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NEWSLETTER

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- INHERITANCE & SUCCESSION PLANNING

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Corporate Laws

Latest update, New and Judgments

1. **Delhi HC orders extension of all interim orders till 15-6-2020**

   Court on Its Own Motion v. State & Others - *[2020] 116 taxmann.com 570 (Delhi)*

   In view of outbreak of COVID-19, Court took suo motu cognizance of the extraordinary circumstances on 25-3-2020 and passed certain directions. In continuation of said order, Delhi HC ordered that in all matters pending before High Court and Courts subordinate to High Court, wherein interim orders issued were subsisting as on 15-5-2020 and expired or will expire thereafter, same shall stand automatically extended till 15-6-2020 or until further orders.

2. **Key highlights of Fifth tranche of measures announced by the Finance Minister**

   The Finance Minister, Smt. Nirmala Sitaraman in a press conference held on 17.05.2020 has announced series of measures in order to get back the economy in track. Now, Finance Minister has come up with Fifth trance of economic measures which are primarily focused on ease of doing business of companies and matters relating to Insolvency and Bankruptcy Code. The key highlights of the press conference are summarized hereunder.

   1. Hikes in threshold limit for default value: The Minimum threshold limit to initiate insolvency proceedings has been proposed to be raised from 1 lakh to 1 crore. It would be the one of the major decisions taken by the Govt. in order to reduce some burden from shoulders of NCLT and NCLAT.

   2. Insolvency Resolution framework for MSME: 2.It has been decided to notify new special insolvency resolution framework for MSME under section 240A of the Insolvency and Bankruptcy Code, 2016.

   3. Suspension of IBC proceedings: In order to deal with testing time arising from deadly virus, it has decided for suspension of fresh initiation of Insolvency and Bankruptcy Code, 2016 up to one year depending upon the pandemic situation.

4. Exclusion few debts from definition of default: COVID-19 related debt would be excluded from the definition of default under the Insolvency and Bankruptcy Code for the purpose of triggering insolvency proceedings.

5. Decriminalization of violation under Cos. Act: Violations involving minor technical and procedural defaults such as shortcomings in CSR reporting, inadequacy in board report, filing defaults and delay in holding AGMs will be decriminalized from Company Act. From now on, the company shall face only monetary penalty on companies.

6. New provisions for producer companies: Provisions of old Companies Act, 1956 pertaining to producer companies being included in the new Companies Act, 2013.

7. Internal Adjudication Mechanism: The various compoundable offences sections to be shifted to internal adjudication mechanism of Companies Act, 2013 and enhancing the power of RD for compounding of offences related to companies act.

8. Direct listing of securities: In order to ease of doing business, it has decided to direct listing of securities by Indian public companies in permissible foreign jurisdictions.

3. <u>Applicant's claim dismissed as he couldn't produce documents to prove payment made against purchase of land</u>

<u>S. Chandraiah v. Parag Sheth - [2020] 116 taxmann.com 601 (NCLT - Ahd.)</u>

In instant case, the applicant claimed to have paid an amount to the corporate debtor against purchase of land of the corporate debtor as earnest money had submitted his claim. On perusal of record, it was found that there was no agreement, as such, with regard to sale and purchase between the corporate debtor and the applicant.

Further, to prove claim the applicant had annexed few counterfoil showing transfer of amount in account of the corporate debtor. However, apart from these documents no other documents were annexed where from it could be deduced that amounts were paid against agreement for sale and purchase of land of the corporate debtor.

The applicant also failed to show any letter from side of the corporate debtor to prove that the corporate debtor had agreed to sell land. Since, the applicant had failed to produce any document to show his bona fide as 'financial debt' so as to stand in footing of financial creditor, instant application filed by applicant to direct RP of the corporate debtor to adjudicate his claim was to be dismissed.

4. **Listed entities to disclose impact of COVID-19 pandemic on their business, performance and financial: SEBI**
Circular No. SEBI/HO/CFD/CMD1/CIR/P/2020/84, Dated 20.05.2020

The SEBI observed that many listed entities around the world have been making disclosures regarding the impact of the pandemic, including that on financial condition and results of operations, future operations, capital and financial resources, liquidity, assets, internal financial control over financial reporting and disclosure controls and procedures, demand for products/services etc. Regulators have encouraged timely reporting as well as complete and accurate disclosure of the impact, as far as possible.

Furthermore, The SEBI advised that listed entities should endeavor to ensure that all investors have access to timely, adequate and updated information. Towards this end, entities are encouraged to evaluate the impact of the CoVID-19 pandemic on their business, performance and financials, both qualitatively and quantitatively, to the extent possible and disseminate the same.

In this regard, the SEBI has issued advisory on disclosure of material impact of COVID-19 pandemic on listed entities under the SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015 ('LODR Regulations'). SEBI has advised all listed entities to specify/include the impact of the CoVID-19

pandemic on their financial statements, to the extent possible. In this regard, the SEBI has also provided an illustrative list of information that listed entities may consider disclosing, viz. (i) Impact of COVID-19 pandemic on business and (ii) Estimation of the future impact of CoVID-19 on its operations (iii) Steps taken to ensure smooth functioning of operations, (iv) Existing contracts/agreements where non-fulfilment of the obligations by any party will have significant impact on the listed entity's business; (v) Other relevant material updates about the listed entity's business and adds that the entities shouldn't resort to selective disclosures, keeping in mind the principles of disclosure and transparency enshrined under the LODR.

5. **HC dismissed interim bail plea of Religare Enterprises promoter on Covid19 ground**

Malvinder Mohan Singh v. State & Anr. - [2020] 116 taxmann.com 577 (Delhi)

In instant case, the complaint was filed by Directorate of Enforcement that petitioner who was promoter of Religare Enterprises (REL) was allegedly involved in acquisition and utilization of proceeds of crime generated out of the criminal activity and its projection as untainted property and had, thus, committed an offence of money laundering in terms of Section 3 of PMLA Act, 2002.

The High Court of Delhi held that allegations against the petitioner of alleged commission of economic offences inter alia punishable under the PMLA Act, 2002 as also punishable under Section 409 of the Indian Penal Code, 1860, which is punishable with imprisonment for life or that which may extend to 10 years and to a fine.

Thus, case of the petitioner clearly did not fall within parameters of guidelines laid down by the High Powered Committee of the High Court for release of prisoners on interim bail due to COVID-19 pandemic and the petitioner's application for grant of interim bail on ground that offences alleged against him were in nature of an economic offence was to be rejected.

6. **CIRP plea admitted as corporate debtor failed to make payments for accounting services rendered by appellant**
Mitesh Milanbhai Solanki v. Kasturi Exim (P.) Ltd. - [2020] 116 taxmann.com 623 (NCLT - Ahd.)
In the instant case, the Applicant rendered accounting services to the respondent. On account of the respondent's failure to make payments for services availed, a demand notice was issued.
The Respondent did not raise any dispute in relation to quality, condition or quantum of fees proposed by the applicant. Thus, instant application was filed under section 9 of the Insolvency and Resolution Process.

The Respondent neither appeared in proceedings nor raised any objection. On facts, there existed an operational debt and the respondent committed default in discharging said debt. Therefore, instant application was to be admitted.

7. **No violation of Sec. 3 in absence of any material record to indicate concert among bidders**
CP Cell, Directorate General Ordnance Service v. AVR Enterprises - [2020] 116 taxmann.com 610 (CCI)
In a tender floated by informant for procurement of cloth cotton pagdi and mattresses, Opposite Parties (OP) were lowest bidders in tenders for both items. The Informant had averred that its Commercial Negotiation Committee observed that cartel was operating among OP in those tenders and as they quoted an identical rates and thus violated provision of section 3 of the Act.
The CCI was noted that though in tenders for both items, OPs quoted identical rates, yet, no material was brought on record suggesting or indicating concert among these parties to submit such identical bids. Thus, conduct of OPs could not be said to be in contravention of section 3 of Act.

8. **RBI reduces repo rate by 40 basis points from 4.4% to 4%**
Press Release: 2019-2020/2391, Dated 22.05.2020
With a view to help the revival of economy from adverse impact of Covid19 crisis, the Monetary Policy Committee (MPC) has decided to reduce the policy

repo rate under the liquidity adjustment facility (LAF) by 40 bps to 4.0 per cent from 4.40 per cent with immediate effect.

Accordingly, the marginal standing facility (MSF) rate and the Bank Rate 0stand reduced to 4.25 % from 4.65 % and the reverse repo rate under the LAF stands reduced to 3.35 % from 3.75 %.

The MPC also decided to continue with the accommodative stance as long as it is necessary to revive growth and mitigate the impact of COVID-19 on the economy, while ensuring that inflation remains within the target.

In addition to that, the impact of the pandemic is turning out to be more severe than initially anticipated and various sector of the economy are experiencing acute stress. Therefore, RBI has decided to further extend moratorium period on payment of term loan and working capital by 3 months. RBI also announced that export credit period increased to 15 months from 1 year. Group exposure limit for lenders to corporates has been hiked to 30% from existing 25%. RBI Governor said that due to Covid19 impact the GDP growth would be likely to be in negative this year.

9. **CIRP plea admitted as corporate debtor failed to make payments for accounting services rendered by appellant**

Mitesh Milanbhai Solanki v. Kasturi Exim (P.) Ltd. - [2020] 116 taxmann.com 623 (NCLT - Ahd.)

The applicant rendered accounting services to the respondent. On account of the respondent's failure to make payments for services availed, a demand notice was issued. The Respondent did not raise any dispute in relation to quality, condition or quantum of fees proposed by applicant.

Thus, instant application was filed under section 9 of the Insolvency and Bankruptcy Code, 2016. However, the respondent neither appeared in proceedings nor raised any objection. On facts, there existed an operational debt and respondent committed default in discharging said debt. Therefore, instant application was to be admitted.

10. **Regulatory measures introduced by SEBI to continue till June 25, 2020**
Circular No. PR. No. 28/2020, Dated 22.05.2020

Due to COVID-19 pandemic and the resultant fear of economic slowdown, the market regulator, SEBI had introduced various regulatory measures for a period of one month w.e.f. March 23, 2020. The deadline of the said measures was subsequently extended till May 28, 2020. As the stock markets (both domestic and global) are expected to be volatile in the near future, keeping in view the objective of ensuring orderly trading and settlement, effective risk management, price discovery and maintenance of market integrity, it has decided that the measures implemented since March 23, 2020 will continue to be in force till June 25, 2020.

11. **RBI extends time period for completion of remittances against import from 6 to 12 months**
Circular No. A.P. (DIR Series) Circular No.33, Dated 22.05.2020

In view of the disruptions due to outbreak of COVID- 19 pandemic, the RBI has decided to extend the time period for completion of remittances against such normal imports (except in cases where amounts are withheld towards guarantee of performance etc.) from six months to twelve months from the date of shipment for such imports made on or before July 31, 2020

12. **RBI to increase bank's exposure to group of connected counterparties from 25% to 30% of eligible capital base**
Circular No DOR.No.BP.BC.70/21.04.048/2019-20 Dated, May 23, 2020

On account of the COVID-19 pandemic, debt markets and other capital market segments are witnessing heightened uncertainty. As a result, many corporate are finding it difficult to raise funds from the capital market and are predominantly dependent on funding from banks. Therefore, with a view to facilitate greater flow of resources to corporate, the RBI has decided, as a one-time measure, to increase a bank's exposure to a group of connected counterparties from 25% to 30% of the eligible capital base of the bank.

13. **RBI permits banks to extend moratorium on loan EMIs by another 3 months**

Circular No DOR.No.BP.BC.71/21.04.048/2019-20 Dated May 23, 2020

In view of the extension of lockdown and continuing disruption on account of COVID-19, all commercial banks (including regional rural banks, small finance banks and local area banks), co-operative banks, All-India Financial Institutions, and Non-banking Financial Companies (including housing finance companies) ("lending institutions") are permitted to extend the moratorium by another three months i.e. from June 1, 2020 to August 31, 2020 on payment of all installments in respect of term loans (including agricultural term loans, retail and crop loans). Accordingly, the repayment schedule for such loans as also the residual tenor, will be shifted across the board. Interest shall continue to accrue on the outstanding portion of the term loans during the moratorium period.

Further, in respect of working capital facilities sanctioned in the form of cash credit/overdraft ("CC/OD"), the RBI permitted lending institutions to allow a deferment of another three months, from June 1, 2020 to August 31, 2020, on recovery of interest applied in respect of all such facilities. Lending institutions are permitted, at their discretion, to convert the accumulated interest for the deferment period up to August 31, 2020, into a funded interest term loan (FITL) which shall be repayable not later than March 31, 2021

14. **CIRP couldn't be challenged on ground that date of default shown in application u/s 7 was wrong: NCLAT**

Naresh Kumar Dhingra v.Indian Overseas Bank - [2020] 116 taxmann.com 637 (NCL-AT)

The Appellant, a director of the corporate debtor, filed the instant appeal against order passed by the Adjudicating Authority whereby application under section 7 of the Insolvency and Bankruptcy Code, 2016 filed by respondent was admitted.

The Appellant contended that date of default as shown was wrong as in terms of subsequent development date of default went to some other date. Since there was debt payable by the corporate debtor and they had not disputed it and records being complete, the Adjudicating Authority rightly admitted application under section 7 of the Code. Therefore, instant appeal was to be dismissed.

15. **CCI dismisses complaint of alleged unfair business practices against Eicher Polaris and others**

Multix Owners and Users Welfare Society v. Eicher Polaris (P.) Ltd. - [2020] 116 taxmann.com 730 (CCI)

In given case, the Informant had filed an information against Opposite Party (OP) , manufacturer of a Personal/Multi Utility Vehicle i.e. MULTIX alleging violation of provisions of sections 3 and 4 of the CCI Act.

As per the complaint genuine spare parts of MULTIX vehicles were manufactured by OP as well as technological information, diagnostic tools and software programs required to maintain, service and repair such technologically advanced automobiles had not been made freely available in open market and same could only be carried out at workshops or service stations of authorized dealers of OP.

Due to said restrictions, the OP was charging arbitrary and high prices to consumers who were forced to avail services of authorized dealers of the OP for repairing and maintaining their automobiles

The CCI held that since the OP had closed its operations due to insufficient demand and unviable business proposition and also, the informant had not adduced any evidence or material to substantiate averments and allegations made in information, no case was made out against OP for alleged contravention of provisions of Sections 3 and 4 of the CCI Act.

16. **Permissible period of pre and post shipment export credit sanctioned by banks is increased from 1 year to 15 months**

Circular No. DOR.DIR.BC.No.73/04.02.002/2019-20, Dated 23.05.2020

In view of the outbreak of Covid-19 pandemic, the exporters have been facing genuine difficulties such as delay / postponement of orders, delay in realisation of bills, etc. In this regard, RBI has already permitted the period of realisation and repatriation of the export proceeds to India to be increased from nine months to 15 months from the date of export in respect of exports made upto July 31, 2020. In line with this relaxation, The RBI has decided to increase the maximum permissible period of pre-shipment and post-shipment export credit sanctioned by banks from one year to 15 months, for disbursements made upto July 31, 2020.

17. **Donation made to 'PM CARES Fund' is allowed as CSR activity: MCA Notification No. [F. No. 13/18/2019-CSR], Dated 26.05.2020**

In order to increase the scope of CSR activities, the MoF has amended the Schedule VII of Companies Act whereby new activity has inserted. Therefore, donations made to PM's Citizen Assistance and Relief in Emergency Situations Fund would be considered as CSR activities. Now, the companies which fall under the CSR provisions are eligible to spend its CSR funds on food for hunger and poverty, promotion of education, improving maternal health, among others.

18. **No abuse of dominant position by SBI-bank in e-auction process for realizations of secured assets: CCI**

RH Agro (P.) Ltd. v. State Bank of India - *[2020] 116 taxmann.com 732 (CCI)*

In this case, the informant filed an information alleging that it had taken secured loan from SBI bank, and, on account of its failure to repay said loan, it became NPA and, thus, while carrying out e-auction process, officers of the SBI bank had used their dominant position in collusion with other opposite parties in contravention of provisions of sections 3 and 4 of the CCI Act, which resulted in denial of market access of potential buyers.

In view of fact that sale of asset declared as NPA was a remedy available to secured creditor, i.e., SBI bank under the provisions of the SARFAESI Act and, moreover, the informant had failed to produce any evidence on record in support of its allegation of contravention. The CCI opined that no competition could be said to have arisen in the instant matter and, hence, information was to be closed forthwith against SBI under section 26 of the Act.

19. DOE's direction to Govt. employees only to use services of Govt Cos. for booking air tickets didn't violate S. 3(1)

Travel Agents Association of India v. Department of Expenditure - [2020] 116 taxmann.com 740 (CCI)

In instant case, an office memorandum bearing No. 19024/1/E.IV/2005 was issued by DOE on the subject of "Guidelines on Air Travel on Official Tours-

Purchase of Air Ticket from Authorised Agents" by which, it was stipulated that while utilizing air transport and the services of travel agents for booking air tickets, Government employees have to exclusively utilize the services of either Balmer Lawrie or Ashok Travels to the exclusion of other travel agents across the nation.

Being aggrieved by the guidelines, the informant alleged that due to such arbitrary decision of DOE mandating the procurement of the services of booking of air tickets only through Balmer Lawrie and Ashok Travels, the competition in the market for travel agent services for booking air tickets in India has been affected adversely by foreclosing the market for the private travel agents.

Based on the aforesaid facts and circumstances, the CCI noted that Office Memorandums and subsequent circulars are not in the nature of agreement pertaining to an economic activity but are internal administrative decision of the Government to deal with a particular agency in the matter of securing air tickets. Such policy decisions of the Government emanating through circulars cannot be termed as an agreement under section 2(b) of the Act and consequently not the kind of agreement envisaged under section 3(1) of the Act. Accordingly, the Commission is of the view that no case of contravention of provisions of section 3(1) of the Act is made out against the DOE, Balmer Lawrie and Ashok Travels.

20. <u>Transfer of shares to family trusts without complying with SAST requirements - SEBI reiterates trust deed contents</u>

SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 2011 ("SAST Regulations") was brought with an intention to ensure fair, equitable and transparent operation of takeovers. The word "Takeover" generally refers to acquisition of a company by any person including a corporate. The basic requirements under the SAST Regulations include the following:

This concept requires the acquirer to give an open offer to all the shareholders of the target company in case he intends to acquire either directly or indirectly, a large chunk of shareholding or control in the same (first time acquisition of 25% and on further acquisition of additional 5% in a financial year).

The same is provided with an intent to provide a fair exit to the remaining shareholders in case they are intending to do so; and Intimation to stock exchange.

Event driven and annual intimations to be given under specified regulations of the SAST Regulations.

While Regulation 3, 4 and 5 of the SAST Regulations require the acquirer to give open offer, Regulation 10 provides certain cases of acquisition which are eligible for exemption. The only fact is that, there is no deemed exemption, the acquirer is required to seek the exemption under Regulation 11 in the specified format and along with requisite details.

SEBI vide its Order1 dated April 30, 2020 has granted exemption to the acquirers of the equity shares of a certain company ("Target Company") from complying with the open offer requirements.

The article tries to capture the key legal points behind granting such exemption.

21. In a cheque dishonor case, question of usage of black cheque with wrongful intention was to be dealt only during trial: HC

Alka Khandu Avhad v. Amar Syamprasad Mishra - [2020] 116 taxmann.com 782 (Bombay)

The Respondent's case was that he was appointed in his capacity of advocate to help petitioner in her legal matters and he raised professional bill for payment of legal charges. In order to make said payment, the petitioner issued post-dated cheque. However, when the respondent presented said cheque for payment, it got dishonoured due to insufficient funds.

Thereafter, the respondent sent notice to the petitioner calling upon her to pay amount due within 15 days from date of receipt of said notice. However, the petitioner neither replied to the said notice nor made payment of aforesaid dishonoured cheque.

The respondent therefore filed a complaint for offence punishable under section 138 of the NI Act. The Trial court directed to issue process against the petitioner for offence punishable under section 138 of the Act. The Petitioner filed instant petition taking an exception to order passed by Metropolitan Magistrate for issuing process against her.

The High Court noted that in support of complaint, the respondent had filed verification and emails exchanged between him and the petitioner. It was also an undisputed fact that cheque issued by petitioner was dishonoured. In aforesaid circumstances, question as to whether cheque was issued towards discharging

legal liability of accused or according to the petitioner, the respondent used blank cheque signed by her husband with wrongful intention was a matter of evidence, which could be adduced any during trial. Therefore, no case was made out to cause interference with impugned order of issuance of process.

22. Merely having common directors is not basis to suggest collusion in bidding process, rules CCI

Ved Prakash Tripathi v. Director General Armed Forces Medical Services - [2020] 116 taxmann.com 745 (CCI)

The present Information was filed by Mr. Ved Prakash Tripathi, ("Informant") under section 19(1)(a) of the Competition Act, 2002 ("the Act") against Director General Armed Forces Medical Services and other alleging, contravention of the provisions of section 3 of the Act.

As per the complaint, a scheme named Ex-servicemen Contributory Health Scheme ("ECHS") was issued which aimed to provide allopathic and AYUSH medicare to Exservicemen pensioner and their dependents through a network of ECHS polyclinics, medical facilities and civil empanelled/Government hospitals/specified Government AYUSH hospitals spread across the country. The Scheme has been structured on the lines of (CGHS) to ensure cashless transactions, as far as possible, for the patients and was financed by the Government of India. The aim of the Scheme was to provide quality healthcare to ex-servicemen pensioners and their dependents. However, in 2018 ECHS Khanpur issued general public information regarding registration/renewal of suppliers for the purposes of local purchase of medical supplies and surgical expendable/non-expendable medical supplies/ equipments for the financial year 2019-20. Applications were invited from firms for supply of generic/branded medical stores under the various categories.

Pursuant to notices, numerous firms including Ops/firms have participated into the tender and Ops bids were rejected due to commonality directorship

In relation to the allegations regarding commonality of directors of the impleaded firms are concerned, CCI observed that mere commonality of directors or ownership of participating firms, in itself, is not sufficient to record any prima facie conclusion about bid rigging in the absence of any material indicating collusion amongst such bidders while participating in the impugned tender. Thus,

merely having common directors cannot be basis to suggest collusion in bidding process.

23. **HC quashes order of MSME Council for reference of Indian Oil Corporation Ltd.'s matter to arbitration**
Indian Oil Corporation Ltd. v. State Level Industry Facilitation Council - [2020] 116 taxmann.com 747 (Gujarat)

In this instant case, the petitioner Indian Oil Corporation (IOL) terminated contract as it entered into sub-contract without prior consent of petitioner in contravention of terms of contract and pursuant to an application filed by sub-contractor Council constituted under MSME Development Act, 2006 referred matter to arbitration.

The HC of Gujarat held that there were no privities of contract between petitioner and sub-contractor and, therefore, there was no liability of petitioner to make payment to sub-contractor and impugned order referring matter to arbitration qua petitioner was not tenable in law.

24. **Dispute raised after issuance of demand notice u/s 8(1) can't be termed to be a pre-existing dispute; CIRP dismissed**
Next Education India (P.) Ltd. v. K12 Techno Services (P.) Ltd. - [2020] 116 taxmann.com 789 (NCLAT- New Delhi)

The Appellant filed an application under section 9 of the Insolvency and Bankruptcy Code, 2016 seeking initiation of corporate insolvency resolution process in case of the respondent-company.

The Adjudicating Authority rejected said application on ground that respondent had raised several disputes relating to defective services provided by the appellant in response to notice issued under section 8 and, thus, it was a case of 'pre-existing dispute'.

Since, in instant case, the respondent failed to bring on record any correspondence to show that prior to section 8 notice under the Code, and it had intimated that defective services were provided by appellant, therefore, impugned order passed by Adjudicating Authority was to be dismissed.

Goods and Service Tax (GST)

Latest Updates, News and Judgments

1. **Transitional Credit: Amid of contradictory judgments, Govt. notifies retrospective amendment to Section 140**
   Notification No. 43/2020 – Central Tax, dated 16-5-2020
   CBIC has appointed May 18, 2020 from which retrospective amendment in Section 140 of the CGST Act, 2017 prescribing the time limits for taking transitional credits as per Section 128 of the Finance Act 2020 shall come into force. The amendment is made effective retrospectively from July 1, 2017.

2. **DVDs/CDs supplied with software to use it as application are not e-books, ineligible for 5% GST**
   Law Weekly Journal, In re - *[2020] 116 taxmann.com 578 (AAR - TAMILNADU)*
   The applicant sell printed journal/books in electronic form of DVDs/CDs with dongle as security lock along with software to use it as application in computer or hand held devices. The applicant has sought an advance ruling to determine whether the same content of books sold in electronic form through DVDs/CDs with a software to search and read, can come under the category of e-books so that benefit of concessional GST rate can be availed?
   The Authority for Advance Ruling observed that DVD contains software which requires an End User License Agreement to be accepted by the user. The software is updated with new content, update of cases when connected to the internet. DVD does not have machine readable files in any format such as .doc, .txt, .pdf, etc., but has executable file. The dongle acts as key and has software installed on it which allows application to be used. It can be inferred that DVD is not an electronic version of the print journals. Thus, the supply of DVDs/CDs and dongle with access for an initial subscription period is a composite supply involving DVD/CD, dongle and loaded software (goods) along with license to use the same for a limited period(service).

   As per the rate notification for services issued under GST, ‘e-books’ are electronic version of printed books supplied online which can be read on

computer or hand held device, which are chargeable at the rate of 5% GST. In the given case, DVDs/CDs do not contain electronic versions of journal but an executable software application, and, hence, does not fall under the category of 'e-book' mentioned in the notification.

The Authority for Advance Ruling held that supply of DVDs/CDs with software along with end user license are not supply of 'e-books', not eligible for concessional GST rate of 5%.

3. **Seller guilty of profiteering for increasing base price of aftershave lotion despite GST rate reduction**

   Rahul Sharma v. J.K. Helene Curtis Ltd. - *[2020] 116 taxmann.com 705 (NAA)*

   The application was filed before the Standing Committee on Anti-profiteering alleging that the benefit of GST rate reduction from 28% to 18% w.e.f 15.11.2017, had not being passed on to it by the seller of 'After Shave Lotion'. The Standing Committee on Anti-profiteering had examined the application and forwarded it to the Director General of Anti-Profiteering (DGAP) for detailed investigation.

   The National Authority on Anti-profiteering (NAPA) on the basis of DGAP report observed that the seller did not reduce the selling price of its product when the GST rate was reduced from 28% to 18% w.e.f. 15.11.2017 and thus, the benefit of reduction in GST rate was not passed on to the recipients by way of commensurate reduction in the price.

   The DGAP also submitted in its report that the MRP remains the same as before the GST rate reduction but the base prices were increased to offset the reduction in GST rate. As per the provisions of the CGST Act 2017, any reduction in rate of tax on any supply of goods or services or the benefit of ITC shall be passed on to the recipient by way of commensurate reduction in prices.

   The NAPA held that the seller had resorted to profiteering for increasing base price of aftershave lotion despite GST rate reduction.

4. **No writ to be filed against the order of confiscation of goods & conveyance by assessee: HC**
   Shiv Agro v. State of Gujarat - *[2020] 116 taxmann.com 712 (Gujarat)*
   The competent authority had passed the final order for confiscation of goods and conveyance of the assessee. The assessee filed a writ petition before the High Court of Gujarat seeking relief against the confiscation order.
   The Honourable High Court declined to interfere in the matter. The Honourable High Court ordered the assessee to file statutory appeal under the GST Act before the appellate authority. Further, the Honourable High Court clarified that the assessee could prefer an application for the provisional release of the goods upon execution of a bond and furnishing of a security or on payment of applicable tax, penalty and interest payable. If such application is filed, the concerned authority shall consider the same and pass an appropriate order in accordance with law.

5. **Assessee liable to pay service tax only on service component of works contract: HC**
   Waidhan Engineering & Industries (P.) Ltd. v. Commissioner of Customs, Central Excise & Service Tax - *[2020] 116 taxmann.com 719 (Madhya Pradesh)*
   The assessee was registered under the service tax regime. It was engaged in the business of retreading of old and used tyres and reconditioning of conveyor belts under the rate contract for its customers. The retreading and reconditioning was a specialized remanufacturing process in which raw materials like tread rubber, vulcanized solution etc. were used after which the old tyres and conveyor belts become usable as new goods. The assessee had paid service tax ranging from 20% to 30% on the gross amount received by claiming exemption available under Notification No. 12/2003 dated 20-6-2003.

   The department issued a show cause notice to the assessee arguing that there was no sale of material or goods to the customer on which the assessee had claimed exemption while calculating service tax. The service tax was to be levied on the total amount charged for retreading including the value of the materials or goods

that have been used and sold in the execution of the contract or exemption to material component as the services provided by the assessee falls under the head 'repair and maintenance' as defined under the service tax. The Adjudicating Authority passed an order and, dropped the proceedings initiated against the assessee. The department filed appeal before the Tribunal against the order of Adjudicating Authority.

The Tribunal held that the entire gross value of the services rendered was liable to service tax and, raised a demand for recovery of Service tax along with penalty from the assessee. The assessee again filed appeal before the High Court of Madhya Pradesh against the order of Tribunal.

The Honourable High Court observed that the similar issue was considered by Apex Court in the case of Safety Retreading Company [2017] 77 taxmann.com 280 (SC). As per Apex Court, the valuation provisions under the service tax specifically excludes the costs of parts or other material, if any, sold to the customer while providing maintenance or repair service from the taxable value for charging service tax. Therefore, the component of gross turnover in respect of which assessee had paid taxes under local Act with which it was registered as works contractor was to be excluded from service tax.

The Honourable High Court set aside the order of Tribunal and, held that the assessee was liable to pay service tax only on service component of works contract.

6. **ITC available on detachable sliding & stackable glass partition which is movable in nature: AAAR**

Wework India Management (P.) Ltd., In re - *[2020] 116 taxmann.com 736 (AAAR-KARNATAKA)*

The applicant is engaged in providing shared workspace or office space to the freelancers, start-ups, small businesses and large-enterprises. The applicant procures goods and services for the purpose of creating workspaces which are given on rent basis to various companies and individuals as sharing workspaces. The applicant has sought advance ruling to determine whether ITC can be availed on the detachable sliding and stacking glass partitions which is movable

in nature and capitalized as furniture and fixtures and not as an immovable property?
The Authority for Advance ruling (AAR) held that the ITC is not available on the detachable sliding and stacking glass partitions. The applicant has filed an appeal before the Appellate Authority for Advance Ruling (AAAR).

The AAAR observed that under GST, ITC is blocked for goods and services used for construction of immovable property where the construction is on his own account and goods or services received are capitalised in the books of accounts. The detachable sliding and stacking glass partitions are not been capitalised as immovable property but rather as movable assets in applicant's books. The term immovable property has not been defined under GST law but as per General Clauses Act, it includes land, benefits arising out if land and things attached to the earth or permanently fastened to anything attached to the earth. The AAR observed certain degree of permanence in the office space provided and considered it as immovable property.

In the given case, the sliding and glass partitions are not permanent and not embedded to earth. Even though, such partitions are fixed to earth with nuts and bolts, it can be dismantled without demolishing the civil structure and moved according to the requirements of the clients. Therefore, the detachable sliding and stacking glass partitions are movable property and addition or fixing of glass partitions does not amount to construction of immovable property.

The AAAR set aside the ruling of AAR and held that the ITC can be availed by the applicant on the detachable sliding and stackable glass partition which is movable in nature.

7. **Services given by sub-contractor to co-operative society w.r.t. landscaping activities for govt. are taxable: AAAR**
Nurserymen Co-Operative Society Ltd., In re - *[2020] 116 taxmann.com 739 (AAAR-KARNATAKA)*
The applicant is a co-operative society and is engaged in the business of maintaining the gardens and landscape development for state and central govt., local bodies and govt. undertakings. In order to execute the work, the applicant has engaged sub-contractors. The applicant has sought an advance ruling on

whether supply of services by the sub-contractors to the applicant for executing the landscape development and gardening for state and central govt. departments are taxable under GST?

The Authority for Advance Ruling (AAR) held that services provided by sub-contractor to the applicant of execution of work of landscape development and gardening for state and central govt. departments is not exempt as it is not covered under the exemption notification issued under GST. The applicant filed an appeal before the Appellate Authority for Advance Ruling (AAAR).

The AAAR observed that the sub-contractors raise the bill on the applicant for the gardening and landscaping work done at the govt. departments. The applicant in turn raises the bill on govt. department in terms of contract given to them. Under GST, exemption is available if the services supplied are pure services or composite supply of goods or services where value of goods supplied is not more than 25% of the total value of supply, the supply should be made to the govt., local authority or govt. entity and the services supplied should be by way of any activity entrusted to Panchayat or Municipality under Constitution. In the present case, the applicant is the recipient of the supply of services from sub-contractor. The applicant is a co-operative society and not govt., local authority or govt. entity. Therefore, the supply of services by the sub-contractors to the applicant is not eligible for the benefit of exemption under GST.

The AAAR upheld the ruling of AAR that services given by sub-contractor to the applicant being a co-operative society in respect of gardening and landscaping activities for govt. are taxable under GST.

Income Tax

Latest Updates, News and Judgments

1. **Mumbai ITAT remanded matter back as TPO computed ALP by applying Benefit Test which wasn't a prescribed method**
   UPS Express (P.) Ltd. v. DCIT - *[2020] 116 taxmann.com 563 (Mumbai - Trib.)*

   Consequent upon reporting international transaction by assessee with its AE in its return of income in Form - 3CEB, the Assessing Officer (AO) made reference to Transfer Pricing Officer (TPO) for computation of ALP of international transactions.

   TPO held that assessee had not submitted any document to establish that it had received the training, technology, etc. No evidence was furnished to substantiate for the need of such payment. As benefit received for above expenses had not been substantiated, the ALP was determined as Nil.

   Mumbai ITAT held that TPO had applied Benefit Test which is not as per the rules prescribed under Rule 10B & 10AB of Income Tax Rules. The payment of Technical knowhow was never bench marked in the earlier AYs. Considering the totality of the facts and circumstances and the fundamental question that revenue should not be deprived of legitimate tax due to the exchequer.

   Therefore, in order to bench mark this transaction and to determine proper ALP of the international transaction, matter was remit back to TPO/AO to determine the ALP afresh as per Rule 10B & 10AB.

2. **No penalty could be levied if notice didn't clearly include reasons for initiation of penalty proceedings**
   ITO v. A. Shihabudeen - *[2020] 116 taxmann.com 495 (Cochin - Trib.)*

   During the course of assessment, the difference between the valuation made by the District Valuation Officer (DVO) and the value admitted the assessee was treated as unexplained investment. Thereafter, AO passed penalty order for levying penalty.

The assessee contended the additions for unexplained investment was made on estimate basis relying on DVO's report. Further said additions had been reduced by the ITAT. Assessee challenged the penalty order before CIT(A).

The CIT(A) deleted the penalty by holding that the penalty order passed by AO, without striking out the irrelevant portion of the notice under section 274, was invalid. Aggrieved-revenue filed the instant appeal before the Tribunal.

The ITAT upholding order of CIT(A)'s order held that AO had not struck out the irrelevant portion. It was not clear whether he had levied the penalty for concealment of particulars of income or furnishing of inaccurate particulars of income. Therefore penalty order passed under section 271(1)(c) in pursuance of said notice had rightly been set aside by Commissioner (Appeals).

3. **'Digital Content' developed by assessee which would be used in films is intangible asset; eligible for dep. @25%**
Pentamedia Graphics Ltd. v. DCIT - *[2020] 116 taxmann.com 564 (Chennai - Trib.)*

The issue before the Chennai Tribunal was whether the assessee was entitled for depreciation @ 25% or 60% on 'Digital Content' developed by it?

The Tribunal held that the computer animation and special effects are digital content which are stored in the hard disc of the computer. This digital content developed by assessee was utilized in the multimedia and entertainment industry and at best it was a copyrighted intangible asset owned by assessee which was manipulated by assessee to be used in various films etc.

The digital contend developed by assessee can be equated with computer program was far-fetched but rather it was a copyrighted material which was stored in computer. The digital content was manipulated by assessee to be used in different films but still it couldn't be categorized a higher pedestal of being termed as 'computer program' rather it still retains the character of copyrighted material being intangible asset.

Thus, the assessee was eligible for depreciation @ 25% on these copyrighted material developed by assessee being 'Digital Content'.

4. **Unexplained credit found in books of account chargeable to tax in previous year to which it relates: HC**
Ivan Singh v. ACIT - *[2020] 116 taxmann.com 499 (Bombay)*
For the financial year 2006-2007, some amounts were found credited in the book of accounts of the assessee. AO made additions under section 68 for said credits during financial year 2008-09.
The assessee contended that section 68 of the Income-tax act, 1961, clearly points out that where any sum is found credited in the books of the assessee for the previous year and the assessee offers no explanation or explanation offered by him is not satisfactory in the opinion of the AO, such sum may be charged to tax as income of the assessee of that previous year.

   On appeal, the Bombay HC held that the Supreme Court in case of Bhor Industries Ltd. v. CIT [1961] 42 ITR 57 (SC), has interpreted the expression "any previous year" to mean as not referring to all the previous years but, the previous year in relation to the assessment year concerned. Section 68 also provides that the sum so credited in the books and which is not sufficiently explained may be charged to the income tax as income of the assessee of "that previous year ". Thus, the additions made by the AO were liable to be deleted.

5. **No waiver of Sec. 234B/234C interest if advance tax wasn't paid on undisclosed income admitted during survey: HC**
Shankarlal Jain v. CCIT - [2020] 116 taxmann.com 607 (Karnataka)
A survey was conducted and assessee admitted certain amount as unaccounted in the statement recorded during such survey. Assessment was concluded under section 143(3) and interest was levied under section 234A, 234B and 234C.
Assessee contended that the books and documents were impounded during survey and the same was not available despite several requests made which caused delay in filing the return of income. The same had to be construed as unavoidable circumstances. Further, the return of income was filed voluntarily without any detection by the Assessing Officer (AO). As such, the benefit of the Circular instructions dated 26-6-2006 had to be extended to for waiver of interest. He applied for waiver before Chief Commissioner of Income tax (CCIT).

The CCIT declined to waive the interest. Assessee filed an application for review and reconsideration of order rejecting such waiver. Further, such application was also rejected.

On writ, the Karnataka HC held that return filed by the assessee could not be construed as the return of income voluntarily filed by him without detection by the AO. On detection at the time of survey, assessee admitted the tax liability and filed the return of income. No advance tax as paid for 3 quarters on such admitted income. Thus, the assessee could not take shelter under the survey proceedings for covering the default committed in filing the true and correct return of income within the period prescribed.

Further, if delay in filing of return is to be attributed to the impounding of the documents during survey, only interest under section 234A would be waived of and not the interest under section 234B and 234C.

6. **Assessee is entitled to defend CIT(A)'s order before ITAT on all grounds though no cross objections were filed: HC**
Sanjay Sawhney v. PCIT - [2020] 116 taxmann.com 701 (Delhi)

Revenue filed an appeal before the Tribunal against the order passed by the CIT(A) contending that the CIT(A) had erred in deleting the additions. Later on, assessee made an oral application under Rule 27 of the Income-tax (Appellate Tribunal) Rules, 1963 and urged additional grounds against the findings of the CIT(A).

The Tribunal, on a technical ground, refused to consider the legal issues that were premised on Rule 27 of the ITAT Rules. Tribunal held that no application had been filed by the assessee for raising the legal ground. The parties to the appeal were required to follow due procedure laid down in this regard under Rule 27 of the ITAT rules.

Assessee filed appeal before the Delhi High Court and contended that Rule 27 of the ITAT Rules does not require an application to be structured in any particular manner, unlike in the case of cross-appeal or cross objection. The ITAT had applied the new ITAT Rules, 2017 which yet to be notified. Therefore, the ITAT had erred in mis-reading a requirement into the rules which did not exist in reality.

The Delhi High Court held that Rule 27 embodies a fundamental principal that a Respondent is entitled to defend an order before the Appellate forum on all grounds, including the ground which has been held against him by the Lower Authority, though the final order is in its favour.

In the instant case, the Assessee was not an aggrieved party, as he had succeeded before the CIT(A) in the ultimate analysis. Merely because no cross objection was filed by him when revenue preferred an appeal on higher forum, it didn't mean that an inference can be drawn that he had accepted the findings in part of the final order that was decided against him.

Therefore, when the Revenue filed an appeal before the ITAT, assessee was entitled under law to defend the same and support the order in appeal on any of the grounds decided against it.

7. **Validity of TP Safe Harbour rules extended till Assessment Year 2020-21: CBDT**

   Notification No. 25/2020, dated 20-05-2020

   The Central Board of Direct Taxes (CBDT) has extended the validity of provisions of Rule 10TD(1) & Rule 10(2A) till Assessment Year 2020-21. Rule 10TD(1) and Rule 10TD(2A) prescribe list of eligible international transactions where transfer price declared by the assessee shall be required to be accepted by the Income-tax Authorities.

   Sub-rule (3A) to Rule 10TD sets time limit for application of provision of sub-rules (1) and (2A). It provides that provisions shall apply for the Assessment Year 2017-18 and two Assessment Years immediately following that. In other words, the provisions are applicable for Assessment Years 2017-18 to 2019-20. Now, the board has inserted a new sub-rule (3B) to Rule 10TD which extends the applicability of provisions of sub-rules (1) and (2A) till Assessment Year 2020-21.

8. **ITAT quashes ex-cricketer Srikanth's tax planning; sale of shares by minor sons clubbed in his income**

   K. Srikanth v. ACIT - [2020] 116 taxmann.com 721 (Chennai - Trib.)

   Assessee-Srikanth was engaged in the business of modelling, Cricket commentary, journalism and consulting & BPCL dealership. The return filed by

the assessee was processed under section 143(1). Later, it was observed that the assessee had sold shares held in his own name as well as shares held in his minor children and wife's name in ‘Kris Srikkanth Sports Entertainment Private Limited’ for Rs. 15 crores.
Out of the sale consideration, assessee had excluded a sum of Rs. 3 crores stating that amount was not received. He claimed exemption for Rs. 7.5 crores under the restrictive covenant as he was not allowed to compete with the company to which the shares had been sold. Further, he had reduced Rs. 4.25 crores by claiming that he had not received the said sum owing to overriding garnishee attachment on the shares by the Indian Bank.

The Tribunal held that assessee along with his minor sons had entered into sale of entire shareholding of ‘Kris Srikanth Sports Entertainment Private Limited’ with Pentamedia Group of Concerns. Almost entire shareholding to the tune of 99% was held by minor sons of the assessee and assessee merely held 125 shares of the said company.

The shares of the minor stood transferred to Pentamedia Group Concerns and minors were divested of their shareholding in ‘Kris Srikanth Sports Entertainment Private Limited’. There were simultaneous agreement for sale of shares as well for non-compete which were simultaneously entered by the assessee on his behalf as well on behalf of the minor.

Thus, the entire consideration of Rs. 7.50 crores towards sale of shares of minor in ‘Kris Srikanth Sports Entertainment Private Limited’ which stood realized was to be brought to tax within provisions of the Act including provisions of Section 60-64. Further, amount of Rs. 4.25 crores paid out of non-compete fee received by assessee was application of income and there was no diversion by overriding title.

Assessee being natural guardian of minor son had no right to use sale proceeds belonging to minor sons to discharge Indian Bank Loan without permission of the Court and then turn back and say that the said amount paid to Indian bank was to be allowed deduction on the ground of diversion of overriding tittle, which will lead to traversity of justice and illegality.

9. **Action of AO seizing 'Cocaine' during search proceedings valid though he wasn't authorised person under NDPS Act**
Anant Vardhan Pathak v. Union of India - [2020] 116 taxmann.com 729 (Bombay)

Income-tax Dept. conducted search and seizure operation at a particular room in Taj Palace Hotel, Mumbai. The search was conducted in connection with affairs of Yash Birla Group Companies. Applicant, who was President of Corporate Affairs of said group was found in said room along with co-accused.
During search operation, the co-accused was found in possession of eight small self-knotted transparent polythene pouches containing white powdery substance kept in a white paper envelope. Income-tax officers collected said article and also informed Narcotics Control Bureau (NCB).

Empowered officers of NCB came on same day and said substance was checked and it transpired that said substance was cocaine weighing about 4.5 grams. After completion of investigation, charge- sheet was led against accused for offence punishable under Narcotic Drugs and Psychotropic Substances Act, 1985 (NDPS Act).

Applicant contended that seizure of contraband by Income-tax Officers didn't constitute a legal seizure as same being done by officers neither armed with a warrant nor authorization and empowerment under provisions of the NDPS Act.

The Bombay High Court held that the phraseology of sections 41 and 42 of NDPS Act, indicates that powers under those sections can be exercised by an officer who is empowered or authorized. A search and seizure operation by an officer not empowered or authorized would be without mandate of law.

However, in case of accidental recovery of contraband in a totally different proceedings like, Income-tax search, different considerations ought to come into play. Thus, the action of Income-tax officers couldn't be said to be inconceivable and unjustifiable. Taking over and keeping suspicious substance, in the instant case, couldn't be clothed with character of 'seizure', in juristic sense.

Here, the requisite intent to carry on search to find out contraband substance could not have been attributed to officers of Income Tax Department. Further,

officers also could not be attributed with competence and authority to draw a definitive inference, at that stage, that substance found was indeed contraband.

Accordingly, it was rightly held by the Special Judge that there was adequate material which justified a strong suspicion of accused/applicant having committed offence punishable under section 8(c) read with section 21(b) of NDPS Act.

10. <u>CBDT notifies new Form 26AS; widen its scope to include info. received under DTAA/TIEA</u>

<u>Notification no. G.S.R. 329(E), dated 28-05-2020</u>

The Finance Act, 2020, has omitted section 203AA which provided issuance of Form 26AS by the Income-tax department in respect of TDS with effect from 01-06-2020. Accordingly, a new section 285BB was introduced to provide that the prescribed Income-tax authority or any other person authorised in this behalf shall upload an Annual Information Statement in the registered account of the assessee containing informations of various financial transactions made by him during the year.

Now, in exercise of the powers conferred by section 285BB read with section 295, the Central Board of Direct Taxes (CBDT) has omitted Rule 31AB and a new Rule 114-I has been inserted to the Income-tax Rules, 1962 to provide that the Principal Director General of Income-tax (Systems) or the Director General of Income-tax (Systems) or any person authorised by him shall, upload such annual information statement in Form No. 26AS in the registered account of the assessee. Such form shall consist of the following information:

a) Information relating to tax deducted or collected at source;
b) Information relating to Specified Financial Transactions (SFT);
c) Information relating to payment of taxes;
d) Information relating to demand and refund;
e) Information relating to pending proceedings;
f) Information relating to completed proceedings; and
g) Information received from any officer, authority or body performing any functions under any law or information received under an agreement

referred under section 90 or section 90A or information received from any other person to the extent it may be deemed fit in the interest of the revenue.

This Annual Information statement is required to be uploaded within 3 months from the end of the month in which the information is received by the Principal Director General of Income-tax (Systems) or the Director General of Income-tax (Systems) or any person authorised by him.

11. Finance Minister formally launches facility for instant allotment of PAN through Aadhaar

Press Release, dated 28-05-2020

The Finance Minister, Smt. Nirmala Sitharaman has formally launched the facility for instant allotment of PAN on May 28, 2020. The facility is available for those PAN applicants who possess a valid Aadhaar number and have a mobile number registered with Aadhaar. The allotment process is paperless and an electronic PAN (e-PAN) is issued to the applicants free of cost.

Earlier, its 'Beta version' was started on e-filing website on 12 Feb 2020 on trial basis by the Dept. The process of applying for instant PAN is very simple. The applicant is required to access the e-filing website of the Income Tax Department to provide his valid Aadhaar number and then submit the OTP received on his Aadhaar registered mobile number. On successful completion of this process, a 15-digit acknowledgment number is generated.

12. Treaty shopping not abusive; GAAR can't be applied to deny DTAA relief: Canadian Federal Court

Her Majesty The Queen v. Alta Energy Luxembourg S.A.R.L. - [2020] 116 taxmann.com 856 (FC - Canada)

The Canada has surrendered its right to tax gains derived by a resident of Luxembourg from the sale of shares of a private corporation if the value of such shares is derived principally from immovable property (other than rental property) situated in Canada in which the business of the corporation is carried on.

In the instant case, 'Alta Luxembourg' had claimed that the capital gain that it had realized as a result of the disposition of the shares of 'Alta Canada'. was not

taxable in Canada. The exemption from tax was based on the provisions of the Convention between the Government of Canada and the Government of the Grand Duchy of Luxembourg for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion (Treaty) with respect to Taxes on Income and on Capital (the Luxembourg Convention).

The issue before the Canadian Federal Court was:

whether the shares of Alta Canada qualified as treaty-protected property as a result of the application of Articles 13(4) and (5) of the Luxembourg Convention; and

a) If the shares did qualify as treaty-protected property, whether the GAAR would apply to deny the tax benefit of only taxing the gain realized on the disposition of these shares in Luxembourg?

The Canadian Federal Court held that there was nothing inherently proper or improper with selecting one foreign regime over another. Respondent's counsel was correct in arguing that the selection of a low tax jurisdiction may speak persuasively as evidence of a tax purpose for an alleged avoidance transaction, but the shopping or selection of a treaty to minimize tax on its own cannot be viewed as being abusive. Further, the GAAR cannot be applied to deny capital gain exemption claimed by respondent. There was no abuse of the Act or the Luxembourg Convention. The treaty shopping does not trigger the application of the GAAR

13. No sec. 271AAA penalty where assessee had admitted undisclosed income and discharged tax and interest thereon

PCI v. Patdi Commercial and Investment Ltd. - *[2020] 115 taxmann.com 291 (Gujarat)*

A search was conducted at the assessee's premises. During the search, director of the assessee-company admitted undisclosed income as unaccounted cash receivable for the year. Penalty notice was served on the assessee and demand notice was issued. Assessee filed reply and contended that he has already disclosed the additional income during search in a statement substantiating the manner in which such income was derived. Assessee also contended that the tax

along with interest on such income had been paid and thereby he claimed immunity for penalty under section 271AAA.
Assessing Officer (AO) held that the assessee had failed to substantiate the offer income and manner in which it was derived. No supporting evidence was produced by assessee for supporting his case. Accordingly, he held that the assessee had failed to fulfil the conditions specified in section 271 AAA(ii). Ultimately, AO held that the assessee was liable to pay penalty. CIT(A) deleted the penalty imposed by AO. Further, ITAT dismissed the appeal filed by revenue.

On appeal, the Gujrat HC held that the director of the company had substantiated the manner in which income was derived. He had disclosed the details of the cash transactions towards b booking/selling of R, T & U wings of RKTM Market. The CIT(A) as well as ITAT had held that there had been "sufficient compliance" of requirement of section 271AAA(2)(i) and (ii). As per settled legal position, where the revenue had failed to question assessee while recording the statement under section 132(4) as regards the manner of deriving such income, it couldn't jump to the consequential or laster requirement of substantiating the manner of deriving income. Thus, the HC held that when the base requirement itself fails, the question of denying the benefit of no penalty would not arise.

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