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1. **Bank is under legal obligation to handover original documents to appellant after completion of auction sale: SC**

Tripower Enterprises (P.) Ltd. v. State Bank of India - *[2020] 116 taxmann.com 377 (SC)*

In this case, the borrower had availed of financial credit from the Bank, for which the guarantor had offered its immovable property by way of mortgage to the Bank. Thereafter, the borrower committed default in repayment of the financial credit, as a result of which the Bank declared it as a Non Performing Asset (NPA) and then proceeded to file application before the Debt Recovery Tribunal (DRT). The bank also took symbolic possession of the secured assets.

On being aggrieved, the guarantor filed a petition before the DRT, challenging the possession notice issued by the Bank under the section 13(4) of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (SARFAESI), which came to be rejected by the DRT. The guarantor then filed an appeal against this decision, which was dismissed on ground of non-payment of pre-deposit amount. The guarantor did not carry that matter any further.

However, the secured assets offered by guarantor were eventually put up for public auction by Bank for recovery of outstanding dues. The appellant ultimately turned out to be highest bidder in auction conducted by Bank. Sale certificate in respect of secured assets purchased by appellant in public auction conducted by Bank, was issued.

Before auction was finalised in favour of the appellant, the Bank had already moved an application before the DRT for return of original documents deposited with DRT, as the Bank would be obliged to hand over same to auction purchaser upon issue of sale certificate.

That application was rejected by DRT, essentially on ground that issue raised by the guarantor that there was no valid mortgage in respect of secured assets and equitable mortgage in respect of said properties have been created by incompetent persons, was still to be examined by the DRT in main proceedings. The DRAT, however, reversed the decision of the DRT allowed application preferred by Bank and directed return of original

documents to the Bank.

On writ petition by the guarantor, the High Court restored order passed by the DRT rejecting application preferred by the Bank. Thereafter, party knocked the door of the Apex Court.

The Apex Court held that the appellant is the auction purchaser and sale certificate has also been issued in its favour by the Bank. As a consequence thereof, the appellant is entitled to receive the title documents in respect of the properties referred to in the sale certificate. The fact that the Bank did not challenge the impugned decision of the High Court, cannot undermine the direct interest of the appellant in getting the relief which was claimed by the Bank to fulfil its obligation of handing over the original documents to the auction purchaser. Therefore, admittedly, the Bank has supported the stand taken by the appellant. Therefore, Bank is under legal obligation to handover original documents to appellant after completion of auction sale.

2. **Registered shops selling non-essential goods are permitted to open from April 25, 2020**

Order No. 40-3/2020-DM-I (A), Dated 24.04.2020

In order to provide relief to public at large, the Ministry of Home Affairs (MHA) has allowed shops selling non-essential goods to open from Saturday onwards. All shops registered under the Shops and Establishment Act of the respective State/UT, including shops in residential complexes and market complexes, within and outside the limits of municipal corporations and municipalities, with 50% of strength of workers are allowed to open during lock down period. However, the Shops in multi-brand or single brand malls would continue to remain closed. It is pertinent to note that shops in market places, multi-brand, and single-brand malls located in municipality areas, corona virus hotspots and containment areas are not allowed to open during the lock down period.

3. **CIRP initiated as corporate debtor failed to make payment as per consent terms arrived at earlier CIRP proceedings**

Krupa Polymers (India) (P.) Ltd. v. Nakshatra Distilleries & Breweries Ltd. - ***[2020] 116 taxmann.com 346 (NCLT - Mum.)***

In the given case, the operational creditor had earlier instituted Corporate Insolvency Resolution Process (CIRP) proceedings under section 9 of the Code against the corporate debtor wherein the corporate debtor had admitted debt and agreed to pay outstanding debt

in five instalments. However, out of five instalments, the corporate debtor paid only first instalment and defaulted in paying balance amount.

Hence, the operational creditor instituted fresh CIRP proceedings to recover balance amount but the corporate debtor neither replied to demand notice nor to CIRP petition. Since on facts it was clear that corporate debtor was in default of a debt due and payable, CIRP petition was to be admitted.

4. **AA to appoint liquidator when liquidation order was passed by CoC but liquidator's appointment wasn't approved**

Oriental Bank of Commerce v. Isolux Corsan India Engineering & Construction (P.) Ltd. - ***[2020] 116 taxmann.com 345 (NCLT-Chd.)***

In this case, Corporate Insolvency Resolution Process (CIRP) was initiated against the corporate debtor. Thereafter, the Resolution professional was appointed. However no resolution plan was received.

In meeting of Committee of Creditors (CoC), an order was passed for liquidation of the corporate debtor. However, agenda related to appointment of liquidator and fees to be paid to him were not approved in said meeting.

Further, the Resolution Professional had also not given his consent to act as a liquidator. Since the Adjudicating Authority is empowered under section 34 to appoint liquidator by following procedure provided in section 34 of the Code. Thus, the board was to be directed to propose name of another Insolvency Professional to be appointed as liquidator.

5. **MCA extends due date of filing of e-form NFRA-2**

Circular No. 19/2020, Dated 30.04.2020

The Ministry of Corporate Affairs (MCA) has extended the last date of filing of Form NFRA-2 which is required to be filed under rule 5 of the National Financial Reporting Authority Rules, 2018. As per Rule 5 of the National Financial Reporting Authority Rules, 2018 every Auditor of the Classes of companies specified shall have to file an annual return on or before Nov 30 of every year in Form NFRA-2. Now, the MCA vide General

Circular no. 19/2020 dated April 30, 2020 has extended the time limit for filing Form NFRA-2. Now the due date of filing NFRA-2 shall be 210 days from the date of deployment of this form on the website of National Financial Reporting Authority (NFRA).

6. **SEBI further relaxes timelines for compliances requirements pertaining to Mutual Funds**

Circular No. SEBI/HO/IMD/DF3/CIR/P/2020/76 April 30, 2020

Based on the representations received from Association of Mutual Funds in India (AMFI), the SEBI has decided to grant further relaxations w.r.t. compliances specified in SEBI (Mutual Funds) Regulations, 1996 and circulars issued thereunder. Accordingly, the SEBI has extended the effective date of implementation of certain policy initiatives up to June 30, 2020. Also, the timelines for filing scheme annual reports for the year 2019-20 and timeline for submission of cyber security audit report has been extended upto August 31, 2020

7. **Now banks can submit all regulatory returns with a delay of up to 30 days from the due date: RBI**

Circular No. DOR.BP.BC.No.68/21.04.018/2019-20 April 29, 2020

In order to mitigate the difficulties in timely submission of various regulatory returns and also in view of disruptions on account of COVID-19 pandemic, the RBI has decided to extend the timelines for their submission. As a result, all regulatory returns required to be submitted by the entities to the Department of Regulation can be submitted with a delay of up to 30 days from the due date. The extension will be applicable to regulatory returns required to be submitted up to June 30, 2020.

Moreover, it has also clarified that no extension in timeline is permitted for submission of statutory returns i.e. returns prescribed under the Banking Regulation Act, 1949, RBI Act, 1934 or any other Act.

8. **Speculative home buyer doesn't fall under category of home buyer as defined u/s 5(8)(f): NCLT**

Aniket Tatia v. Sundaresan Nagarjan - ***[2020] 115 taxmann.com 196 (NCLT- Chennai)***

In Corporate Insolvency Resolution Process of the corporate debtor, a construction

company, the applicant filed a claim in Form CA in capacity of a home buyer. The Applicant produced sale agreements and memorandum of agreement (MOA) entered into with the corporate debtor to establish that amount mentioned in said documents was duly paid to the corporate debtor in relation to purchase of property.

However, the Resolution Professional rejected claim on ground that claim was *ex facie* not supported by any proof of proper consideration having been paid by the applicant as home buyer. It was also found that payment in question was made by a company and not by applicant and no evidence was produced to effect that the applicant was director of said company and was authorised to purchase said property.

Also no proper documents were produced for backing payments made through cash or bank. Three sale agreements along with MOA which were produced by the applicant clearly showed that transactions were to be considered as being speculative and could not be considered as genuine made from stand point of home buyer for lodging claim in Form CA. In circumstances of case claim lodged with Resolution Professional being a Stale claim was rightly rejected.

9. **NBFC to fall under definition of corporate debtor if it entered in transaction in capacity of a private limited Co.**

Aditya Birla Money Ltd. v. Arkay International Finsec Ltd. - ***[2020] 116 taxmann.com 328 (NCLT-Jaipur)***

In this particular case, the respondent availed services from the applicant and opened a trading account with the applicant. As per the applicant's books of account, a sum of Rs. 90 lakh became due from the respondent.

The applicant issued a demand notice and the respondent denied any outstanding amount to applicant. On instant CIRP application filed by the applicant, the respondent contended that a certificate of registration was granted by RBI to carry on business of NBFC, therefore, the respondent was a financial service provider and did not come within purview of definition of corporate person.

The NCLT noted that RBI had granted certificate of registration to respondent, was neither brought to knowledge of the applicant at time of executing KYC nor in reply to demand notice. Since the respondent had intentionally deceived the applicant while executing KYC Form, it could not escape from liability by raising an objection of NBFC. Even though the

respondent was an NBFC, however, the respondent himself entered into transaction with applicant in capacity of a private limited company, therefore, in regard to transaction under consideration, the respondent fell under definition of the corporate debtor. Therefore CIRP was to be initiated against the respondent.

10. **SEBI extends timeline for compliance related to unlisted NCDs**

Circular No. SEBI/HO/IMD/DF2/CIR/P/2020/75, Dated 28.04. 2020

Earlier, the SEBI vide Circular SEBI/HO/IMD/DF2/CIR/P/2019/104 dated October 01, 2019 had allowed the existing unlisted Non-convertible debentures (NCDs) to be grandfathered till maturity, Now it has been clarified that the grandfathering of the 'identified NCDs' is applicable across the mutual fund industry. Accordingly, mutual funds can transact in such identified NCDs and the criteria as specified in SEBI's Circular dated October 1, 2019 is not applicable. However, investments in such identified NCDs shall continue to be subject to compliance with investment due diligence and all other applicable investment restrictions.

As a result of COVID -19 pandemic, the timeline for compliance with the maximum limits for investment in unlisted NCDs (as issued vide SEBI Circulars dated October 01, 2019 and March 23, 2020) as 15% and 10% of the debt portfolio of the scheme is extended to September 30, 2020 and December 31, 2020 respectively.

11. **Renouncement of right in equity shares by Indian residents can be acquired by foreigner: MoF**

Notification No. [F. No. 01/05/EM/2019], Dated 27.04.2020

The Government has notified the Foreign Exchange Management (Non-debt Instruments) (Second Amendment) Rules, 2020 whereby rule 7A has been inserted which provides that a person resident outside India who has acquired a right from a person resident in India who has renounced it may acquire equity instruments (other than share warrants) against the said rights as per pricing guidelines. Amendment has also been made to Schedule I whereby 100% FDI has been allowed under automatic route for Intermediaries or Insurance Intermediaries including insurance brokers, re-insurance brokers, insurance consultants, corporate agents, third party administrator, Surveyors and Loss Assessors and such other entities, as may be notified by the Insurance Regulatory and Development Authority of India from time to time.

12. **SEBI reduces time period for further issue of capital post buy-back to 6 months from existing timeline of 1 year**

Circular No. SEBI/HO/CFD/DCR2/CIR/P/2020/69, Dated 23.04.2020

In order to enable companies to have relatively quicker access to capital, the SEBI has temporarily relaxed the period of restriction provided in Regulation 24(i)(f) of the Buy-back Regulations. As per the provision, the minimum time between the expiry of a buy back period and subsequent capital raising should be 1 year. However, the SEBI has decided to reduce time period for further issue of capital raising after buyback to 6 months from existing period of 1 year, which would be in line with section 68(8) of the Companies Act, 2013. The relaxation with respect to buyback norms shall come into force with immediate effect and will be applicable till December 31, 2020.

13. **Now banks can issue e- cards against overdraft accounts maintained by individuals**

Circular No. DOR.FSD.BC.No.67/24.01.041/2019-20, Dated 23.04.2020

The RBI has decided to permit banks to issue e-cards to natural persons having Overdraft accounts that are only in the nature of personal loan without any specific end-use restrictions. The e-card shall be issued for a period not exceeding the validity of the facility and shall also be subject to the usual rights of the banks as lenders. The e-card shall be used for domestic transactions only. Adequate checks and balances shall be placed to ensure usage of cards for online/ non-cash transactions only.

Further, the RBI clarified that prior to launching the product, the banks shall frame a Board approved policy on issuance of electronic cards to above mentioned Overdraft Accounts, encompassing appropriate risk management, periodic review procedures, grievance redressal mechanism, etc., which will be subject to supervisory review.

14. **MCA extends timeline for Name Reservation and Re-submission for Cos. and LLP's due to COVID-19 pandemic**

News, Dated 23.04.2020

The Ministry of Corporate Affairs (MCA) has continued to reduce the compliance burden from stakeholders and providing relaxation to companies and LLPs due the situation arising from COVID-19 pandemic. Now, this time, the MCA has come up with a circular to provide the extra time for Name Reservation and Re-submission for Companies &

LLP's by 20 days. Therefore, proposed names either for change of name of existing companies or for incorporation of new companies if expiring any day between 15.03.2020 to 03.05.2020 would be extended by 20 days beyond 03.05.2020.

15. **Member of promoter organisation can't be an independent director in Registered Valuer Organisation, clarifies IBBI**

Circular No. No. IBBI/RVO/033/2020 23, Dated 23.04.2020

In the meetings with MDs/CEOs of the Registered Valuer Organisation (RVOs), t?e issue of eligibility to be an independent director has been discussed a few times, in view of the likely conflict of interests. In this regard, IBBI has clarified that a member of the promoter organisation, which has promoted an RVO, shall not be an independent director in the RVO. A promoter organisation may have its members, shareholder, a trustee, as directors on the Governing Board of the RVO, However, such directors shall not be appointed as independent directors as Recognition of RVOs is subject to other conditions as may be specified by the Insolvency and Bankruptcy Board of India.

16. **Top 100 listed Cos. whose financial year ended on Dec 31, 2019 may hold their AGM by Sep 30, 2020: SEBI**

Circular No. SEBI/HO/CFD/CMD1/CIR/P/2020/71, Dated 23.04.2020

Due to outbreak of COVID-19 pandemic, the Ministry of Corporate Affairs allowed companies whose financial year ended in the month of December, to hold their AGMs within the first nine month from the Closure of financial year. Therefore, in line with the MCA's relaxation, the SEBI has also relaxed regulation 44(5) of the LODR whereby the top 100 listed entities by market capitalization whose financial year ended on December 31, 2019 may hold their AGM within a period of nine months from the closure of the financial year (i.e., by September 30, 2020) and the same would not be considered as violation in the Companies Act and SEBI LODR regulation.

This Circular shall come into force with immediate effect and Stock Exchanges are advised to bring the provisions of this circular to the notice of all listed entities that have issued specified securities and also disseminate on their websites.

17. **Now neighbour countries can invest in non-debt instrument of Indian Cos. only through Govt. approval route**

Notification No. [F. No. 01/05/EM/2019-Part (1)], Dated 24.04.2020

There is a significant change in FDI policy due to outbreak of COVID-19 pandemic around the world. Therefore, in order to tackle the situation and the Ministry of Finance has decided to amend the Foreign Exchange Management (Non-debt Instruments) Rules, 2019. The amendment has made in proviso in rule 6 whereby, prior approval of the Government had been made mandatory for any foreign investment from countries that share land border with the India or the beneficial owner of an investment into India who is situated in or is a citizen of any such country.

Furthermore, it has explicated that, in the event of the transfer of ownership of any existing or future FDI in an entity in India, directly or indirectly, resulting in the beneficial ownership falling within the restriction, such subsequent change in beneficial ownership shall also require government approval.

18. **Default in payment due to lockdown during Covid-19 wouldn't be considered for valuation of debt securities held by Mutual Funds**

CIRCULAR No. SEBI/HO/IMD/DF3/CIR/P/2020/70 April 23, 2020

SEBI has relaxed norms for valuation of money and debt market instruments held by mutual funds in view of the nationwide lockdown announced due to COVID-19 and the three-month moratorium/ deferment on payment permitted by RBI. The SEBI has clarified that "if the valuation agencies appointed by Association of Mutual Funds in India (AMFI) are of the view that the delay in payment of interest/principal or extension of maturity of a security by the issuer has arisen solely due to COVID-19 pandemic lockdown and/or in light of the moratorium permitted by Reserve Bank of India (RBI) (vide notification no. RBI/2019-20/186, dated March 27, 2020) creating temporary operational challenges in servicing debt, then valuation agencies may not consider the same as a default for the purpose of valuation of money market or debt securities held by Mutual Funds". The circular further says that the above modification to circular dated September 24, 2019 shall be in force till the period of moratorium by the RBI as referred above.

Goods and Service Tax (GST)

Latest Updates, News and Judgments

1. Drawings & specifications imported for post-importation activities not to be included in value of imported goods: SC

Commissioner of Customs v. Steel Authority of India Ltd. - ***[2020] 116 taxmann.com 388 (SC)***

The assessee entered into contracts with overseas consortia for import of certain items in connection with modernization, expansion and modification for its plant in West Bengal. As per the contracts, consortia were to supply plant, equipments and spares as well as certain basic designs and supervisory services at site. The custom authorities described such an arrangement as turnkey contracts and held that since, design and the other items were integrally linked with the equipments, entire contract value has to be treated as the transaction value for the purpose of charging customs duty. Also, the Commissioner of Customs for Special Valuation Branch directed that the transaction value of the imported goods was to include the price paid for the basic design and engineering, drawings, supervision of erection, commissioning, performance guarantee and technical services.

The assessee filed appeal before the Commissioner of Customs (Appeals) against such order which was rejected. The assessee further filed an appeal before the Customs, Excise and Service Tax, Appellate Tribunal, Kolkata (CESTAT) against the order of first appellate authority.

The CESTAT held that the drawings and technical documents related to post importation activities for assembly, construction, erection, operation and maintenance of the plant and should not be included in the value of imported goods. The revenue filed appeal before the Hon'ble Supreme Court against the order of CESTAT. On behalf of revenue department, it was argued that the contracts were integrated from basic planning and designing till their implementation at site and what was imported was a project and not merely equipments.

The Apex Court observed from the orders in original that the stand of assessee was consistent that the subject drawings and specifications did not relate to the equipments imported and was meant for post importation activities. Further, there was no condition laid down that the import of the equipments were to be supplemented by post-importation work. Therefore, the disputed items on which the customs authorities intended to impose

duty were related to post importation activities and could not be included in the assessable value. The Hon'ble Supreme Court upheld the order of the tribunal that drawings and specifications imported for post-importation activities would not be included in the value of imported goods.

2. Paying guest accommodation services to students cannot be treated as renting of residential dwelling, liable to GST

Taghar Vasudeva Ambrish, In re - *[2020] 116 taxmann.com 373 (AAR - KARNATAKA)*

The applicant along with four others has collectively let out the residential complex to a company. The company provides affordable residential accommodation to students along with other services such as food, wi-fi, etc., generally known as paying guest accommodation. The applicant has sought advance ruling to determine whether the lease of building given by the applicant to the company can be treated as 'Services by way of renting of residential dwelling for use as residence' which is exempt from GST?

The Authority for Advance Ruling observed that the applicant along with other lessors have collectively leased out their residential complex to a company, who in turn has entered into sub-lease agreement with students for providing residential accommodations with living amenities, security, entertainment facilities for a long stay for a period varying from 3 to 11 months. The applicant is not providing the service in individual capacity to the lessee, but as a part of the group of lessors.

Therefore, the applicant along with other lessors has given leasing services to company for business and commerce and thus, liable to GST.

Moreover, there is also a second transaction, where company gives accommodation services to students. It is also observed that as per exemption notification issued under GST, services by way of renting of residential dwelling for use as residence have been exempted. However, the leased premises consist of only rooms with attached toilets and do not fit into the meaning of dwelling which means a house. They are similar to hotel rooms and the entire leased premises have 42 rooms, which cannot be considered as a residential dwelling. Services by a hotel, inn, guest house, clubsite or campsite or other commercial places for residential or lodging purposes are covered separately. Hence, the rooms though given on rent for residential purposes would not amount to residential dwelling and hence the said exemption does not apply.

The Authority for Advance Ruling held that lease services cannot be treated as renting of

residential dwelling for use as residence and, hence, liable to GST.

3. **Amount collected for Land Area Development Fund from Solar Power Developers forms part of rental income, attracts GST**

Karnataka Solar Power Development Corporation Ltd., In re - *[2020] 116 taxmann.com 267 (AAR - KARNATAKA)*

The applicant has obtained land on lease from the farmers for a period of 28 years and sub-leased such land to the Solar Power Developer (SPD) to install solar panels for generation of solar power. The applicant collects rent along with applicable GST from the SPD. The applicant is also required to collect amount from each SPD after commissioning of solar project, in five yearly instalments as per the guidelines of Ministry of New & Renewable Energy (MNRE) towards Local Area Development (LAD) Fund in order to rehabilitate the affected area. The applicant has sought an advance ruling to determine that whether amount collected for LAD fund is a supply and leviable to GST?

The Authority for Advance Ruling observed that applicant has sub-leased the land to the SPD and collects annual lease rent which amounts to 'supply' under GST. As per the valuation provisions under the GST, any taxes, duties, cesses, fees and charges levied under any law other than GST are includible in the value of supply. In the given case, the amount collected by the applicant from the SPD is as per guidelines issued by MNRE. Further the amount payable by the SPDs towards LAD fund are on account of supply made by the applicant and are linked to rent/lease payable and, hence, includable in the value of rental/lease service rendered by the applicant.

The Authority for Advance Ruling ruled that the amount collected towards LAD fund forms part of value of supply of renting/leasing service and chargeable to GST.

4. **Street lighting services provided under energy performance contract is a composite supply**

Karnataka State Electronics Development Corporation Ltd., In re - *[2020] 116 taxmann.com 265 (AAR - KARNATAKA)*

The applicant is engaged into providing street lighting services under the Energy Performance Contract (ESCO contract) to the Thane municipal Corporation (TMC) in Mumbai for 7 years. The ESCO contract is on shared saving model and is to reduce the overall consumption of electricity in street lighting. The applicant has sought advance

ruling on whether the street lighting activity under the ESCO contract is considered as composite supply being works contract under GST?

The Authority for Advance Ruling observed that as per the contract, applicant's responsibilities includes installation, operations and maintenance of the LED street lights on the existing street poles, on or off street lights, repair and replacement of the street lights at their own cost. Non-functioning of any street light and non-maintenance of the same for minimum up-time shall be subjected to penalty.

Under GST, composite supply is a supply consisting of two or more taxable supplies of goods or services or both, or any combination thereof, which are naturally bundled and supplied in conjunction with each other in the ordinary course of business, one of which is a principal supply. The ESCO contract involves more than two taxable supplies such as supply of LED lights, fixtures, and other equipment, their installation, operation and maintenance, etc. in the ordinary course of business where the principal supply is supply of goods, i.e., LED street lights along with relevant fixtures. Thus, day to day operation and maintenance of the LED street lights can only take effect after supply and installation of such street lights. Therefore, this transaction fulfils the criteria of composite supply.

The Authority for Advance Ruling held that the street lighting services provided under the energy performance contract is a composite supply wherein the principal supply of LED street lights.

5. **Form PMT-09 effective from April 21, 2020**

Notification No. 37/2020-Central Tax, dated 28-4-2020

Form PMT-09 which enables a registered person to transfer any amount of tax, interest, penalty, fee or any other amount available in the electronic cash ledger to the head IGST, CGST, SGST or UTGST or cess has been made effective from April 21, 2020.

6. No recovery proceeding to be initiated for interest amount under GST without any adjudication proceedings: HC

Mahadeo Construction Co. v. Union of India - [2020] 116 taxmann.com 262 (Jharkhand)

The assessee was served with a letter issued by Superintendent of Goods and Services Tax and Central Excise directing the assessee to make payment of interest amounting to Rs.19,59,721 due to delay in filing of return in Form GSTR-3B for the months of February and March, 2018. The revenue authorities further initiated recovery

proceedings of interest amount by issuing notice to the banker of assessee. The writ application was filed to seek relief in this regard.

The Honourable High Court observed that as per Section 73(1) of the CGST Act, if tax had not been paid or had been short paid, a notice was required to be served by the Proper Officer on the assessee. The said notice would not only require him to show cause as to why tax should not be recovered from it, but should also specify the interest payable under Section 50 will also be recovered along with penalty. Thus, if there was a short payment of tax or non-payment of tax, a notice was required to be issued even for recovery of interest under Section 50 of the CGST Act.

The interest liability under Section 50 is required to be calculated and intimated to assessee. If the assessee disputes the calculation of interest or the leviability of interest, then only the Assessing Officer can initiate proceedings either under Section 73 or 74 of the CGST Act for adjudication of interest liability.

Moreover, Section 79 of the CGST Act empower the authorities to initiate garnishee proceedings for recovery of tax wherein any amount payable by a person to the Government under any of the provisions of the Act and Rules made is not paid. Even though the liability of interest is automatic, but the same is required to be adjudicated when assessee dispute the computation or leviability of interest, by initiation of adjudication proceedings. Until such adjudication was completed by the Proper Officer, the amount of interest could not be termed as an amount payable under GST. Therefore, without initiation of any adjudication proceedings, no recovery proceeding under Section 79 of the Act could be initiated for recovery of the interest amount.

The Honourable High Court set aside the letter demanding interest as well as notice initiating recovery proceedings.

7. Service Tax department empowered to carry audit & seek information w.r.t. Service Tax under GST regime: HC

Aargus Global Logistics (P.) Ltd. v. Union of India - [2020] 116 taxmann.com 381 (Delhi)

The assessee was engaged in the business of providing freight forwarding services to its clients. It had offices across India, including at Delhi, Gujarat, Haryana, Karnataka etc. For the purpose of service tax, the assessee had a centralized registration with the service tax department at Delhi. The Competent Authority, post-GST regime issued two notices to the assessee for the purpose of carrying Service Tax verification, audit of

records and requested the assessee to furnish the requisite information and documents.The assessee had filed a writ petition before the High Court of Delhi contending that the Service tax department cannot conduct audit post-GST regime.

On behalf of the assessee, it was submitted that a rule 5A under the erstwhile Service Tax Rules which deals with the powers of an officer to carry out audit, was in conflict with the provisions of the Finance Act, 1994 and does not survive under the post-GST regime as it was repealed.

The Honourable High Court observed that the rule 5A empowers officer authorised by the Commissioner who shall have an access to taxpayer's premises registered under the erstwhile Service tax Act for the purpose of carrying out any scrutiny, verification and checks as may be necessary to safeguard the interest of revenue. Also, it obliges every taxpayer to furnish the information and documents for the same. Further, under GST law, it was provided that the repeal of the Finance Act, 1994 does not affect any investigation, inquiry, verification (including scrutiny and audit), assessment proceedings, adjudication and any other legal proceedings or recovery of arrears under the erstwhile Act.

The Honourable High Court held that the Service Tax department was empowered to carry audit and seek information under the GST regime. Thus, the assessee shall be obliged to provide all the records prepared by it in the normal course of its business.

8. Subsequent investigation against assessee on same subject allowed even when case was pending before another Authority

Dadhichi Iron and Steel (P.) Ltd. v. Chhattisgarh GST - [2020] 116 taxmann.com 334 (Chhattisgarh)

The assessee was a trader of iron and steel items. The department commenced investigation based on the allegations that assessee was purchasing goods from bogus dealers and issuing fake invoices. Notice was issued to the assessee wherein Input Tax Credit available to the assessee was blocked and proceeding was drawn in-respect-of the illegal availing of the Input Tax Credit. Meanwhile, the department issued show cause notice proposing tax demand for allegedly dealing with fake dealers and using of fake invoices. Afterwards, the department also conducted raid in the premises of the assessee. Subsequently, one of the directors of the assessee was arrested by the department in-connection with the aforesaid investigation proceedings.

The assessee's contention was that when show cause notice proceeding initiated by the department was pending before the concerned authorities then the department could not initiate another investigation or proceeding in-respect of the same subject matter.

As per the Honourable High Court, the initial issuance of the show cause notice and the proceedings drawn were in respect of the intrastate transactions made by the assessee, wherein fake and bogus invoices were used for availing of ineligible ITC. Subsequent to the information being received and further investigation being made in the course of a raid conducted at the premises of the assessee and other related premises, the magnitude of the offence committed by the assessee of Rs. 60 crores (approx.) was revealed. In the course of raid it was found that the assessee was undertaking false and bogus transactions and illegally availed ineligible ITC credits.

There was clear distinction between a proceeding drawn for the demand of tax evaded by the assessee and the investigation be conducted in respect of an offence committed by way of bogus and fake invoices and illegally availing ITC.

In view of the above, the Honourable High Court rejected the petition.

9. Supply of purified water, either in sealed or unsealed container, taxable under GST: AAR

Water Health India (P.) Ltd., In re - [2020] 116 taxmann.com 270 (AAR - KARNATAKA)

The applicant is engaged in the business of supplying purified water in unsealed form by filling empty cans of customers. The applicant has entered into an agreement with local panchayats/municipalities for the supply of purified water to the general public by installing community water system. The applicant supplies purified water to general public in unsealed containers. The applicant has sought advance ruling on whether supply of purified water to public in empty unsealed cans is exempt from GST?

The Authority for Advance Ruling observed that the applicant supplies purified water to urban under-served people across metro cities by installing the community water system, which is a water treatment plant. The applicant removes all the suspended solids, organic matter, chlorine, obnoxious taste and smell from raw water. The raw water is converted into purified drinking water which is then supplied to the public.

Under GST, an exemption notification has been issued which exempts the water other than aerated, mineral, purified, distilled, medicinal, ionic, battery, de-mineralized and water solid in sealed container from the levy of GST. The ordinary usage of word 'and'

is conjunctive. There is no hard and fast rule as to the meaning of the word ‘and’ and this word gets its proper meaning from the particular context from which it has been used.

Thus, the word ‘and’ used before the ‘water sold in sealed container’ is in disjunctive nature and lays down that ‘water sold in sealed container’ is another type of water excluded from the exemption entry along with aerated, mineral, purified, distilled, medicinal, ionic, battery and de-mineralized water.

The Authority for Advance Ruling held that the supply of purified water whether in sealed or unsealed container is not entitled for GST exemption and, hence, taxable under GST.

Income Tax
Latest Updates, News and Judgments

1. CBDT rejects report prepared by IRS Officers suggesting Income-tax changes to tackle COVID-19

Press Release, dated 26-04-2020

The Central Board of Direct Taxes (CBDT) has rejected report circulating on social media regarding suggestions by a few IRS officers on tackling COVID-19 situation. The board has said that it never asked IRS Association or these officers to prepare such report. No permission was sought by the officers before going public with their personal views and suggestions on official matters, which is a violation of extant Conduct Rules. Necessary inquiry is being initiated in this matter.

The report circulating on media has suggested a few tax changes like imposing 40% tax on Income over 1 Crore, 4% COVID-19 relief cess, wealth tax on persons having income over Rs. 5 crore, etc. The board has reiterated that the impugned report does not reflect the official views of CBDT/Ministry of Finance in any manner.

2. SC upholds constitutional validity of Sec. 43B allowing deduction of leave encashment on payment basis

Union of India v. Exide Industries Ltd. - ***[2020] 116 taxmann.com 378 (SC)***

The assessee contended that section 145 of the Income-tax Act provides an option to choose the method of accounting. Accordingly, assessee computed its profits and gains in accordance with mercantile system of accounting. Section 43B has been carved out as an exception to the aforesaid general rule as it subjects deductions to actual payment. It contended that section 43B comes into operation only in limited set of cases covering statutory liabilities like tax, duty etc. and other liabilities created for the welfare of employees. Therefore liability under the leave encashment scheme being a trading liability couldn't be subject to the exception under section 43B.

On appeal, the Supreme court held that once the Finance Act inserting clause, which provides for deduction of leave encashment on actual payment, has been passed, the deduction stood regulated in the manner so prescribed. The amendment doesn't reverse the nature of the liability nor has it taken away the deduction as such. The liability of leave

encashment continues to be a present liability as per mercantile system of accounting.

The amendment has not extinguished the autonomy of the assessee to follow the mercantile system. It merely defers the benefit of deduction to be availed and links it with to the date of actual payment thereof to the concerned employee. The only effect is to regulate the deduction by putting it in a special provision. Thus, section 43B is held to be constitutionally valid and operative for all purposes.

3. **Gain to Co. arising from sale of agricultural land not taxable under MAT provisions: ITAT**

DCIT v. Motisons Buildtech (P.) Ltd. - ***[2020] 116 taxmann.com 337 (Jaipur - Trib.)***

The assessee sold agricultural land and claimed the same as exempt by virtue of provisions of section 2(14)(iii). The Assessing Officer (AO) did not accept the assessee's claim by holding that the gain on sale of land was taxable under section 115JB. Accordingly, he charged tax on this income under section 115JB.

Aggrieved by the order of AO, assessee preferred an appeal before CIT(A). The CIT(A) held that the agricultural land sold by the assessee was not a capital asset by virtue of section 2(14) and same had not disputed by the AO also. Further, Section 115JB provides that the amount of income to which provision of section 10 or 11 or 12 apply shall be reduced from the book profits. Thus, profit from sale of agricultural land which was not a capital asset couldn’t be included for the purpose of computing book profit under section 115JB.

On revenue's appeal, ITAT held that the agricultural land was held by assessee for more than 9 years as investment and this land was situated in rural area more than 17 km away from the municipal limit. The land was used for agricultural purpose and considering its location, it couldn’t be used for non-agricultural purpose in near future. The AO himself accepted that the land was an agricultural land which was out of the definition of capital asset. Thus, the ITAT upheld the order passed by CIT(A).

4. **Humanitarian Act of ITAT; Stayed demand recovery so that salaries could be paid during COVID-19**

Pandhes Infracon (P.) Ltd. v. ACIT - ***[2020] 116 taxmann.com 376 (Mumbai - Trib.)***

The assessee sought an extremely urgent hearing of stay petition by way of an email. In view of the lockout and in view of guidelines of the Government of Maharashtra, the Mumbai Tribunal decided to hear stay petition, through web based video conferencing, from home offices of the respective Members of the coram.

Assessment of assessee, a civil contractor, builder and developer was reopened and additions were made on account of bogus purchases. While appeals were pending, all bank accounts and debtors of assessee had been subjected to attachment. Due to Covid 19 pandemic, work of assessee came to standstill.

Assessee was not in a position to pay its labourers, even though there were directions from the Government to pay the labourers, support staff and other employees, and to take care of them. Assessee also moved to Hon'ble Bombay High Court for immediate intervention, so as to enable the assessee to take care of its employees, but when the matter was taken up, at the time of mentioning, "it was suggested that the applicant should approach the ITAT first".

The Mumbai Tribunal held that all of us traversing through one of the toughest patch of time, facing the Covid 19 pandemic, and the poorer sections of society are hardest hit. In view of Covid 19 pandemic, a stay on collection/recovery of outstanding demands relating to interest and penalty was to be granted on condition that amount available to assessee would first be used for making payments of wages/salaries payable to labourers/employee.

The balance amount would be used for purpose of carrying out construction activity in partially completed building as necessary for providing quarantine facilities as per direction of Collector and any surplus thereafter would be used for construction activities of business.

5. HC allows petitioners to operate attached bank accounts after setting apart demand amount in separate FD A/c

Banshihari Large Sized Multipurpose Co-op Society Ltd. v. ITO - *[2020] 116 taxmann.com 260 (Calcutta)*

The assessee was engaged in the business of extending business opportunities to tribals. The order of assessment was passed against the assessee. It preferred an appeal against

such order. The appeal and stay petition of assessee were pending. In the interregnum, the Income-tax authorities issued notices for recovery and attached its bank accounts.

The assessee contended that when an appeal was preferred, notice of recovery was stayed upon deposit of 20% of the demand. It submitted that in the COVID-19 pandemic in the country, no recovery measures to be taken by the revenue authorities. It should be allowed to operate bank accounts. Unless it was allowed to operate the bank accounts, the livelihood guaranteed under Article 19(1)(g) of the Constitution of India would stand infringed.

On appeal, the Calcutta HC held that the interest of justice would be sub served by directing the bank of the assessee to set apart the demanded amount in a separate interest bearing fixed deposit account pending the decision of the appellate authority. Upon the bank of the assessee setting aside the amount demanded in the notice, the petitioners were at liberty to operate such bank account.

It was further clarified that this was an interim measure given in the COVID-19 pandemic situation in the country. The appellate authorities were at liberty to dispose the appeal in accordance with law, as expeditiously as possible.

6. No additions merely on assumptions that cash deposited by assessee was bribe received by him in 'Vyapam case'

Vinod Bhandari v. PCIT - ***[2020] 116 taxmann.com 264 (Indore - Trib.)***

In the instant application, sole grievance of the assessee was against the action of the Assessing Officer (AO) confirming addition of Rs. 7.35 crore as unexplained credit under section 68. AO refused to accept the contention of the assessee that source of cash deposited was the maturity proceeds of the hundis, i.e., short term advances for which investment was made from unaccounted income surrendered during the course of survey and offered to tax in the return of income.

AO held that cash so deposited was from the income earned from alleged bribe received for admission in medical colleges because assessee was accused in "Vyapam case",

The Tribunal held that proceeding initiated against the assessee under the Vyapam case fall in financial year 2012-13 i.e. subsequent year whereas cash was deposited during

Financial 2011-12.

There was no evidence on the record to substantiate that assessee received any unaccounted income in the form of bribe for admission in medical college during financial year 2011-12. AO merely on the basis of surmises and conjectures had taken the view that cash deposited was actually bribe taken by assessee.

AO ignored the fact that the assessee had surrendered Rs.7 crores as unaccounted income during the year. This unaccounted income in cash was used in earning interest income by way of giving short term advance on hundis. Further, those hundis were impounded during the course of survey which itself was sufficient evidence that unaccounted income had been invested. Thus, assessee was entitled for the telescoping benefit of the income surrendered during the year to the cash deposited in the bank account.

7. CBDT re-issues FAQs on Vivad se Vishwas Scheme; case where notice issued for initiation of prosecution is eligible

Circular no 9/2020, dated 22-04-2020

The Central Board of Direct Taxes (CBDT) has released revised frequently asked questions (FAQs) on the 'Direct Tax Vivad se Vishwas Act, 2020'. Earlier, the board has issued, Circular no. 7 of 2020 dated 04-03-2020, clarifying queries of the taxpayers of "Direct Tax Vivad se Vishwash Bill, 2020". However, those clarifications were subject to approval and passing of "Direct Tax Vivad se Vishwas Bill, 2020" by the Parliament and receiving assent of the President.

55 questions contained in previous circular are reissued under this new Circular with the following modifications:

1) Clauses of the Bill have now become sections in the Vivad Se Vishwas, the reference to "clause" in circular no 7 has been replaced with "section".

2) Reference to declaration form in circular no 7 has been replaced with referencing of relevant form, since rules and forms have now been notified.

3) Answer to question no 22 has been modified to reflect the correct intent of the law. It has been clarified that where only notice for initiation of prosecution has been issued

without prosecution being instituted, the assessee is eligible to file declaration under Vivad se Vishwas.

4) However, where the prosecution has been instituted with respect to an assessment year, the assessee is not eligible to file declaration for that assessment year under Vivad se Vishwas, unless the prosecution is compounded before filing the declaration.

8. Sum paid towards 'toll free telephone charges' amounts to royalty; liable for Sec. 194J TDS

Vidal Health Insurance TPA (P.) Ltd. v. JCIT - *[2020] 116 taxmann.com 250 (Bangalore - Trib.)*

Assessee-company was engaged in the business of providing Third Party Administration (TPA) services to insurance companies. It had been given licencee by IRDAI to operate as TPA. Assessee filed return of income declaring losses. The case was selected for scrutiny and notice was issued under section 143(2) and 142(1). Assessee filed relevant details, particulars and clarifications called for.

The Assessing Officer (AO) observed that the assessee had not deducted tax from expenses claimed in respect of toll-free numbers. He made disallowances under section 40(a)(ia). CIT(A) upheld the order passed by the AO.

On further appeal, the ITAT held that the payments were towards toll-free telephone charges paid for toll free telephone number provided by telecom operators, whereby the charges for calls made by the customer to the toll-free number is borne by the assessee. These were dedicated private circuit lines available to assessee. There was a process involved for exclusive communication link of customers with assessee. The definition of royalty in explanation to section 9(1)(vi) includes the term process. Therefore, payment made by assessee was royalty and liable for deduction of TDS under section 194J.

9. Sec. 142A couldn't be invoked to determine FMV of land without assigning reasons for rejecting declared value

Dashrathbhai G. Patel v. DCIT - *[2020] 116 taxmann.com 229 (Ahmedabad - Trib.)*

Assessee sold ancestral land (acquired prior to 1-4-1981) and adopted Fair Market Value (FMV) as on 1-4-1981 as Cost of Acquisition (COA) based on report of Registered

Valuer (RV). AO made reference to District Valuation Officer (DVO) under section 142A to determine correct value on grounds that purchase documents of ancestral property were not made available.

DVO furnished valuation report under section 55A determining value of land at lower figure. AO adopted said FMV and enhanced taxable gain.

The Tribunal held that power to make reference under section 142A is restricted to matters concerning sections 69, 69A or 69B. Since subject matter of examination under sections 69, 69A or 69B was understatement in value of investments acquired during year, reference under section 142A could not have been made for finding out extent of alleged overstatement in value of investment.

Reference made under section 142A was also unsustainable for another reason that provision of section 142A couldn't be invoked without assigning some tangible basis giving rise to doubt on FMV adopted by assessee and AO while making reference to DVO had not provided any reasons for doing so except to obtain elucidation on correct value.

10. Sum received from other partners for reduction in profit-sharing ratio not taxable as capital gains

Anik Industries Ltd. v. DCIT - ***[2020] 116 taxmann.com 385 (Mumbai - Trib.)***

The assessee was a partner in a partnership firm. It received a sum of Rs, 400 lakh on account of surrender of 5% share of profit and reduced said income from its income computation by submitting that the firm was reconstituted and right was created in favor of existing partners.

Assessing Officer (AO) opined that a business builds some reputation after it is continued for some time. It is valuable asset and its value depends on personal reputation of the owner/ management/ peculiar advantage a firm has. At the time of reconstitution of the firm, one of the methods to compensate for the goodwill would be that new incoming partner agrees to make payment directly to the old partners without involving the firm. The said payment was nothing but consideration for intangible asset i.e. the loss of share of partner in the goodwill of the firm. Accordingly, AO made additions by treating it as capital gains. CIT(A) upheld the order passed by the AO.

The ITAT held that during subsistence of partnership, a partner doesn't possess an interest in any particular asset of the partnership. A partner has a right to obtain a share in profit. On dissolution of a partnership or upon retirement, a partner is entitled to valuation of his share in the net assets of the partnership which remains after meeting the debts and liabilities. An amount paid to a partner upon retirement, after taking accounts and upon deduction of liabilities, did not involve an element of transfer within the meaning of Section 2(47). Thus, the compensation received by the assessee from existing partners for reduction in profit sharing ratio would not tantamount to capital gain.

11. CBDT defers GST & GAAR reporting in Tax Audit Report by one more year amid COVID-19 pandemic

Circular no. 10/2020, dated 24-04-2020

In view of the prevailing situation due to COVID-19 pandemic across the country, the Central Board of Direct Taxes (CBDT) has decided that the reporting under clause 30C and clause 44 of the Tax Audit Report shall be kept in abeyance till 31st March, 2021.

Section 44AB of the Income-tax Act, 1961 read with rule 6G of the Income-tax Rules, 1962 requires specified persons to furnish the Tax Audit Report along with the prescribed particulars in Form No. 3CD. The Form No. 3CD was amended *vide notification no. GSR 666(E) dated 20th July, 2018* with effect from 20th August, 2018. However, the reporting under clause 30C and clause 44 of the Tax Audit Report was kept in abeyance till 31st March, 2019 vide *Circular No. 6/2018 dated 17.08.2018*, which was subsequently extended to 31.03.2020 *vide Circular No. 9/2019*.

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