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NEWSLETTER

Aug 2020 Vol. I

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Contents

1. Corporate Laws-Latest update, News and Judgments
2. Goods and Service Tax (GST)- Latest update, News and Judgments
3. Income Tax- Latest update, News and Judgments

Corporate Laws

Latest update, New and Judgments

1. **Dispute as to inheritance of shares is eminently a civil dispute which couldn't be decided in proceedings u/s 241/242**

   Aruna Oswal v. Pankaj Oswal - *[2020] 117 taxmann.com 563 (SC)*

   The Respondent claiming to be a shareholder of company filed petition under section 241/242 of the Companies Act. On date of institution of proceedings, the respondent was not holding 10 per cent of share capital of the company that was required to maintain an application under section 241/242 of the Act.

   The Respondent claimed that he was one of four heirs of his deceased father who held 5.35 crore shares in company and thus entitled to claim 1/4th of shares held by him and on that basis he had more than 10 per cent of shareholding in company and he had also filed a suit for partition before High Court.

   The Appellant however claimed that she was nominee in respect of said shares and, thus, the respondent could not claim his right over said shares and accordingly application filed by the respondent under section 241/242 would not be maintainable.

   Dispute as to inheritance of shares was eminently a civil dispute which could not be decided in proceedings under section 241/242. The Respondent himself having chosen to avail remedy of civil suit, as such filing of an application under sections 241 and 242 after that was nothing but an afterthought. In absence of having 10 per cent shareholding and firmly establishing his rights in civil proceedings to extent he was claiming in shareholding of companies, respondent could not be permitted to continue proceedings for mismanagement initiated under sections 241 and 242 of the Act.

2. **RP penalised for outsourcing his responsibility to IPE and burdening ailing corporate debtor with additional costs**

Koteswara Rao Karuchola, In re - *[2020] 117 taxmann.com 615 (IBBI)*

The instant order disposes of the show cause notice issued to a Resolution Professional based on findings of an inspection in respect of his role as IRP. It was alleged that the RP had outsourced his responsibility to verify claims of the financial creditors to the IPE. The RP, however, submitted that He only obtained support services/assistance from the IPE in carrying out the verification and the same was only recommendatory in nature. The IBBI held that though verification of claims of creditors was the primary duty of the Resolution Professional himself, he outsourced his duty and engaged Insolvency Professional Entity (IPE) for verification of such claims. He further included payment made to IPE for same in Insolvency Resolution Process Costs thereby burdening ailing Corporate Debtor with additional costs of fee of Rs. 3 lakh plus GST paid. Since the Resolution Professional had displayed a casual attitude towards his duties under the provisions of the Code and Regulations made there under, a monetary penalty of Rs.1 Lakh was to be imposed and he would be barred from accepting any new assignment as an IP till he deposited said penalty.

3. **RBI unleashes Fair Practices Code for Asset Reconstruction Companies**

Circular No. DOR.NBFC(ARC) CC. No. 9/26.03.001/2020-21, Dated 16.07.2020

In order to achieve the highest standards of transparency and fairness in dealing with stakeholders, the RBI has advised Asset Reconstruction Companies (ARCs) to put in place Fair Practices Code (FPC) duly approved by their Board. The FPC requires ARC to follow transparent and non-discriminatory practices in acquisition of assets and to maintain arm's length distance in the pursuit of transparency. Prescribes various measures to enhance transparency in the process of sale of secured assets. The FPC also requires ARCs to release all securities on repayment of dues or on realisation of the outstanding amount of loan, subject to any legitimate right or lien for any other claim they may have against the borrower. As per the draft Code. The ARCs shall also have to put in place Board approved policy on the management fee, expenses and incentives, if any, claimed from trusts

under their management. The Board approved policy should be transparent and ensure that management fee is reasonable and proportionate to financial transactions. The FPC shall be placed in public domain for information of all stakeholders.

4. **Liability of guarantor doesn't stand reduced upon approval of Resolution Plan against corporate debtor**

   Gouri Shankar Jain v. Punjab National Bank - *[2020] 117 taxmann.com 613 (Calcutta)*

   In the instant case, the Resolution Plan approved by Tribunal in respect of corporate debtor envisaged payment of Rs. 34.25 crores to secured financial creditors against their entire outstanding claim amount of Rs. 76.21 crores in full and final settlement of all dues. The Resolution Applicant had paid secured financial creditors in terms of such Resolution Plan. First respondent bank, a secured creditor, issued a notice under section 13(2) of SARFAESI Act to petitioner personal guarantor on basis of guarantee. Thereafter, the petitioner was posted with CIBIL for alleged default of Rs. 12.62 crores towards first respondent-bank.

   In instant writ, the petitioner sought for a direction upon first respondent-bank to remove name of petitioner from list of defaulters on ground that personal guarantee given by petitioner stood extinguished upon Resolution Plan being approved. However, the Liability of a guarantor of a debt of a corporate debtor does not stand reduced/extinguished upon an Insolvency Resolution Plan in respect of corporate debtor being approved.

5. **Liquidator directed to complete liquidation as creditors holding 73.76% in value relinquished security interest**

   Srikanth Dwarakanath v. Bharat Heavy Electricals Limited - *[2020] 117 taxmann.com 622 (NCL-AT)*

   The Respondent, a secured creditor of the corporate debtor, succeeded in Arbitration proceeding against the corporate debtor and the respondent had been granted lien over equipment and goods lying at site of the corporate debtor.

The Secured assets, on which the respondent had been granted lien or a charge was one which was already hypothecated to all other secured creditors. In liquidation of the corporate debtor, the respondent informed appellant-liquidator about unwillingness to relinquish its security interest in assets of corporate debtor.

All secured creditors had relinquished their security interest into liquidation estate of corporate debtor except respondent. The Liquidator was unable to proceed with any further sale of assets without receipts of relinquishment of security interest from all secured creditors to whom said assets were charged.

The Liquidator filed a application seeking permission from Adjudicating Authority to sell assets of corporate debtor. However, said application was rejected by Adjudicating Authority by impugned order on ground that the respondent was a secured creditors, entitled to proceed under section 52 to realize its security interest and the appellant-liquidator could not cause sale of assets falling under section 52 in manner as specified under section 53 unless charge holder relinquished security interest.

Since secured creditors which were 73.76 per cent in value had already relinquished security interest into liquidation estate, it would be prejudicial to stall liquidation process at instance of a single creditor having only 26.24 per cent share (in value), in secured assets.

Section 13 of SARFAESI Act would be applicable in instant case to end deadlock, and decision of 73.76 per cent of majority secured creditors, who had relinquished security interest would also be binding on dissenting secured creditor, i.e., respondent.

However, the respondent's charge on secured assets was not exclusive, respondent could realise a security interest as per provision section 13(9) of SARFAESI Act. Respondent did not have a requisite 60 per cent value in secured interest, respondent did not have right to realize its security interest, as it would be detrimental to liquidation process and interest of remaining secured creditors and, therefore, appellant/liquidator was directed to complete liquidation process.

6. **Plea challenging inaction by police on criminal complaint in view of corporate insolvency proceedings was to be dismissed: HC**
India Infoline Finance Limited v. State of West Bengal - *[2020] 117 taxmann.com 641 (Calcutta)*
In the instant case, the High Court observed that the police may not be able to carry forward a criminal proceedings initiated for activities linked to a company whose transactions are subject to CIRP under the IBC.

A notice under Section 41A of Criminal Procedure Code was served upon the respondent and subsequent to registration of FIR, a police case was started. The Accused persons were examined by police who admitted that a loan of Rs.25 lakh was procured from the petitioner -company and they were guarantors of said loan.

Though Police took sufficient steps, order of intervening commencement of CIRP and moratorium following there from had been passed by NCLT. It was held that since any action of police would have to be based on investigation on subject matter of transaction, which was directly within purview of CIRP, it was to be deemed that police could not take further steps in matter unless and until CIRP culminates in a resolution or otherwise.

7. **Inter-se agreement between financial creditors will not override section 7: NCLAT**
Oriental Bank of Commerce v. Ruchi Global Limited - *[2020] 117 taxmann.com 707 (NCL-AT)*

In given case, the Appellant bank, part of a consortium of banks had extended Letter of Credit facility to the corporate debtor which was non-fund based and the respondent-corporate debtor was taking benefit of same.

In account of the respondent-corporate debtor there were outstanding dues and thus, application under section 7 of the Code was filed mentioning amount in default as on date of classifying debt as NPA.

The Adjudicating authority dismissed application filed by the appellant/financial creditor on ground that the appellant filed an application under Section 7 of the Code without consultation or without taking approval of rest of members of consortium and thereby committed a breach of contract. However, fact that agreement was inter-se between banks, the corporate debtor could not have taken benefit of clauses in that agreement, which were binding only on banks.

Further, if the appellant Bank did not act in tune with consortium agreement it may be matter of consideration for other bank/s of consortium and/or Reserve Bank of India, however, there was nothing to bar filing of section 7 application by the appellant. Therefore, judgment of Adjudicating Authority in dismissing application under section 7 because of consortium agreement would not be maintainable.

8. **CIRP plea u/s 7 admitted as respondent-Co. failed to repay loan taken from bank even after one time settlement**
Punjab National Bank v. Shree Sai Smelters (India) Ltd. - *[2020] 117 taxmann.com 676 (NCLT - Guwahati)*

The Applicant bank sanctioned loan facilities to the respondent bank. On account of the respondent's failure to repay loan as per agreed terms of agreement, the applicant issued demand notice to the respondent company.

Subsequently both parties arrived at one time settlement for repayment of loan amount. As respondent failed to honour even terms of one time settlement regarding payment of loan amount, instant application was filed under section 7 of the Insolvency and Bankruptcy Code.

The Respondent-company did not raise any dispute in respect of its inability to pay amount as agreed in one time settlement. In aforesaid circumstances, instant application deserved to be allowed.

9. **SAT reduces penalty as appellant-promoters acquired shares and made public belatedly due to technical issue**

Susheel Somani v. Securities and Exchange Board of India, Mumbai - *[2020] 117 taxmann.com 541 (SAT - Mumbai)*

In the instant case, a penalty of Rs. 15 lakhs was imposed upon the appellants for violation of provisions of regulation 3(2) read with regulation 13(1) as it acquired shares of two promoters without making any public announcement.

The Appellants pleaded that since transfer was inter se between promoters, same was exempted from making a public announcement as provided by regulation 10. However, it was found that two promoters had an objective to dispose of their shares, whereas, appellants had an objective to acquire shares and this itself would show that there was no common cause between appellant and transferors.

Thus, appellants were not exempted from making public announcement and, were in violation of relevant regulations for not having made announcement.

In said circumstances, penalty was imposed. However, Assessing Officer had not considered fact that appellants made disclosures though belatedly after five days as required by regulation 29. Therefore, it being a technical breach, instead of imposing a penalty of Rs. 15 lakhs, a penalty of Rs. 5 lakhs would have been just and sufficient. Thus, order of Assessing Officer to extent of quantum of penalty was to be set aside and appellants were to be directed to pay penalty of Rs. 5 lakhs.

10. **Dispute as to inheritance of shares is eminently a civil dispute which couldn't be decided in proceedings u/s 241/242**

Aruna Oswal v. Pankaj Oswal - *[2020] 117 taxmann.com 563 (SC)*

In the instant case, the respondent claiming to be the shareholder of the company filed a petition under section 241/242. On date of institution of proceedings, the respondent was not holding 10 per cent of share capital of company that was required to maintain an application under section 241/242.

The Respondent claimed that he was one of four heirs of his deceased father who held 5.35 crore shares in company and thus entitled to claim 1/4th of shares held by him and on that basis he had more than 10 per cent of shareholding in company and he had also filed a suit for partition before High Court.

The Appellant however claimed that she was nominee in respect of said shares and, thus, the respondent could not claim his right over said shares and accordingly application filed by the respondent under section 241/242 would not be maintainable. Dispute as to inheritance of shares was eminently a civil dispute which could not be decided in proceedings under section 241/242.

Respondent himself having chosen to avail remedy of civil suit, as such filing of an application under sections 241 and 242 after that was nothing but an afterthought. In absence of having 10 per cent shareholding and firmly establishing his rights in civil proceedings to extent he was claiming in shareholding of companies, respondent could not be permitted to continue proceedings for mismanagement initiated under sections 241 and 242.

11. **Criminal proceedings can't be stayed under section 391(6) of 1956 Act as 'civil proceedings' alone can be stayed: HC**.
Iyogi Technical Services (P.) Ltd., In re - *[2020] 117 taxmann.com 724 (Delhi)*
In the instant case, the Central Government approved of a Special Initiative scheme for State of Jammu and Kashmir, the scheme aimed at delivering skills and higher employment to youth and increasing their employability by imparting special industry/sector specific skills.

The National Skill Development Corporation (NSDC) was retained for implementing said scheme. In terms of said scheme, NSDC agreed to give certain grant to the applicant to be used solely for purpose of scheme in question. Since the applicant failed to submit utilization report as agreed between parties, NSDC issued a show cause notice to the applicant.

In absence of any response from the applicant's side, NSDC wrote a letter to Economic Offence Wing (EOW) requesting them to register an FIR against relevant provisions of IPC. The Applicant thus filed instant application seeking ad interim stay of proceedings against them, consequent on complaint by NSDC.

The Applicant's case was that it was in process of revival and, therefore, section 391(6) of 1956 Act justified stay of proceedings against it, consequent on aforesaid complaint of NSDC, pending culmination of revival proceedings. Criminal proceedings cannot be stayed under section 391(6) of 1956 Act as 'civil proceedings' alone can be stayed. Since no FIR was filed against applicant, by anyone, including EOW, it could not be concluded that 'criminal proceedings' had been initiated against applicant. Therefore, in absence of pendency of any criminal proceedings against applicant, instant application was to be dismissed.

12. **CIRP plea u/s 9 admitted as corporate debtor failed to raise dispute within 10 days from receipt of demand notice**

Totem Media Solutions (P.) Ltd. v. V2 Retail Ltd. - ***[2020] 117 taxmann.com 733 (NCLT - New Delhi)***

The applicant was engaged in various business activities including sale of advertising print space. The Respondent placed orders for purchase of advertising space on various date.

On account of the respondent's failure to make payments for services supplied as agreed between parties, the applicant issued demand notice under section 8 of the Code. The Respondent replied to said notice after prescribed period by merely raising a plea that the applicant had charged abnormal, unjust and exorbitantly high price from them.

13. **No abuse of dominant position by PayU payments in relevant market of e-payment in India: CCI**

Satyen Narendra Bajaj v. PayU Payments (P.) Ltd. - ***[2020] 117 taxmann.com 757 (CCI)***

PayU was a financial technology company providing technology solutions to online merchants and held a Non-Banking Financial Company ('NBFC') license in

India. OP-2, Wibmo provided a host of services like mobile payments, fraud and risk management, and prepaid solutions.

The Informant filed information alleging that OPs were dominant in relevant market for 'e-payments gateway in India'. It was alleged that after acquisition of Wibmo by PayU, PayU's market power would enhance in market of e-payment processing gateway services in India for completion of e-payments and this high market power was likely to result in unfair and discriminatory conditions in availing payment gateway services for both consumers and competitors of Ops.

The CCI was observed that informant's allegations were premised only upon fact that combined entity had become dominant in market, however, there was no allegation of abusive conduct. However, existence of prima facie abusive conduct under section 4(2) is a prerequisite to order an investigation. Therefore, no evidence having been furnished in relation to abuse of dominant position by OPs, information was to be closed forthwith.

14. Unsecured Loan without any interest and no fixed time to repay didn't fall under category of financial debt

Abhishek Agarwal v. Manasadevi Bakers (P.) Ltd. - *[2020] 117 taxmann.com 770 (NCLT - Hyd.)*

In the instant case, the petitioners/financial creditors had advanced unsecured loans to the corporate debtor under a MOU and an agreement. Even after several requests said loan amount along with interest remained unpaid, hence the financial creditor filed application under section 7 of the Insolvency and Bankruptcy Code, 2016.

However, it was found that the corporate debtor had approached Canara Bank for a term loan of Rs. 950 lakhs which was duly sanctioned and financial creditors as well as directors of the corporate debtor had executed a subordination agreement in favour of banker, and financial creditors, together with other signatories to said agreement had undertaken that they will not sue for, collect, assign or receive payment of any claims until bank's dues are cleared.

Further, loan was provided as unsecured loan and there was no interest and no time fixed to repay same. Therefore, unsecured loan provided by financial creditors would not fall under category of financial debt. Further, it was also evident that debt had not become due and same was not payable at this time as financial creditors were party to subordination agreement and clauses were binding on them and thus, they could not be treated as financial creditors. Thus petition under section 7 of the Insolvency and Bankruptcy Code, 2016 was to be dismissed.

15. **Govt. notifies new e-commerce norms under the Consumer Protection Act Notification No. G.S.R. 462(E), Dated 23.07.2020**

The Ministry Of Consumer Affairs, Food and Public Distribution has notified the Consumer Protection (E-Commerce) Rules, 2020 under the Consumer Protection Act. The norms cover all goods sold online through the marketplace or inventory-led models. The new e-commerce rules applies to all e-commerce retailers operating in India, whether they are registered in Indian or abroad. The new norms allow the Central Government to act against unfair trade practices in e-commerce, direct selling. New norms require retailers to facilitate easy returns, address customer grievances and prevent discriminating against merchants on their platforms. The rules also requires e-commerce entities to set up a robust complaint redressal mechanism which ensures that customer complaints are addressed under 48 hours and resolution is provided within one month.

16. **IRDAI allows Arogya Sanjeevani Policy to be offered as a group policy Circular No. IRDAI/HLT/REG/CIR/197/07/2020 Dated, 24-07-2020**

Earlier, the IRDAI had required all general and health insurers to offer standard individual health insurance policy called “Arogya Sanjeevani” Policy to the public from 01.04.2020. Now, the IRDAI has also allowed the insurers to offer the same standard policy also as a group policy under the same name “Arogya Sanjeevani” subject to rider that all the terms and conditions of the standard policy are retained except for the premium which is to be fixed by the insurers.

17. **Govt. unveils norms relating to Mediation under the Consumer Protection Act, 2019**

NOTIFICATION F. No. A-105/MR/NCDRC/2020.-. Dated, 24th July, 2020

The Government has notified the Consumer Protection (Administrative Control over the State Commission and the District Commission) Regulations, 2020. The regulations provides provisions relating to Eligibility for empanelment as mediator, Disqualifications for empanelment, Procedure for empanelment of mediator, Removal of mediator, Re-empanelment of mediator, Fee of mediator, conducting of Mediation proceedings, Role of mediator etc.

18. **Govt. unveils norms relating to administrative control over commissions under the Consumer Protection Act**

NOTIFICATION F. No.A-105/ACR/NCDRC/2020. Dated, 24th July, 2020

The Government has notified the Consumer Protection (Administrative Control over the State Commission and the District Commission) Regulations, 2020. The regulations provides provisions relating to Observance of work, Inspection of State Commission at least once in year by President of National commission, Inspection of the District Commission, Recommendation to State Government for administrative action, Uploading of orders and pending matters on their respective websites.

19. **SEBI require depositories to recording of all types of encumbrances in Depository system**

CIRCULAR No. SEBI/HO/MRD2/DDAP/CIR/P/2020/137 Dated July 24, 2020

SEBI has asked Depositories shall put in place a system for capturing and recording all types of encumbrances, which are specified under Regulation 28(3) of SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 2011, as amended from time to time. SEBI further clarified that towards this end, depositories will follow processes and other norms similar to that stipulated for the purpose of capturing and recording non-disposal undertakings in depository system.

20. **IRDAI extends timelines to comply with Guidelines on Standards and Benchmarks for Hospitals in the Provider Network**
Circular No.IRDAI/HLT/REG/CIR/199/07/2020 Date:24-07-2020
IRDAI has invited reference to Chapter IV of the Guidelines on Standardization in Health Insurance under Section 1 of Master Circular ref: IRDAI/HLT/REG/CIR/193/07/2020 dated 22.07.2020. In partial modification of the guidelines, taking into consideration the prevailing COVID 19 pandemic, the timelines for complying with the standards and benchmarks specified at Clause (a) (i) and (ii) of Chapter IV stands extended for a further period of one year for all the existing network providers.

21. **Govt. extends time period for which small account shall remain operational till 30th September, 2020 under PMLA norms.**
Notification No. G.S.R. 465(E). Dated, 24th July, 2020
In exercise of the powers conferred by clause (iiia) of sub-rule (5) of rule 9 of the Prevention of Money-laundering (Maintenance of Records) Rules, 2005, the Central Government has extended the period for which small account shall remain operational till 30th September, 2020.

22. **Ind AS Amendments notified for FY 20-21; includes guidance for change in lease rentals due to Covid-19**
NOTIFICATION G.S.R. 463(E). Dated 24th July, 2020
The MCA has notified amendments for nine Indian accounting standards namely Ind AS 1, Ind AS8, Ind AS 10, Ind AS 34, Ind AS 37, Ind AS 103, Ind AS 107, Ind AS 109 and Ind AS 116. Amendments in Ind AS 116, Leases, provide guidance on how to account for changes in lease rentals due to Covid-19. Any change in lease rentals amount due to covid 19 may be accounted as if there is no lease modification.

23. **Material and price sensitive events/information is to be disclosed even when one is in doubt: SAT**

ICICI Bank Ltd. v. Securities and Exchange Board of India - *[2020] 117 taxmann.com 798 (SAT - Mumbai)*

Material and price sensitive events/information is to be disclosed even when one is in doubt. Though RBI and BSE Guidelines/Circular mandate disclosure only after Board approval, such interpretations cannot be extended ipso facto to provisions of disclosure laws/regulations when said regulations mandate disclosure of every material and price sensitive information relating to performance or operation of a listed company on an on-going, continuous basis.

Binding Implementation Agreement signed by an authorized Executive Director of appellant ICICI Bank with dominant shareholders of Bank of Rajasthan, being price sensitive and admittedly material to performance of appellant, needed to be disclosed on an immediate basis. Since there was delay of one trading day in disclosure, order of Adjudicating Officer of SEBI imposing penalty on appellant was to be upheld.

24. **Interlocutory application referring parties in main petition u/s 7 to arbitration for settling disputes was to be allowed**

Indus Biotech (P.) Ltd. v. Kotak India Venture Fund-I - *[2020] 117 taxmann.com 912 (NCLT - Mum.)*

In section 7 petition of the Insolvency and Bankruptcy Code, there has to be a judicial determination by Adjudicating Authority as to whether there has been a 'default' within meaning of section 3(12) of the Code.

Mere claim by the financial creditor that default has occurred is not sufficient. Where disputes that formed subject matter of underlying Company Petition, viz., valuation of shares, calculation and conversion formula and fixing of Qualified Initial Public Offering (QIPO) date were all arbitrable, an attempt was to be made to reconcile differences between parties and their respective perceptions.

Further, fact that applicant /corporate debtor was a solvent, debt-free and profitable company, no meaningful purpose would be served by pushing applicant/corporate

debtor into CIRP at this stage. Therefore, an attempt was to be made to reconcile differences between parties and their respective perceptions and thus, Interlocutory Application referring parties in main petition under section 7 to arbitration, for settling their disputes was to be allowed.

25. **SEBI extends timeline for submission of financial results to September 15, 2020**
Circular No. SEBI/HO/CFD/CMD1/CIR/P/2020/140, Dated July 29, 2020

In a major relief to companies, the Securities and Exchange Board of India (SEBI) has extended the deadline for submission of financial results for the quarter, half-year, and financial year ended 30 June 2020 to September 15.

SEBI had received representations requesting an extension of time for submission of financial results for the quarter or half year-ended 30 June 2020, due to the shortened time gap between the extended deadline for submission of financial results for the period-ended 31 March 2020 and the quarter or half year-ended June 30, 2020.

Under Regulation 33 of the SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015 ('LODR Regulations'), a listed entity is required to submit its quarterly, half-yearly, or annual financial results within 45 days or 60 days, as applicable, from the end of each quarter, half year, or financial year. Accordingly, listed entities were required to submit the financial results for the quarter, half-year-ended 30 June 2020 on or before 14 August 2020.

26. **CPIO-IBBI wasn't under obligation to express any opinion or provide information which was already available in public domain**
Manoj K. Kamra v. Central Public Information Officer - *[2020] 117 taxmann.com 943 (IBBI)*

When there was no imminent danger to life and liberty of the appellant, the respondent-CPIO was not under obligation to respond within forty-eight hours of receipt of request of the appellant.

The CPIO was not under obligation to express any opinion or provide suggestive assumption or provide any answer to any question posed by appellant and also that

he was not required to provide any information which was already available in public domain; at best, he could telescope source of information providing link to information.

If e-mails sent by appellant were forwarded to any authority, he had a right to know about same; this status of e-mails falls within definition of 'information' and this would cast an obligation on CPIO to provide information, if available, as to whether e-mails sent by appellant were forwarded to any other authority; and if these were forwarded, name of authority and date and time of such forwarding along with copy of forwarding e-mail.

In view of fact that respondent-CPIO had not out rightly rejected request of appellant, respondent-CPIO was justified in not providing information which was not available with IBBI.

27. **Co. was to be dissolved when shareholders agreed to close down due to non-availability of business prospects**
GIPCL Projects & Consultancy Co. Ltd. v. Registrar of Companies - *[2020] 117 taxmann.com 910 (NCLT - Ahd.)*

The Petitioner-company was engaged in business of providing consultancy and/or services in all areas/fields and kinds of designing, engineering and/or management

The Directors of company proposed to close down business of company by way of voluntary liquidation due to non-availability of business prospect and no business operations.

It was noted that it was made clear by the petitioner - company that it had no creditors i.e. either secured or unsecured creditors. There was no objection received opposing voluntary liquidation of company from shareholders side.

The Company had duly passed necessary special resolution in its extra-ordinary general meeting by confirming decision of its board of directors of proposing its voluntary liquidation. Further, in extraordinary general meeting a resolution was passed to appoint a liquidator for such purposes.

Liquidator had duly took all necessary steps before initiating voluntary liquidation of company. He had opened a separate bank account for realization and payment to members as per statutory requirement and regulations. On facts, instant application to dissolve petitioner - company was to be allowed.

28. **Petitioner to approach ROC for activation of DIN and DSC for filing of STK-2 to enable strike off of name of Co.**
Tony Joseph v. Union of India - *[2020] 117 taxmann.com 948 (Kerala)*

In the instant case, the petitioners had been disqualified for reason that the company did not file annual returns in time. The DIN and DSC of the petitioners had been deactivated. It is submitted that the petitioners did not intend to continue company.

However, it is stated that they seek to file returns and make statutory uploading so as to enable a 'strike off' of company. The Petitioners, therefore, seek to upload form STK-2 to enable 'strike off' of company from register of companies.

The petitioners had not produced any request made by them before respondents in this behalf. In case of petitioners approach ROC seeking an activation of DIN and DSC for purpose of uploading form STK-2, ROC should take up application and pass appropriate orders.

29. **Shareholders holding securities in physical form are allowed to tender shares in open offers and buy-backs**
Circular No. SEBI/HO/CFD/CMD1/CIR/P/2020/144, Dated 31.07.2020

The SEBI has received representations from investors expressing concerns that they have not been able to participate in open offers, buybacks and delisting of securities of listed entities since the securities held by them were not in dematerialized form. In this context, SEBI has clarified that shareholders holding securities in physical form are allowed to tender shares in open offers, buy-backs through tender offer route and exit offers in case of voluntary or compulsory delisting. However, such tendering shall be as per the provisions of respective regulations.

Goods and Service Tax (GST)

Latest Updates, News and Judgments

1. Interim measure for revocation application of cancelled registration rejected before 12-6-2020 via appeal

   GSTN Updates dated 18.07.2020

   GSTN has proposed an interim measure in relation ROD order 01/2020 dated 25.06.2020 as per which where application of revocation of registration was cancelled by the tax authorities on or before 12.6.2020, the supplier can request the appellate authority or the higher authority to pass a simple offline order for restoration of the application.

   Based on such order, jurisdictional authority can restore the application for revocation of cancellation.

   It has further been provided that GSTN is working on to remove present restriction on reapplication of the revocation of cancellation application. After that filing of revocation of application would become one step process.

2. **Excessive subsidy given under RIPS scheme should be refunded; 12% interest should be paid instead of 18%: SC**

   M/S. Ultratech Cement Ltd. &Anr. V/S State Of Rajasthan & Ors., Civil Appeal No. 2773 Of 2020Supreme Court of India

   The appellant is engaged in the business of manufacturing and marketing of cement and allied products. By revision order dated 12-3-2018, the Additional Chief Secretary, Finance, Government of Rajasthan, Jaipur ('ACS') held that the Kotputli Unit of the appellant was entitled to Capital Investment Subsidy under Rajasthan Investment Promotion Scheme-2003 ('RIPS-2003') only to the extent of 50% of the Sales Tax/VAT deposited and not to the extent of 75% as availed by it. The appellant was directed to refund the excess amount of subsidy along with interest at the rate of 18% p.a.

The Hon'ble Apex Court observed that the State Government has rightly exercised the powers of revision under Clause 13 of RIPS-2003 to interfere with the erroneous decisions of State Level Screening Committee ('SLSC') whereby the appellant was allowed 25% extra subsidy being prejudicial to the interest of revenue. Thus, the appellant was entitled to subsidy under RIPS-2003 only to the extent of 50% of tax payable and deposited and not 75% as allowed by SLSC.

Further, the Scheme envisaged interest at the rate of 18% per annum. However, undertaking in form filed by the appellants has provided for repayment of subsidy amount, in case of availing excessive benefits or non-compliance with the provisions of the Scheme, with interest at the rate of 12% p.a. Availment of subsidy in excess of 25% could not be referred as any misrepresentation by the appellants as there was no allegation of breach of any of the conditions of RIPS-2003 by the appellants while availing such benefit. However, the appellant had obtained undue advantage in monetary terms by availing 25% extra subsidy and had given undertaking to refund any excessive benefit with interest at the rate of 12% p.a.

The Hon'ble Apex Court upheld the revision order passed by the ACS demanding refund of excess subsidy of 25% paid under RIPS-2003. However, the interest on subsidy to be refunded shall be paid at the rate of 12% p.a. instead of 18% p.a.

3. **Dept. has no right to point out any deficiency in refund application after 15 days: Delhi HC**

High Court of Delhi, Jian International v. Commissioner of Delhi Goods And Services Tax- W.P. (C) 4205/2020

The petitioner has filed GST refund application on 4-11-2019 which has not been processed till date. He filed writ petition seeking grant of refund amount along with interest.

The Hon'ble High Court observed that as per Rules 90(2) and (3) of the Central Goods and Services Tax Rules, 2017 (CGST Rules) the department has to either point out discrepancy/deficiency in FORM RFD-03 or acknowledge the refund application in FORM RFD-02, within fifteen days from the date of filing of the

refund application. In case deficiencies are found, then the same are communicated to the assessee, requiring the assessee to file a fresh refund application after rectifying those deficiencies. In the present case, the petitioner's refund application is pending for processing. Neither acknowledgment nor deficiency memo has been issued within time line of 15 days. Hence, refund application would be presumed to be complete in all respects as per Rule 89 of CGST Rules.

The Court has provided that if it allow the department to issue deficiency memo now, then it would amount to processing of refund application beyond the statutory timelines. This would also be construed as rejection of the petitioner's initial refund application as it would require a fresh refund application to be filed by the petitioner after rectifying the alleged deficiencies. Further, it would not only delay the petitioner's right to seek refund, but also impair its right to claim interest from the relevant date of filing the initial refund application.

The High Court held that the department has lost the right to point out any deficiency in the petitioner's refund application at this belated stage. The Court directed the department to pay the refund amount to the petitioner along with interest within two weeks.

4. **POS in 'Bill to Ship to' cases shall be the location of person giving direction for shipment: GOA AAR**

   High Tech Refrigeration & Air Conditioning Industries, In re - *[2020] 117 taxmann.com 819 (AAR - GOA)*

   The applicant is a registered proprietorship firm which deals in supply of air conditioners and its related maintenance or repair services. It has sought an advance ruling to determine that whether supply made by applicant from Goa on behalf of third person who is not in Goa, to a place in Goa, is an Inter-State Supply or Intra-State Supply.

   The Authority for Advance Rulings ('AAR') observed that as per Section 10(1)(b) of the Integrated Goods and Services Tax Act, 2017 ('IGST Act') which caters to bill-to-ship-to transaction provides that where the goods are delivered by the supplier to a recipient or any other person on the direction of a third person either

by way of transfer of documents of title to the goods or otherwise, it shall be deemed that the said third person has received the goods and the place of supply of such goods shall be the principal place of business of such person.

For the purpose of classification of any supply as Inter-State Supply or Intra-State Supply, two ingredients are necessary, which are location of the supplier and place of supply. In the given case, location of the supplier is Goa, place of supply will be outside Goa, i.e., location of third person in view of the provision as discussed above, hence, it is an Inter-State Supply.

Therefore, nature of supply made by the applicant is to be treated as Inter-State supply of goods and GST shall be charged accordingly.

5. **Only seven out of nine members in Board are of State Govt; Authority wouldn't qualify as Govt Authority: AP AAR**
Sri Satya Sai Water Supply Project Board, In re - *[2020] 117 taxmann.com 826 (AAR - ANDHRA PRADESH)*
The applicant is a society registered under the Societies Registration Act, 1997; incorporated with the objective of undertaking drinking water supply projects in Anantapur District, Andhra Pradesh. The applicant was constituted as a public charitable trust in Anantapur. To operate and maintain comprehensive protected water supply schemes, the Government of Andhra Pradesh constituted the Applicant's 'Sri Satya Sai Water Supply Project Board'. It has sought an advance ruling to determine if it can be qualified as a 'Governmental Authority' under the Central Goods and Services Tax Act, 2017 ('CGST Act') and availability of exemption on the services procured by it.

The Authority for Advance Rulings ('AAR') observed that vide Notification No. 31/2017 - Central Tax (Rate), dated 13-10-2017, the term 'Governmental authority' means an authority or a board or any other body which is set up by an Act of Parliament or a State Legislature; or established by any Government, with ninety per cent or more participation by way of equity or control, to carry out any function entrusted to a panchayat or to a municipality under the Constitution.

In the present case, the applicant is constituted by the Government i.e., the State of Andhra Pradesh. The Board of the applicant consists of 9 Members, out of which 7 are officers/Employees of the Government of Andhra Pradesh which makes 77% of Government control falling short of the designated 90% as required by the CGST Act. Thus, the applicant falls short of the qualifying mark of 90% in terms of equity or control. Hence, the applicant is not qualified as 'Governmental authority' and thereby, the services received by the applicant are not exempt from GST.

6. **Marketing & Consultancy services provided by Indian Co. to overseas client are 'Intermediary Services': AP AAR**

   DKV Enterprises (P.) Ltd., In re - *[2020] 117 taxmann.com 865 (AAR - ANDHRA PRADESH)*

   The applicant is an authorized non-exclusive consultant of overseas client in Singapore for the sale of goods i.e., fluid cracking catalysts and additives. As per the applicant, only marketing and consultancy service is given in India on behalf of foreign company and billing is directly done to foreign company in foreign currency. The applicant has sought an advance ruling to determine whether marketing consultancy service can be treated as export of service.

   The Authority for Advance Ruling ('AAR') on going through the definition of export of services defined under Section 2(6) of the Integrated Goods and Services Tax Act, 2017 ('IGST Act'), observed that the supplier of service i.e., the applicant is located in India and the recipient of the service i.e., foreign company is located outside India. However, the place of supply of service being outside India is not applicable in the present case, as the applicant provides marketing and consultancy services to overseas client and carries out all the functions in India as necessitated by its client. The mere fact that the payment has been received in convertible foreign exchange by the applicant will not qualify the transaction as export of services.

   Further, Section 2 (13) of the IGST Act defines intermediary, which means a broker, an agent or any other person, who arranges or facilitates the supply of goods or services or both, or securities, between two or more persons, but does not

include a person who supplies such goods or services or both or securities on his own account. The applicant by providing marketing and consultancy services facilitates the supply of goods from Singapore to its clients in India. Also, condition that transaction not being done on his own account makes the applicant rightly fit into the definition of intermediary.

Therefore, marketing and consultancy services provided by the applicant to overseas client qualify as 'Intermediary Services'.

7. **Institute providing coaching services to CA/ICWA/CMA students does not qualify as Educational Institution: AP AAR**

Master Minds, In re - *[2020] 117 taxmann.com 824 (AAR - ANDHRA PRADESH)*

The applicant provides coaching to students pursuing CA, CWA and CMA from entrance to final level. The applicant has sought an advance ruling to determine that whether it falls within the definition of the term 'educational institution' as defined under Notification No. 12/2017-Central Tax (Rate) dated 28-6-2017?

The Authority for Advance Ruling ('AAR') observed that as per entry no. 66 clause (ii) of Notification No. 12/2017- Central Tax (Rate), dated 28-6-2017, 'educational institution' means an institution providing services by way of education as a part of a curriculum for obtaining a qualification recognized by any law for the time being in force.

In the given case, the applicant is not recognized or authorized by ICAI or ICWAI or had any Partnership or MOU with these statutory bodies for imparting coaching or training relating to the courses recognized by these bodies. These statutory bodies are themselves offering coaching and training classes' to the aspirants through their Regional Councils or Branches or certain accredited private colleges/institutions. They impart as per the prescribed curriculum and issue course completion certificates to their students. On the other hand, the applicant is not issuing any 'coaching completion certificate' or 'any study certificate' in respect of CA & ICWA Courses. Moreover, applying in applicant's coaching Centre is not a mandatory compliance for an aspirant in pursuing their study and obtaining certificates from ICAI & ICWAI.

Therefore, the service provided by the applicant to the aspirants of CA and ICWA do not ensure that the student obtains a qualification recognized by any law and hence, the same does not fall under the definition of 'Educational Institution'.

8. **Denial of refund on 'Input Services' under Inverted Duty Structure Scheme is ultravires to Section 54 (3): GUJ HC**
High Court of Gujarat, VKC Footsteps India Pvt. Ltd. Vs. Union Of India & 2 other(s)-R/SPECIAL Civil Application No. 2792 of 2019
The petitioner is manufacturer and supplier of footwear which attracts 5% GST. It procures input services such as job work service, goods transport agency service etc. and inputs such as synthetic leather, PU Polyol, etc., on payment of applicable GST for use in the course of business and avails input tax credit ('ITC') of the same. Majority of its inputs and input services attract 12% or 18% GST. Since GST rate on procurements is higher than the rate of tax payable on outward supply of footwear, unutilized credit is accumulated in electronic credit ledger of the petitioner.

The department is allowing refund of accumulated ITC of tax paid on inputs. However, refund of accumulated ITC of tax paid on procurement of input services is being denied on ground that explanation (a) of Rule 89(5) which defines Net ITC does not include input services. The petitioner has challenged the validity of this definition Central Goods and Services Tax Rules, 2017 ('CGST Rule') to the extent it denies refund of ITC of input services.

The Hon'ble High Court observed that explanation (a) to Rule 89(5) of the CGST Rule provides that 'Net Input Tax Credit' shall mean ITC availed on inputs during the relevant period other than the ITC availed for which refund is claimed under sub-rule (4A) or (4B) or both. By prescribing the formula in Rule 89(5) to exclude refund of tax paid on 'input service' as part of the refund of unutilised ITC goes contrary to the provisions of Section 54(3) of the Central Goods and Services Tax Act, 2017 ('CGST Act') which provides for claim of refund of 'any unutilised input tax credit'. On perusal of definitions under Section 2, it can be inferred that 'input' and 'input service' both are part of 'input tax' and 'input tax credit'.

As per Section 54(3), registered person may claim refund of ‘any unutilized input tax’. Hence, by way of Rule 89(5) such claim of the refund cannot be restricted only to ‘input’ excluding the ‘input services’ from the purview of ‘Input tax credit’. Moreover, clause (ii) of proviso to Section 54(3) also refers to both supply of goods or services and not only supply of goods as per amended Rule 89(5) of the CGST, Rules 2017.

In view of the above, Explanation (a) to Rule 89(5) which denies the refund of unutilised input tax paid on input services as part of ITC accumulated on account of inverted duty structure is ultra vires the provision of Section 54(3) of the CGST Act.

Income Tax

Latest Updates, News and Judgments

1. **No illegal tax benefits given by Ireland to Apple; European General Court annuls Commission's ruling**
   CURIA's Press Release No 90/20, dated 15-07-2020
   The European Commission, in the year 2016, had held that Ireland has granted undue tax benefits of up to € 13 billion to Apple. This was illegal under EU state aid rules because it allowed Apple to pay substantially less tax than other businesses.

   The General Court of the European Union, in its judgement dated 15-07-2020, has annulled the above decision because the Commission did not succeed in showing to the requisite legal standard that there was an advantage for the purposes of Article 107(1) of the Treaty on the Functioning of the European Union (TFEU).

   Article 107(1) TFEU provides that any aid granted by a Member State or through State resources in any form whatsoever which distorts or threatens to distort competition by favouring certain undertakings or the production of certain goods shall, in so far as it affects trade between Member States, be incompatible with the internal market.

   According to the General Court, the Commission was wrong to declare that Apple Sales International (ASI) and Apple Operations Europe (AOE) had been granted a selective economic advantage and, by extension, State aid. The decision of European Commission must be annulled in its entirety without it being necessary to examine the other pleas in law raised by Ireland and ASI and AOE.

2. **Assessee can't file rectification application to claim deduction which is debatable in nature**
   Nagaraj & Co. (P.) Ltd. v. ACIT - *[2020] 117 taxmann.com 618 (Madras)*
   Assessee omitted to claim deduction for interest paid to Industrial Development Bank of India (IDBI) under section 43B in return of income filed by it. After

noticing mistake, it filed application under section 154 seeking rectification of mistake on account of said omission. Assessing Officer (AO) rejected application on the ground that such mistake was not apparent from record as it involved debatable point of law.

Aggrieved by the order of AO, assessee filed an appeal before CIT(A). CIT(A) upheld the order passed by AO on the ground that merely by relying on figures given in financial statements, one couldn't arrive at the amount allowable under section 43B especially when quantum of principal and interest waived in one time settlement was not apparent from record. ITAT upheld the order of AO on the ground that assessment had been completed on the basis of computation filed by assessee. It could not be stated such assessment suffered from any mistake apparent from record on an item of expenditure never claimed by assessee.

On further appeal, Madras HC held that claim for deduction of interest under section 43B could be adjudicated by AO through a process of investigation only. Assessee had produced a self serving statement of account disclosing interest payments which didn't tally with the computation of income filed along with section 154 application. Therefore, unless and until a complete investigation was done by AO, deduction for interest payment could not be ascertained. Hence, omission claimed by assessee couldn't fall under the category of "mistake apparent from record".

3. **New Form 26AS is faceless handholding of taxpayer to e-file ITR correctly: CBDT**
   Press Release, dated 18-07-2020

   The Central Board of Direct Taxes (CBDT) vide notification No. 30/2020, dated 28-05-2020, has notified a new Rule 114-I which prescribes uploading of annual information statement in Form 26AS in the registered account of assessee. A new Form 26AS has been notified for reporting of information related to tax deducted at source (TDS), tax collected at source (TCS), specified financial statements (SFTs), payment of taxes, demand & refund, pending & completed proceedings &

any information in relation to sub-rule(2) of 114-I which includes information received under agreement referred to in section 90 or 90A.

The CBDT has said that the new Form 26AS is the faceless hand-holding of the taxpayers to e-file their income tax returns quickly and correctly. Information received by the Income-tax Dept. from SFTs will be shown under Part E of Form 26AS. It will facilitate voluntary compliance, tax accountability and ease of e-filing of ITR. This would also bring in further transparency and accountability in the tax administration.

The earlier Form 26AS used to give information regarding TDS and TCS relating to a PAN, besides certain additional information including details of other taxes paid, refunds and TDS defaults. But now, it will have SFTs to help the taxpayers recall all their major financial transactions so that they have a ready reckoner to enable them while filing the ITR.

4. **No rectification if disputed issue having two possible opinions settled through Finance Act amendments**
Sandeep Bhargava (''HUF') v. DCIT - *[2020] 117 taxmann.com 677 (Chandigarh - Trib.)*

Assessee filed return of income claiming exemption under section 54B. During the assessment proceedings Assessing Officer (AO) accepted deduction claimed by assessee. Later on, AO passed a rectification order under section 154 and rejected the assessee's claim for exemption under section 54B on account of reinvestment made in purchase of agricultural land as the same was not available to an HUF in assessment year 2012-13.

AO held that the Finance Act, 2012 had also added HUF as eligible for claiming deduction under section 54B with effect from assessment year 2013-14. Until AY 2012-13, only an individual was eligible to claim deduction. Assessee contended that amendment carried out to section 54B making the deduction available to HUF was clarificatory and curative in nature and same was to be applied retrospectively.

On appeal, ITAT held that the Finance Act, 2012 specifically mentioned that the "assessee being an individual or his parent or a HUF". No such words as "assessee being an individual" finds mentioned in section 54B prior to such amendment. The wording prior to amendment was "assessee or a parent of his". As per the provisions of the Income-tax Act, the assessee inter alia can be an individual or an 'HUF' also.

It is a settled law that powers of AO to rectify an order under section 154 are very limited. It can be exercised only in case where AO finds that a mistake apparent from record had occurred. However, in case of a debatable issue or where lengthy arguments are needed to decide the issue, powers under section 154 cannot be exercised to amend an order which has already been passed.

5. **CBDT starts 11 days e-campaign to promote voluntary compliance of ITR filing for AY 2019-20**
   Press Release, dated 18-07-2020

   The Income-tax Department has started 11 days e-campaign on the voluntary compliance of Income-tax for the convenience of taxpayers from 20-07-2020. The campaign focuses on the taxpayers who are either non-filers or have discrepancies/deficiency in their returns for the Financial Year 2018-19.

   The objective of the e-campaign is to facilitate taxpayers to validate online their financial transaction information available with the Income-tax Department and promote voluntary compliance so that they do not get into notice and scrutiny process etc.

   Under the e-campaign, the Dept. will send e-mail/SMS to identified taxpayers to verify their financial transactions related to Statement of Financial Transactions (SFT), Tax Deduction at Source (TDS), Tax Collection at Source (TCS), Foreign Remittances (Form 15CC) etc.

   The taxpayer will be able to access details of their high-value transaction-related information on the designated portal. The response has to be submitted online and there would be no need to visit any Income Tax office.

6. **Committee established under Bar Council to safeguard interest of advocates eligible for exemption u/s 12A & 80G**
Advocate Welfare Fund Trustee Committee. v. CIT (Exemption) - *[2020] 117 taxmann.com 701 (Delhi - Trib.)*

Assessee was an Advocate Welfare Fund Trustee Committee. It filed applications seeking registration under section 12AA and exemption under section 80G. CIT(E) rejected assessee's applications on the ground that applicant failed to furnish balance sheet and Income & Expenditure account. Thus, the conditions laid down under section 12AA are not satisfied as the genuineness of assessee's activities could not be established.

Assessee contended that being a charitable institution, it was entitled to registration under section 12AA as well as an exemption under section 80G. CIT(E) had erred in rejecting application illegally on the ground that balance sheet and Income & Expenditure account were not furnished. It further contended that it was a trustee committee called as Advocates Welfare Fund Trustee Committee established under Bar Council of Delhi vide Notification dated 25-10-2011 by the government of India and it was a charitable institution.

On appeal, Delhi ITAT held that it is settled proposition of law that for registration under section 12AA, the threshold condition, i.e., genuineness of the activities is to be decided with the object clause of the institution. When the object of the institution is proved to be charitable within the meaning of section 2(15), further scrutiny of the financials are not required. By relying on various judicial pronouncements, ITAT held that the CIT(E) had erred in declining the registration under section 12AA just on the ground that financials were not furnished by assessee.

7. **Obsolete stocks of laptops & motherboards which couldn't be sold is allowable as expenditure: Bombay HC**
CIT v. Gigabyte Technology (India) Ltd. - [2020] 117 taxmann.com 670 (Bombay)

Assessee claimed losses towards stock obsolescence. Assessing Officer (AO) issued show-cause notice in respect of losses claimed towards laptops and

motherboards. AO held that laptops and motherboards having long shelf life cannot be considered as having become obsolete and accordingly disallowed the losses. Aggrieved by the order of AO, assessee preferred an appeal before CIT(A). CIT(A) allowed the assessee's appeal. On revenue's appeal, ITAT upheld the order passed by CIT(A).

Revenue contended that high court in case of CIT v. Heredilla Chemicals Ltd. [1997] 225 ITR 532 (BOM.) held that mere writing off some machinery by claiming that the same had become obsolete, was not a good ground for claiming any deduction for losses.

On appeal, Bombay HC held that assessee consistently followed a particular accounting policy from year to year which is quite consistent with the provisions of section 145A. The ruling in case of Heredilla Chemicals limited (Supra) turns on its peculiar facts. In this case, the deduction was claimed merely by attempting to write off losses in its accounts in the previous year. This Court noted that even at the time of hearing of the Appeal, the machinery had not been sold despite the fact that assessee had assured the authorities to bring back the sale proceeds of the same for assessment as and when it was sold. It was in such a situation that this Court held that assessee couldn’t be said to have suffered any loss in the previous year under consideration. Such facts were not found in the present case. The ruling in Heredilla Chemicals Ltd. was, therefore, distinguishable and, consequently, inapplicable to the assessee's case.

8. **CBDT signs MoU for sharing ITR related information to Ministry of MSME Press Release, dated 20-07-2020**

A formal Memorandum of Understanding (MOU) was signed between the Central Board of Direct Taxes (CBDT) and the Ministry of Micro, Small and Medium Enterprises, Government of India (MoMSME) for sharing of data. The MoU will facilitate the seamless sharing of certain Income-tax Return (ITR) related information by the Income Tax Department to MoMSME.

This information shared will enable MoMSME to check and classify enterprises in Micro, Small and Medium categories as per the criteria notified in the Notification

No. S.O. 2119(E) dated 26/06/2020. Both the organizations will appoint Nodal Officer and Alternate Nodal Officers to facilitate the process of data exchange.

9. **CBDT and CBIC have signed a new MoU for data exchange**
Press Release, dated 21-07-2020

The CBDT and CBIC have signed an MoU for exchange of data between two organizations. Erstwhile MoU signed between the two organizations in the year 2015 stands superseded. The MoU will facilitate the sharing of data and information on an automatic and regular basis. In addition to this, CBDT and CBIC will also exchange any information available in their respective databases which may have utility for the other organization, on request and spontaneous basis.

10. **CBDT specifies procedures for notification of Sovereign Wealth Fund for the purpose of exemption u/s 10(23FE)**
Circular No. 15 of 2020, dated 22-07-2020

The Finance Act, 2020, has inserted a new section 10(23FE) to the Income-tax Act, to provide for exemption to the income of a specified person in the nature of dividend, interest or long-term capital gains from an investment made by it in India. The exemption is available if investment is made in specified infrastructure business during the period from 01-04-2020 to 31-03-2024 and such investment is held for at least three years.

The specified person for the purpose of section 10(23FE) has been defined as wholly-owned subsidiaries of Abu Dhabi Investment Authority (ADIA), notified Sovereign Wealth Fund (SWF) and notified Pension Funds (PF) subject to fulfillment of various conditions.

To notify SWF, the Central Board of Direct Taxes (CBDT) has specified that the SWF is required to apply in Form I. This form shall be filled with the Member (Legislation), CBDT, Department of Revenue, Ministry of Finance, north block, New Delhi during the financial year 2020-21 and thereafter to the Member, CBDT having supervision and control over the work of foreign tax and Tax research division.

The Board has also annexed Form I to make an application for notification under section 10(23FE). Further, SWF shall be required to file a return of income along with audit report. It shall also be required to file a quarterly statement within one month from the end of the quarter electronically in Form II in respect of each investment made during the quarter. The necessary procedure for furnishing and verification of Form II shall be notified later.

11. **Cabinet Secretariat, Intelligence Bureau, NCB & NIA notified as authority under Sec. 138**
Notification No. 52/2020, dated 21-07-2020

Section 138 of the Income-tax Act, 1961 deals with the mechanism for disclosure of information in respect of assessees under the Income-tax Act. It gives power to the CBDT to furnish information (received or obtained by income tax authorities) to any officer, authority or body performing any functions under any law relating to the imposition of any tax, duty or cess.

It facilitates the exchange of information by the Income-tax Department with other tax authorities or enforcement authorities. The provision enables automatic exchange of information relating to any income-tax assessees with any tax authority, RBI or any notified authority.

The CBDT has notified Cabinet Secretariat, Intelligence Bureau, Narcotics Control Bureau (NCB) and National Investigation Agency (NIA) for sharing of information under section 138.

12. **Project Office won't be constituted as PE if Co. wasn't carrying out its core business through it: SC**
Director of Income-tax (IT) v. Samsung Heavy Industries Co. Ltd. - [2020] 117 taxmann.com 870 (SC)

ONGC awarded a turnkey contract to a consortium comprising of assessee and Larsen & Toubro Ltd. Such contract was awarded for carrying out the work, inter alia, of surveys, design, engineering etc. Assessee set up a project office in Mumbai to act as a communication channel between assessee and ONGC in respect of the project.

Assessing Officer (AO) passed a draft assessment order concluding that project allotted to assessee was a single indivisible turnkey project, whereby ONGC was to take over a project that was completed only in India. The draft assessment order attributed 25% of the revenue earned outside India as income of the assessee eligible to tax.

On assessee's objection to draft assessment order, DRP held the opening of a project office in India proved that the assessee was doing something more than what would have been done through liaison office. Considering the nature of activities undertaken in India it was clear that Permanent Establishment (PE) existed in the case of assessee. ITAT confirmed the decision of AO and DRP. However, the High Court held that the Project Office couldn’t be said to be PE within the meaning of Article 5 of the DTAA

On further appeal by the revenue, the Supreme Court held that the condition precedent for applicability of Article 5(1) of the double taxation treaty is that it should be an establishment "through which the business of an enterprise" is wholly or partly carried on. Further, the profits of the foreign enterprise are taxable only where the said enterprise carries on its core business through a PE.

A reading of the Board Resolution showed that the Project Office was established to coordinate and execute "delivery documents in connection with the construction of offshore platform modification of existing facilities for ONGC". Further, only two persons were working in Project Office, neither of whom was qualified to perform any core activity of assessee.

Therefore, it was clear that no PE had been set up within meaning of Article 5(1) of DTAA, as Project Office could not be said to be a fixed place of business through which core business of assessee was wholly or partly carried on.

13. Joint Secretary (Farmers welfare), DAC&FW notified u/s 138 to identify eligible beneficiaries under PM-KISAN Yojana
Notification No. 51/2020, dated 21-07-2020

The Central Board of Direct Taxes (CBDT) has notified Joint Secretary (Farmers welfare), Department of Agriculture, Cooperation and Farmers Welfare, Ministry

of Agriculture and Farmers Welfare (DAC&FW), Government of India, for the purposes of section 138, in connection with sharing of information, regarding income-tax assessees for identifying the eligible beneficiaries under PM-KISAN Yojana.

14. **ITAT allows exemption to Tata Trust for sum spent on CBDT-approved foreign universities**

Tata Education and Development Trust v. ACIT - [2020] 117 taxmann.com 946 (Mumbai - Trib.)

Assessee was a charitable institution registered under section 12A. In relevant years, assessee claimed amount remitted to educational universities outside India as application of income under section 11(1)(c). Assessing Officer (AO) opined that since no approval for the aforesaid purpose was granted by CBDT as required under proviso to section 11(1)(c), assessee's claim for exemption of income could not be allowed

During pendency of appellate proceedings, CBDT granted approval sought by assessee by passing an order which was specifically 'stated to had effect for period covered by assessment years 2009-10 to 2016-17'. Based on said approval by CBDT, AO rectified assessment order under section 154 whereby impugned addition made in assessment order passed under section 143(3) was deleted.

CIT(A) held that CBDT's approval was not retrospective and thus, it restored addition made by AO in original assessment order.

The Mumbai ITAT held that the CBDT has approved the exemption being granted in respect of payments made by the assessee trust to the Cornell University USA and Harvard University USA, in which the AO had duly given effect to the stand so taken by the CBDT.

CIT(A), seemingly more loyal to the CBDT than CBDT itself, resulted in this wholly avoidable litigation which did not only clog the serious litigation before the judicial forums but also diverts scarce resources of the philanthropic bodies.

Though approval granted by CBDT was not specifically stated to be retrospective in nature, yet it was clarified by the board that it would affect for the period

covered from assessment years 2009-10 to 2016-17. Therefore, the impugned order passed by CIT(A) was to be set aside.

15. **CBDT amends Rule 31AA and TCS statement to incorporate FA 2020 amendments**
Notification No. 54/2020, dated 24-07-2020

The Finance Act, 2020, has amended section 206C to widen the scope of tax collected at source. Two new sub-sections were inserted to provide for the collection of tax at source (TCS) from the following:

a. Remittance out of India under Liberalized remittance scheme (exceeding the threshold limit) [Section 206C(1G)]
b. Sale of overseas tour package [Section 206C(1G)]
c. Sale of goods (exceeding the threshold limit) in any other case [Section 206C(1H)

To incorporate the effect of such amendments, the CBDT has amended rule 31AA, rule 37-I of the Income-tax Rules, 1961 and annexure to Form 27EQ.

Rule 31AA has been amended requiring collector to furnish the particulars of the amount received or debited on which tax was not collected. Further, Rule 37-I has been amended to provide a non-obstante clause that where tax has been collected under section 206C(1F) or 206C(1G) or section 206C(1H), credit for TCS shall be given to the person from whose account tax is collected for the assessment year relevant to the previous year in which such collection is made.

In the part of Form 27EQ, new columns have been inserted in its annexure to give particulars in case the buyer is liable to TDS and details of payment of tax in case TDS has been deducted from such payments. Further, additional notes have been provided to give reasons for non-collection/collection of tax at lower rates or higher rates.

16. **An omitted provision is to be treated as never existed in law; ITAT quashed revisional proceedings**

Raipur Steel Casting India (P.) Ltd. v. PCIT - *[2020] 117 taxmann.com 944 (Kolkata - Trib.)*

After passing of assessment order by Assessing Officer (AO) under section 143(3), Principal Commissioner of Income-tax (PCIT) examined the assessment records with reference to the evidences brought on record by AO during the assessment proceedings. During the examination of such records, it was observed from the Form 3CEB that the assessee had entered into specified domestic transactions which were required to be referred to TPO by AO after obtaining the approval of PCIT as per section 92CA but the same was not done by AO.

PCIT took a view that the order passed by AO was erroneous in so far as it is prejudicial to the interest of revenue and initiated proceedings under 263. Notice under section 263 was issued on 20-11-2018 and order passed on 8-3-2019.

Assessee contended that the clause (i) of section 92BA was "omitted" w.e.f 1-4-2017 and the effect of such omission without any saving clause of the general clause Act, means that the above provision was not in existence or never existed. Therefore, PCIT couldn't exercise jurisdiction under section 263.

The tribunal held that in a case where a particular provision in a statue is omitted and in its place another provision dealing with the same contingency is introduced without a saving clause in favour of pending proceedings, then it can be reasonably inferred that the intention of the legislature is that the pending proceeding shall not continue but a fresh proceeding for the same purpose may be initiated under the new provision.

Since clause (i) of section 92BA was unconditionally omitted without a saving clause in favour of pending proceedings, therefore PCIT ought not to have proceeded under section 263. Since the omission took place prior to 8-3-2019 and such omission in clause (i) of section 92BA is unconditional, it does not say that pending proceedings would continue in future, even after its omission on 1-4-2017. Therefore, PCIT erred in exercising his jurisdiction, so far clause (i) of section

92BA is concerned, reason being, in the eyes of law after omission of clause (i) of section 92BA, it would be treated as if it never existed in the Statute Book.

17. **CBDT amends Forms for furnishing statement of income paid/credited by investment fund to its unit holder**
Notification No. 55/2020, dated 28-07-2020

The CBDT has substituted rule 12CB of the Income-tax Rules, 1962 and Forms 64C & 64D which are required to be furnished to the Unit Holder and PCIT/CIT for the income paid or credited by an investment fund to its unit holder. As per the revised rule, the Form 64C has to be furnished to the unitholder after generating and downloading the same from the web portal. The Forms have been revised to include various additional information to be furnished by the investment funds.

Form 64D also seek PAN or Aadhaar number of Directors/Trustees/Partners of the Investment fund. Further, the due date for furnishing Form 64D has been changed from November 30 to June 15 of the financial year following the previous year during which the income is paid or credited.

18. **CBDT further extends due date for filing of ITR for AY 2019-20 till 30-09-2020**
Notification No. 56/2020, dated 30-07-2020

The Central Board of Direct Taxes (CBDT), vide notification no. 56/2020, dated 29-07-2020 has further extended the due date for furnishing of belated as well as revised Income-tax return (ITR) for the Assessment Year 2019-20 from 31-07-2020 to 30-09-2020. Further, it has also provided relief to the senior citizen from levy of interest under section 234A.

Earlier, the CBDT vide notification no. 35 /2020, dated 24-06-2020 extended various due dates, which were previously extended, to June 30, 2020 by the Taxation and Other Laws (Relaxation of Certain Provisions) Ordinance, 2020. In respect of ITRs, it was provided that the due date for furnishing revised/belated ITR for Assessment Year 2019-20 extended to 31-07-2020. Further, due date for furnishing ITR for Assessment Year 2020-21 has been extended to November 30, 2020 (for all categories of assessees).

Though the due date for filing of ITR for the Assessment Year 2020-21 was extended to 30-11-2020, but no relief was provided from the interest chargeable under section 234A if the tax liability exceeds Rs. 1 lakh. Thus, if self-assessment tax liability of a taxpayer exceeds Rs. 1 lakh, he would be liable to pay interest under section 234A from the expiry of original due dates, that is, 31-07-2020 or 31-10-2020.

Now, the CBDT has granted relief to resident senior citizens towards section 234A interest. A resident senior citizen who does not have any income from business or profession is not required to pay advance tax and he can pay the entire tax by way of self-assessment tax. For computing the limit of Rs. 1 lakh (as specified above), the self-assessment tax paid by a senior citizen on or before 31-07-2020 shall be deemed to be the advance tax. Thus, same shall be reduced while computing the tax liability of Rs. 1 lakh.

19. Losses already set off against profit other business not to be reduced notionally while computing profit u/s 80-IA
DCIT v. Chhotabhai Jethabhai Patel & Co. - [2020] 117 taxmann.com 938 (Ahmedabad - ITAT)

Assessee was engaged in generation of electricity through windmills which were eligible business to claim deduction under section 80-IA. Assessee claimed deduction without notional adjustment of losses and depreciation of the earlier years, arising from eligible business, which already stood set off from other steam of income.

Assessing Officer (AO) denied assessee's claim by invoking embargo place by section 80-IA(5). AO made the adjustment on account of notionally carry forward losses and depreciation of earlier years from actual commencement of business. AO held that assessee was required to treat the eligible business as the only source of income of eligible undertaking. Provisions regarding set-off of losses as contained under section 70, 71 & 72 were required to be ignored for quantification of eligible profits for deduction.

On appeal, ITAT held that the manner of determination of quantum of deduction as provided under section 80-IA(5) was clarified by the CBDT vide Circular No. 1,

dated 15-2-2016 and is devoid of controversy any more. Having regard to the wide-ranging controversies, The Circular has given categorical interpretation on the exercise of option of choosing initial assessment year referred under section 80-IA(5) in favour of assessee. The CBDT has also clarified that embargo place under section 80-IA(5) for quantification of deduction would apply from the assessment year immediately succeeding initial assessment years only.

Thus, the ITAT held that assessee was not required to notionally reduce losses arose from eligible business in the earlier years which were already set off against other business of assessee before exercise of option of initial assessment year. The losses arising in eligible business subsequent to earmarking of an initial assessment year shall continue to be governed by embargo placed in the section 80-IA(5).

20. CBDT notifies 'Director General / Secretary, CCI' u/s 138 for sharing of information

Notification No. 57/2020, dated 30-07-2020

Section 138 of the Income-tax Act, 1961 deals with the mechanism for disclosure of information in respect of assessees under the Income-tax Act. It gives power to the CBDT to furnish information (received or obtained by income tax authorities) to any officer, authority or body performing any functions under any law relating to the imposition of any tax, duty or cess.

It facilitates the exchange of information by the Income-tax Department with other tax authorities or enforcement authorities. The provision enables automatic exchange of information relating to any income-tax assessees with any tax authority, RBI or any notified authority.

The CBDT has notified Director General / Secretary, Competition Commission of India for sharing of information under section 138. Earlier, the board has notified the Cabinet Secretariat, Intelligence Bureau, Narcotics Control Bureau (NCB) and National Investigation Agency (NIA) for sharing of information.

Disclaimer

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