRP proceedings was not sustainable and to be set aside: HC**

Editorial Note: Where petitioner undergoing process of resolution before Interim Resolution Professional (IRP), impugned order under section 73 of UPGST Act issued, petitioner's request to grant time to seek permission of IRP to contest adjudication proceedings not considered, impugned order passed during pendency of IRP proceedings was not sustainable



#### **Detention of goods and imposing penalty due to expired E-way bill to be quashed if no mens rea to evade tax is established: HC**

Editorial Note: Where assessee's goods were in transit and same were detained on ground that E-way bill had expired to which reason given by assessee was that truck driver had diverted from route due to personal reasons without informing, order detaining assessee's goods in transit and imposing penalty due to an expired E-way bill was to be quashed as proceedings under Section 129 read in conjunction with Section 130, require an intent to evade payment of tax and in instant case revenue had failed to

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### **Seizure of cash and silver bars recovered during GST search is not sustainable: SC**

Editorial Note: Search and Seizure proceedings - Seizure of cash and silver bars recovered during search not sustainable as these were not subject matter of supply and evasion of tax. Purpose of Section 67 of GST law was not recovery of tax but to empower authorities to unearth evasion



### **Appeal filing date under GST law is date of electronic submission, not subsequent physical filing: HC**

Editorial Note: Appeal filing date under GST law is date of electronic submission, not subsequent physical filing, for determining timely filing within limitation period. Appeal filing date under GST law is date of electronic submission, not subsequent physical filing, for determining timely filing within limitation period

### **No GST is payable on supply of services by way of extending loans by company to its subsidiary company: HC**

Editorial Note: No tax is payable on supply of service by director of company by way of providing guarantee on loans taken by company; No GST is payable on supply of services by way of extending loans by company to its subsidiary company



### **4. INCOME TAX REGULATORY UPDATES**

#### **No concealment penalty if assessee relied on professional valuation report to compute capital gain: ITAT**

Editorial Note: Where addition of capital gain was computed on account of difference in estimation of cost of acquisition between claim made by assessee and value adopted by Assessing Officer and Assessing Officer not able to prove that there was any willful or gross negligence on part of assessee resulting thereby either any concealment of income and or furnishing inaccurate particulars of income, penalty could not be levied under section 271(1)(c)

### **Trust can apply for final approval even if it commenced its activities prior to grant of provisional registration: ITAT**

Editorial Note: Where assessee applied for provisional approval under section 80G(5)(iv) and same was granted but application for final approval was rejected on ground that assessee had already commenced its activities in 2002 and, thus, time period for making application had already expired, since application could not be rejected on ground that institution had already commenced its activities even prior to grant of provisional registration, assessee-trust was entitled to apply for final approval

### **Loss incurred by builder on default in payment schedule of purchase of property is business loss: ITAT**

Editorial Note: Where assessee, engaged in real estate business, entered into agreement to purchase a property and paid part of consideration as advance but for failure of assessee to pay balance amount, seller forfeited amount paid as advance, such loss having been incurred in course of business activity was allowable as business loss



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### **AO to record specific finding that undisclosed income was based on tangible material before levying penalty u/s 271AAA**

Editorial Note: Assessing officer have to record a specific finding that undisclosed income as defined under section 271AAA was found based on tangible verifiable material found during course of search and onus is thus on Assessing officer and not on assessee to satisfy conditions before charge for levy of penalty is fastened on assessee.



### **No higher TDS/TCS if deductee/collectee dies on or before 31-05-24 without linking PAN-Aadhaar: CBDT**

Editorial Note: The CBDT has specified that in respect of cases where a higher rate of TDS/ TCS was attracted under section 206AA/206CC of the Act pertaining to the transactions entered into up to 31.03.2024 and in case of the demise of the deductee/collectee on or before 31.05.2024, i.e. before the linkage of PAN and Aadhaar could have been done, there shall be no liability on the deductor/collector to deduct/collect the tax under section 206AA/206CC, as the case may be.

### **Exp. incurred on community services & social welfare as per settlement with workmen is allowable u/s 37: HC**

Editorial Note: Where assessee-company made certain payments towards community services and social welfare in vicinity of its business operations and Assessing Officer disallowed said payments under section 40A(9), merely because such welfare measures were recited in Memorandum of Settlement with workmen's union, these payments would not partake of character of payments made under Memorandum of Settlement or payment required to be made under labour law, or for that matter,

### **Extra sum received on development of property to be treated as capital gain if it was part of development agreement: HC**

Editorial Note: Where assessee entered into a development agreement with a developer to develop a land and building standing thereon (property) owned by him and developer during course of development obtained TDR also from assessee and paid certain extra amount to assessee, development agreement and commitment letter regarding TDR should be read as one agreement and extra amount paid should be considered as payment under development agreement itself and extra amount should be treated as long-term)

### **Date of possession of new flat to be considered as date of purchase for claiming sec. 54 exemption: ITAT**

Editorial Note: Where assessee entered into an agreement with a builder to purchase new asset on 21-6-2014 and he made agreement to sell original asset on 22-7-2015 and occupation certificate for new asset was received by builder on 16-9-2015 and possession of new asset was given to assessee on 16-11-2015, in view of judicial precedent on subject, relevant date for grant of deduction under section 54 would be date of possession which was well within period of two years from date of agreement

### **No sec. 68 additions if loan amount was duly repaid within same financial year: HC**

Editorial Note: Where amount of loan received by assessee was returned within same financial year, appellate authorities had rightly deleted addition made under section 68 in respect of such loan

### **No fee under section 234F as CPC considered wrong due date of filing of ITR while processing return: ITAT**

Editorial Note: Claim of exemption under section 11 could not be denied on ground that assessee omitted to file audit report along with return, when same was submitted before intimation under section 143(1) was issued

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### **Sum received for relinquishment of right to sue for allotment of shares is not profits in lieu of salary: HC**

Editorial Note: Where assessee received a lump sum amount from company towards full and final settlement of all disputes and differences with it and in terms of settlement agreement, assessee unconditionally and irrevocably relinquished all his rights in respect of registration of shares held by him and to consequently hand over share certificates in original to company, said settlement amount was not liable to be construed as payment connected to termination of assessee's employment and, thus,



### **ITAT restricts additions made on basis of WhatsApp chats to sales made to only 3 parties**

Editorial Note: Where Assessing Officer had made addition on account of under-invoicing after analyzing Whatsapp messages retrieved from mobile of persons working and looking after sales and billing of assessee-firm being of view there was suppression of sale rate, and, therefore, entire turnover of assessee was extrapolated, in view of fact that except three parties, transactions made on basis of Whatsapp chat did not pertain to year under consideration.

### **No deduction u/s 24 if rental income of charitable trust is computed u/s 11: ITAT**

Editorial Note: No deduction under section 24 was to be allowed where rental income derived by a charitable trust was computed under section 11

### **Compensation received from Flipkart for diminution in value of ESOPs is taxable as perquisite: HC**

Editorial Note: Where assessee, employee of step down subsidiary of FPS, held ESOPs of FPS and received monetary benefit at pre-exercise stage by way of compensation for diminution in value of stock options, since assessee did not make any payment towards ESOPs and continued to retain all ESOPs even after receipt of compensation, entire receipt would qualify as perquisite and would become liable to be taxed under head salaries)



### **Statement given during survey has no evidentiary value; additions based on such statement not substantiable: ITAT**

Editorial Note: Statement given during course of survey under section 133A is not a statement on oath as given under section 132(4) and, therefore, has no evidentiary value.

### **AO can't make additions on account of unexplained cash credit if Co. undergoing insolvency: ITAT**

Editorial Note: Where assessee-company underwent a CIRP under IBC, 2016 and consequently, AO resorted to reopening assessment and made additions under section 68 on account of unexplained cash credits representing bogus purchases, by virtue of provisions of section 238 of IBC, 2016, Income-tax Department is bound by terms of resolution plan.

### **All Indian citizens aren't required to obtain Income-tax Clearance Certificate before leaving country: CBDT**

Editorial Note: The Central Board of Direct Taxes (CBDT) has clarified that income-tax clearance certificates (ITCC) are needed by residents domiciled in India only in rare cases, such as (a) where a person is involved in serious financial irregularities or (b) where a tax demand of more than Rs. 10 lakh is pending and not stayed by any authority.



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### **No disallowance of employees' contribution to NPS deposited before filing ITR as no due date is prescribed under PFRDA Act**

Editorial Note: Where assessee made payments of employees' contribution to National Pension Scheme (NPS), since there was no due date prescribed in respective PFRDA Act, 2013 for such payments and all payments were duly made before filing of return of income as per section 139(1), impugned adjustment made on payments under NPS scheme was not justified and amount in question was to be treated as allowable under section 43B(b)



### **Ruling favorable to assessee should be applied if there are conflicting decisions by two non-jurisdictional HCs: ITAT**

Editorial Note: Where assessee made certain payments to non-resident without deduction of TDS, since recipient parties had already declared receipts in their respective return of income, said payment could not be disallowed by invoking provisions of section 40(a)(i)

### **Loss on high seas sales not speculative if ultimate settlement of transaction was by actual delivery of goods: ITAT**

Editorial Note: Where assessee purchased goods from importer while on high seas in transit and thereafter assessee sold goods by handing over and transfer of title documents in favour of ultimate buyer and while goods were still on high seas transit ultimate purchaser had taken delivery and physical possession of goods, since ultimate settlement of transactions entered into by assessee had been settled by actual delivery of goods to ultimate buyer

## **4. Corporate Law Updates**

### **Secured creditor can't claim right in property beyond what was available to Co. during subsistence of sub-lease rights**

Editorial Note: Where sub-demised office space was leased by applicant to respondent company-in liquidation vide registered Indenture of Sub-Lease, which was subsequently mortgaged by respondent in favour of PNB bank to secure credit facilities,



### **SEBI proposes to introduce a new asset class or product category to bridge the gap between Mutual Funds and PMS**

Editorial Note: SEBI has released a Consultation Paper on the 'Introduction of new asset class or product category'. The objective is to seek public comments on proposal to introduce a new asset class or product category to bridge the gap between Mutual Funds and Portfolio Management Services (PMS) in terms of flexibility in portfolio construction. The minimum investment amount under the new asset class has been proposed at Rs 10 lakh per investor. Comments on the same may be submitted by August 6, 2024.

### **Companies must now remit amounts to the IEPF Authority online within 30 days of the due date: MCA**

Editorial Note: The MCA has notified the Investor Education and Protection Fund Authority (Accounting, Audit, Transfer and Refund) Amendment Rules, 2024. As per the amended norms, companies must remit any amount required to be credited to the Investor Education and Protection Fund (IEPF) online to the Authority within 30 days from the date it becomes due. Earlier, companies were required to remit the amount into a specified account of the IEPF Authority maintained in the Punjab National Bank.

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### Tax Compliance Calendar for September 2024

| Compliance Due Date        | Concerned (Reporting) Period | Compliance Detail   | Applicable To   |
|----------------------------|------------------------------|---|---|
| 7 <sup>th</sup> September  | August 2024                  | TDS deposit   | Non-Government Deductors  |
| 10 <sup>th</sup> September |                              | Equalization Levy deposit   | All Deductors   |
| 11 <sup>th</sup> September |                              | GSTR 8 (GST TDS Return)   | Any person who is required to collect tax at source is required to furnish monthly return of tax collected at source and tax deduction at source for the month  |
|                            |                              | GSTR-1 (Outward supply return)  | a) Taxable persons having annual turnover > Rs. 5 crore in FY 2022-23<br>b) Taxable persons having annual turnover ≤ Rs. 5 crore in FY 2022-23 and not opted for Quarterly Return Monthly Payment (QRMP) Scheme |
| 15 <sup>th</sup> September |                              | ITNS -280   | Second instalment of advance tax payable for assessment year 2024-25 is required to be deposited by persons other than those covered by section 44AD(1) or section 44ADA(1).                                    |
| 15 <sup>th</sup> September |                              | Deposit of PF&ESI contribution  | All Deductors   |
| 20 <sup>th</sup> September |                              | GSTR-6 [Return by input service distributor (ISD)]<br>a)GSTR-5 (Return by Non- resident).<br>b)GSTR-5A [Online Information Database Access and Retrieval (OIDAR) services return] | Person registered as ISD<br>a)Non-resident taxable person (NRTP)<br>b)OIDAR services provider   |
| 20 <sup>th</sup> September | August 2024                  | GSTR-3B (Summary return)  | a) Taxable persons having annual turnover > Rs. 5 crore in FY 2022-23<br>b) Taxable persons having annual turnover ≤ Rs. 5 crore in FY 2022-23 and not opted for QRMP scheme                                    |
| 27 <sup>th</sup> September | 2023-24                      | Form AOC -4 (OPC)   | Financial statement of one person company   |
| 25 <sup>th</sup> September | August 2024                  | PMT 06 Payment of tax liability   | Tax payers (Quarterly Filers under QRMP)  |
| 30 <sup>th</sup> September | 2023-24                      | AGM & 3CA OR 3CB & 3CD  | Hold Annual General Meeting (Companies adopting financial year April to March) & Tax Audit of Accounts  |



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