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NEWSLETTER

July 2020 Vol. I

Compiled By: CA. Sachin Singhal

CA. Vinit Aggarwal

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Corporate Laws

Latest update, New and Judgments

1. **Section 397 was violated when directors effected change in control and management by violating Act and using muscle power**

Mar Jacob Thoomkuzhy v. Jeevan Telecasting Corporation Ltd. - [2020] 117 taxmann.com 71 (NCLT - Kochi)

The petitioners promoted the Respondent-company. It started functioning successfully however the petitioners could not mobilize fund. The Respondent-directors were inducted in the company and they gave loan to the company. The Respondent group started creeping acquisition of shares hiding real intentions of taking over the company. In this process, Policy Guidelines of Ministry of Information and Broadcasting (MIB) was also been violated. Asking the respondent group to reduce shareholding to comply with the MIB Guidelines triggered a chain of events that led to the Petitioners removal from directorship by the respondent group. To achieve their ends, the Respondents had not bothered to follow process laid down either in Companies Act or Articles of Association of Company. Board meetings and Extra ordinary General Meeting (EoGM) were convened illegally and Company Secretary and Auditor and ultimately Chairman and Board of Directors were illegally removed. Thus, the respondents indulged in oppression of minority shareholders and effected change in control and management of the respondent The Company by their financial clout, muscle power and by adopting dubious methods to achieve their ends. There was a violation of section 397/398.

2. **MCA allows companies to conduct their EGMs via. e-mode up to Sep 30, 2020 Circular No. 22/2020, Dated 15.06.2020**

The Ministry of Corporate Affairs (MCA) is fully cognizant of the difficulties faced by companies on account of the ongoing nation-wide lockdown and social distancing due to COVID 19. The Ministry has also taken note of various representations received from industry associations and corporate on the need to facilitate companies in taking certain emergent/ urgent measures in the face of extreme disruptions and dislocation caused by the pandemic. Therefore, it has

decided to extend the facility up to Sep 30.2020. The companies now can conduct their EGMs through E-mode up to Sep 30, 2020 instead of June, 2020.

3. **Pendency of case under section 138 of Negotiable Instruments Act, 1881, would not amount to pre-existing dispute**

Ingram Micro India (P.) Ltd. v. ASP Computers (P.) Ltd. - [2020] 117 taxmann.com 73 (NCLT- Chennai)

In instant case, the operational creditor supplied software products to the corporate debtor however, the Cheque issued by the corporate debtor for payment was dishonoured by bank. Even after issuance of demand notice, the corporate debtor did not make payment.

The Corporate debtor, however, claimed that it bought goods from operational creditor on basis of offer that it would be offered trips to UK and USA but the operational creditor failed to issue 9 tickets to it and also failed to adjust cost of said tickets from bills.

Since visa of the corporate debtor for trip to UK was rejected twice and as a result trip to USA was voluntarily cancelled by the corporate debtor and, moreover, the operational creditor was not obliged to adjust cost of unutilized tickets, contention of the corporate debtor that cost of tickets had to be given credit to account of the corporate debtor was required to be brushed aside.

Further, debt and default on part of the corporate debtor was proved and defense raised by the corporate debtor were spurious, illusory and hypothetical, therefore, Corporate Insolvency Resolution Process against the corporate debtor was to be admitted.

4. **CIRP plea filed in the name of sole proprietary concern can't be maintained: NCLT**

R.G. Steels v. Berrys Auto Ancillaries P. Ltd. - [2020] 115 taxmann.com 218 (NCLT - New Delhi)

The petitioner approached as an operational creditor under section 9 of the Insolvency and Bankruptcy Code, 2016 seeking initiation of Corporate Insolvency Resolution Process (CIRP) against the corporate debtor.

By virtue of definition as contained in section 3(23), a person even though includes an individual, it does not include within its ambit a sole proprietary concern. In all 30 invoices raised by the petitioner against the corporate debtor two invoices allegedly remained unpaid and demand notice was issued by the petitioner to the corporate debtor.

Since it was evident that petition had been filed by R G Steels stated to be sole proprietary concern, condition of section 3(23) was not satisfied, and also there was a pre-existing dispute regarding rates as charged by petitioner, therefore, instant petition was not maintainable.

5. Consolidated CIRP of a Co. and its subsidiaries was to be ordered to avoid huge losses to its shareholders: NCLT

Axis Bank Ltd., In re - [2020] 115 taxmann.com 133 (NCLT - Mum.)

In given case, the Corporate insolvency resolution process against three group companies, i.e. LCL, WAML, and DCCL was initiated vide. separate applications. The WAML and DCCL were 100 per cent subsidiaries of LCL.

Further all these companies had common directors. The WAMAl, DCCL operated on a common set of assets and office infrastructure owned by LCL.

The NCLT noted that each of 100 percent subsidiaries of LCL depended upon outcome of LCL's CIRP and without consolidation of resolution process of LCL group companies no resolution of Insolvency of LCL and its subsidiaries was possible and would have resulted in loss of huge values to all stakeholders and thereby defeating very object of Insolvency & Bankruptcy Code. Therefore consolidated CIRP of LCL and its subsidiaries was to be ordered.

6. Period of lockdown would be excluded for purpose of counting period for resolution process u/s 12 of IBC

Suo Moto, In re - [2020] 117 taxmann.com 180 (NCLAT- New Delhi)

Period of lockdown ordered by Central Government and State Governments including period as may be extended either in whole or part of country, where registered office of the corporate debtor may be located, shall be excluded for purpose of counting of period for 'Resolution Process' under section 12 of the Insolvency and Bankruptcy Code, 2016 in all cases where 'Corporate Insolvency

Resolution Process' has been initiated and pending before any bench of National Company Law Tribunal or in appeal before Appellate Tribunal.

Further, any interim order/stay order passed by Appellate Tribunal in anyone or other appeal under Insolvency and Bankruptcy Code, 2016 shall continue till next date of hearing.

7. MCA issues clarification with regard to creation of deposit repayment reserve of 20% u/s. 73 of Cos. Act, 2013

Circular No. General Circular No. 24/2020, Dated 19.06.2020

In continuation to General Circular No. 11/2020 dated 24th March 2020 and keeping in view the requests received from various stakeholders seeking extension of time for compliance of the subject requirements on account of covid-19, MCA has decided to further extend the time in respect of matters referred to in paras V, Vl of the circular, from 30.06.2020 30.09.2020. However, all other requirement shall remain unchanged.

8. RBI amends mode of payment norms under FEMA regulation

Notification No. FEMA. 395(1)/2020-RB., dated 15.06.2020

The RBI has notified the Foreign Exchange Management (Mode of Payment and Reporting of Non- Debt Instruments) (Amendment) Regulations, 2020 whereby an amendment has been made to the Regulation 3.1 of the Principal Regulations providing that the amount of consideration shall be paid as inward remittance from abroad through banking channels or out of funds held in a foreign currency account and/or a Special Non-Resident Rupee (SNRR) account maintained in accordance with the Foreign Exchange Management (Deposit) Regulations, 2016.

Further it provides that unless otherwise specified in these regulations or the relevant Schedules, the foreign currency account and SNRR account shall be used only and exclusively for transactions under this Schedule.

Amended norms also provides that the sale proceeds (net of taxes) of equity instruments and units of REITs, InViTs and domestic mutual fund may be remitted outside India or credited to the foreign currency account or a SNRR account of the FPI.

9. Compensation plea filed by applicant within 3 years period from SC's order wasn't time barred: NCLAT

Food Corporation of India v. Excel Corp Care Limited - [2020] 117 taxmann.com 207 (NCL-AT)

In given case, the Applicant had sent information under section 19(1) to Commission (Competition Commission of India) alleging 'anti-competitive behaviour' on part of three respondents, in regard to tenders released by the applicant for purchasing Aluminium Phosphate Tablet (ALP).

The Commission came to conclusion that the respondents had violated section 3 and resultantly levied penalties in terms of Act. However, the Said order of Commission was confirmed by COMPAT and also by Supreme Court.

Thereafter, the applicant filed instant compensation application seeking compensation from respondents for a sum in terms of section 53N. Since 'litigation' involved in these orders was common filing of single application against the respondents was not fatal.

The limitation period will commence only after final decision of Supreme Court and, thus, contra plea taken by the respondents that a compensation application was only permissible against a CCI order or COMPAT's order and not against the Supreme Court judgment was not acceptable. Further, since ultimate proceedings ended in Supreme Court on 8-5-2017 and instant compensation application was filed by the applicant within a reasonable period of time, i.e., less than three years, instant application was not hit by plea of limitation.

10. Plea of pre-existing dispute filed in response to a demand notice had no merit, CIRP admitted

ECO Drilling Fluids P. Ltd. v. DSTR Infrastructures & Projects LLP - [2020] 117 taxmann.com 224 (NCLT - New Delhi)

The operational creditor supplied polymers to the corporate debtor. It issued number of invoices out of which certain invoices remained unpaid by the corporate debtor. Therefore, the Demand notice under section 8 was sent to corporate debtor.

The Corporate debtor replied to notice assuring that it would make payment, however, no payment was made by the corporate debtor. On instant CIRP application filed by the applicant, the corporate debtor contended that material supplied by the operational creditor was sub-standard and price of material was exorbitantly higher than mark.

Thus, the corporate debtor tried to raise a pre-existing dispute only after filing of CIRP application. Since no document was placed on record to exhibit dispute between parties and there was an admission by the corporate debtor to do payment in reply to section 8 notice, default being occurred with respect to payment of operational debt, thus, instant CIRP application was to be admitted.

11. Member lending institutions to assign 0% risk weight on credit facility under emergency Credit Line Guarantee Scheme
Circular No. RBI/2019-20/255 DoR.BP.BC.No.76/21.06.201/2019-20 June 21, 2020

RBI directed to refer to circular Ref no. 2842/NCGTC/ECLGS dated May 23, 2020 issued by National Credit Guarantee Trustee Company (NCGTC) in respect of the captioned scheme announced by the Government of India to extend guaranteed emergency credit line to MSME borrowers. As credit facilities extended under the scheme guaranteed by NCGTC are backed by an unconditional and irrevocable guarantee provided by Government of India, In this regard, the RBI has decided that Member Lending Institutions shall assign zero percent risk weight on the credit facilities extended under this scheme to the extent of guarantee coverage.

12. Acknowledgment of debt in agreement followed by issuance of cheques for repayment was prima facie admission of debt
Dinesh Khetan v. Bigmoon Buildcon (P.) Ltd. - [2020] 117 taxmann.com 245 (NCLT - New Delhi)

In instant case, the corporate debtor approached the financial creditor for arrangement of investment Rs. 11 lacs stood towards initial service charges for arranging investment upto Rs. 6 crores.

An actual cash investment of Rs. 20 lacs was also disbursed to the corporate debtor by the applicant-financial creditor. As per 'Investment Agreement cum Memorandum of Understanding', the corporate debtor acknowledged Rs. 11 lacs as investment.

After receipt of investment of Rs. 20 lacs, issued a cheque for Rs. 31 lakh. Said cheque got dishonoured and acknowledgement of debt made in agreement followed by issuance of cheques by the corporate debtor are prima facie admission

of debt. Since there had been default in payment of the financial debt, Corporate Insolvency Resolution Process (CIRP) petition was to be admitted.

13. **MCA further extends time period for Reservation and Re-submission of names**

News, Dated 23.06.2020

The Ministry of Corporate Affairs (MCA) has come with circular whereby time period for reservation and resubmission of names has been further extended. Now the MCA decided to provide 20 additional days for beyond June 30, 2020 for filing SPICe+ Part B (to be filed within 20 days of name reservation) and further grants 60 more days beyond June 30, for filing INC-24 for change of name of a company, for names expiring between March 15 and June 30.

In addition to that, for LLPs, extends name reservation in case of new incorporation/change of name (for which FiLLiP/Form 5 needs to be filed), by 20 days, beyond June 30 and for Resubmission ('RSUB') validity for companies as well as LLPs, allows additional 15 days beyond June 30, for SRNs where last date of Resubmission (RSUB) falls between March 15 to June 30.

14. **InvITs/ REITs may conduct meeting of unit holders through VC or OAVM, clarifies SEBI**

SEBI/HO/DDHS/DDHS/CIR/P/2020/102, Dated 22.06. 2020

The SEBI had received representations to allow InvITs/ REITs to conduct meeting of unit holders through Video Conferencing (VC) or through other audio-visual means (OAVM). In this regard, SEBI has now clarified that InvITs/ REITs may conduct meeting of unit holders via VC or OAVM. The facility of VC or OAVM shall be available for annual meeting of unit holders in terms of Reg. 22(3)(a) of InvIT Regulations and Reg.22(3) of REIT Regulations, to be conducted during calendar year 2020.

15. **SEBI amends ICDR regulations; relaces pricing norms in preferential issue of shares of Cos. having stressed assets**

Notification No. SEBI/LAD-NRO/GN/2020/18. Dated 22.06.2020

The SEBI has notified the SEBI (Issue of Capital and Disclosure Requirements) (Second Amendment) Regulations, 2020 whereby a new regulation 164A has been inserted which prescribes "Pricing in preferential issue of shares of companies having stressed assets. By introduction of 164A, the SEBI has relaxed preferential

allotment norms for companies having stressed assets, the norms provides that in case of frequently traded shares, the price of the equity shares to be allotted pursuant to the preferential issue shall not be less than the average of the weekly high and low of the volume weighted average price of the related equity shares quoted on a recognized stock exchange during the two weeks preceding the relevant dat.

Further, the norms provide compliance requirement for the issuer company before making the preferential issue. The new regulation requires the issuer to make arrangements for monitoring the use of proceeds of the issue by a public financial institution or by a scheduled commercial bank, which is not a related party to the issuer.

The new provision also prescribes that the allotment made shall be locked-in for a period of three years from the last date of trading approval.

16. SEBI extends timeline for submission of financial results by listed entities under LODR to July 31, 2020

CIRCULAR SEBI/HO/CFD/CMD1/CIR/P/2020/106 June 24, 2020

SEBI, vide circular No. SEBI/HO/CFD/CMD1/CIR/P/2020/38 dated March 19, 2020 and circular No. SEBI/HO/DDHS/ON/P/2020/41 dated March 23, 2020, had extended the timeline for submission of financial results under regulations 33 and 52 of the SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015 ('LODR Regulations') to June 30, 2020 (extension of one month) due to the impact of the CoVID-19 pandemic. Thereafter, the SEBI received representations from stakeholders seeking further extension of time for preparation, finalization and submission of financial results for listed entities for the quarter/half year/financial year ending 31st March 2020, due to many reasons, like the continuing lockdown, subsidiaries and associates situated in containment zones making the audit process challenging and other operational challenges due to the CoVID-19 pandemic.

After taking into consideration the all issues, SEBI has decided to further extend the timeline for submission of financial results under Regulation 33 of the LODR Regulations, by a month, to July 31, 2020, for the quarter and the year ending 31st March 2020. Similarly, the timeline under Regulation 52 of the LODR for submission of half yearly and/or annual financial results for the period ending

March 31, 2020 for entities that have listed NCDs, NCRPS', CPs, MDS' is also extended to July 31, 2020.

17. **MCA further extends relaxation for all Board Meetings through Video Conferencing**
NOTIFICATION No G.S.R. 395(E) Dated 23.06.2020

The Ministry of Corporate Affairs (MCA) has notified the extension of the relaxation for all the Board meetings to approve its financial statements through Video Conferencing (VC) or Other Audio-Visual Means (OAVM) to be conducted till September 30, 2020.

18. **IRDAI unveils guidelines on introduction of short term health insurance policies for COVID-19 diseases**
Circular No. IRDAI/HLT/REG/CIR/156/06/2020 Dated, 23.06.2020

With an objective of making available insurance protection to various sections of people in prevailing COVID-19 pandemic, it is considered that short term health insurance policies providing coverage specific to COVID-19 disease is the need of the hour. Accordingly, all insurers are allowed to offer COVID-19 specific short term health insurance policies subject to issued guidelines. Short term health policy for the purpose of these guidelines means any health insurance policy contract which has been issued for a policy term less than 12 months.

19. **MCA expands scope of CSR activities, includes CAPF and CPFM veterans, and their dependents come under CSR activities**
Notification No. G.S.R. 399(E). Dated 23.06.2020

The Ministry of Corporate Affairs has issued notification No. G.S.R. 399(E) to amend Schedule VII of the Companies Act, 2013. The notification provides that in schedule VII, in item (vi), after the words "war widows and their dependents", the words "Central Armed Police Forces (CAPF) and Central Para Military Forces (CPMF) veterans, and their dependents including widows" shall be inserted. This means that now any amount spent by companies towards Central Armed Police Forces and Central Para Military Forces veterans, and their under the activities which may be included by companies in their Corporate Social Responsibility Policies.

20. IRDAI constitutes working group for insurance of remotely Piloted Aircraft System Drone Technology (RPAS)

Circular No. IRDAI/NL/ORD/MISC/160/06/2020 Dated, 24.06.2020

Drone are emerging as one of the fastest growing technologies and are being used for a variety of purposes. Their numbers are growing rapidly. Drones are playing a significant role in the current COVID -19 situation. Therefore, there is an immediate need to make available suitable insurance product covering the various risks involved in drone. In this regard, IRDAI has decided to constitute a working group committee of 9 members.

The terms of reference of the working group committee includes

i) study and understanding of the insurance needs of RPAS owners and operators,

ii) making recommendation relating to design and development of products meeting the needs RPAS owners and operators, including third party liability.

iii) Making of recommendation relating to underwriting of such risks including the re-insurance perspective.

iv) To examine any other relevant matter relating to the subject. The working group shall have to submit its report within 6 weeks of the date of issuing of the order.

21. Statutory period of 14 days for passing of order by AA u/s 7 isn't mandatory but to be passed with utmost expedition

Techno Electric & Engineering Co. Ltd. v. McLeod Russel India Ltd. - [2020] 117 taxmann.com 258 (NCL-AT)

In the instant case, the Appellate tribunal held that though statutory prescribed period of 14 days for passing of an order by Adjudicating Authority with regard to admission or otherwise of an application under section 7 has not been held to be 'mandatory' but such order is required to be passed with utmost expedition.

22. Notification on CSR contribution to PM CARES fund deemed to come into force w.e.f. March 28, 2020, clarifies MCA

General Circular No.25/2020, Dated 26.06.2020

The MCA has clarified that in view of amendment in Schedule VII of the Companies Act, 2013 vide gazette notification no. GSR 313, dated 26.5.2020,

deemed to have come into force from March 28, 2020, the office memorandum No. CSR-05/1/2020-CSR_MCA dated 28.03.2020 is redundant and hence stands superseded.

23. SEBI further extends timeline for submission of Secretarial Compliance Report by one more month, to July 31, 2020

Circular No. SEBI/HO/CFD/CMD1/CIR/P/2020/109, Dated 25.06.2020

The SEBI has received representations from the Institute of Company Secretaries of India (ICSI), industry bodies and listed entities requesting extension of time for submission of the Annual Secretarial Certificate (ASC) Report in view of the difficulties and challenges faced by listed entities and Practicing Company Secretaries due to the continuing impact of the CoVID-19 pandemic. After consideration, it has been decided to further extend the timeline for submission of the ASC Report by one more month, to July 31, 2020.

24. Pricing in preferential issue of shares of companies having stressed assets

i. INTRODUCTION

In a move to help fundraising by companies having stressed assets, the Securities and Exchange Board of India ("SEBI") vide a notification dated 22 June 2020, enacted the SEBI (Issue of Capital And Disclosure Requirements) (Second Amendment) Regulations, 2020. The newly added section 164A relaxes the pricing methodology for the preferential issue of shares by listed companies having stressed assets.

ii. RATIONALE BEHIND INTRODUCING SECTION 164A

Listed companies that have stressed assets are generally in need of urgent capital. One method available for raising capital is the preferential allotment of shares. However, the present pricing guidelines are too onerous for any investor to consider investing in a stressed company as determination of the pricing covers a period of twenty-six weeks for frequently traded shares. Companies with stressed assets generally experience a progressive fall in their share prices and hence there could be wide gap between at the beginning of the twenty-six weeks and the

current price when funds are required to be raised. Given these pricing regulations, it is extremely difficult for such companies to raise funds through preferential allotment. Therefore, to combat this problem, section 164A has been introduced.

iii. ANALYSIS OF SECTION 164A

Relaxation

Eligible listed companies having stressed assets can determine pricing of their preferential allotments at not less than the average of the weekly high and low of the volume weighted average prices of the related equity shares during the two weeks preceding the relevant date.

iv. Eligibility criteria

To avail the relaxation, issuer - company should meet any two of the following three criteria:

a. The issuer has disclosed all the defaults relating to the payment of interest/repayment of principal amount on loans from banks/financial institutions/ Systemically Important Non-Deposit taking Non-banking financial companies/ Deposit taking Non-banking financial companies and /or listed or unlisted debt securities in terms of SEBI Circular dated November 21, 2019 and such payment default is continuing for a period of at least 90 calendar days after the occurrence of such default;
b. there is an Inter-creditor agreement in terms of Reserve Bank of India (Prudential Framework for Resolution of Stressed Assets) Directions 2019 dated June 07, 2019
c. the credit rating of the financial instruments (listed or unlisted), credit instruments / borrowings (listed or unlisted) of the listed company has been downgraded to "D"

25. Liability on debtor wasn't barred by limitation when there was subsisting liability on day of filing of plea

Ashish Kumar v. Vinod Kumar Pukhraj Ambavat - [2020] 117 taxmann.com 154 (NCL-AT)

In the instant case, the corporate debtor was granted a loan by the financial creditor-bank in the year 2008 and same was extended till year 2010. The Account of the corporate debtor was declared NPA on 29-8-2012. The CIRP application filed by the financial creditor was admitted.

The Corporate debtor in the instant appeal contended that CIRP order was passed ex-parte which was illegal and same was also barred by limitation.

The NCLT noted that several opportunities were granted to the corporate debtor and notice to CIRP application was also served upon the corporate debtor, and when no response was received from the corporate debtor, Adjudicating Authority proceeded ex-parte.

It was further noted that the corporate debtor issued various letters and one-time settlement proposals between 2012 and 2019. Since the corporate debtor offered varying amounts to the financial creditor for full and final settlement thereby admitted jural relationship of debtor-creditor with financial creditor. Since afresh period of limitation started after acknowledgement of liability, there was subsisting liability on the corporate debtor on day of filling of CIRP application, therefore, same was not barred by limitation.

26. SEBI further extends compliance requirement for portfolio managers

Circular No, SEBI/HO/IMD/DF1/CIR/P/2020/111, Dated 29.06.2020

After taking into consideration requests received from portfolio managers and the prevailing business and market conditions, SEBI has decided to extend the timeline for compliance with the requirements of SEBI Circular No. SEBI/HO/IMD/DF1/CIR/P/2020/26 dated February 13, 2020, by further three months. Accordingly, the provisions of said SEBI Circular shall be applicable with effect from October 01, 2020.

27. **Extension of timeline for submission of public comments on report of Working Group on Social Stock Exchange**
News, Dated 30.06.2020

The market regulator, SEBI had put up the report of the working group on Social Stock Exchange for public consultation on its website on June 01, 2020 seeking comments by June 30, 2020. In view of the requests seeking extension of timeline for submission of comments due to COVID-19 pandemic, SEBI has decided to extend the timeline for seeking public comments to July 15, 2020.

28. **IRDAI streamlines process of submission of Life operational returns through BAP**
Circular No. Ref: IRDAI/Life/Cir/Misc/165/06/2020

The Authority observed that some Insurers were not submitting the returns within the prescribed timelines and some were frequently requesting for unlocking of the already submitted returns to revise the same. This was hampering the regulatory review and analysis by the Authority. Therefore, in this regard, the IRDAI has issued some instructions to streamline the process of submission of life operational returns through 'Business Analytics Project' (BAP).

The timelines for submission of monthly returns shall be 8th of following month. The timelines for all others returns (Unaudited quarterly returns, Audited annual return, Yearly outsourcing return and other Yearly return) remains unchanged. IRDAI has directed all Life Insurers to adhere to the above timelines and ensure submission of life operational returns accordingly.

Further, IRDAI said that a provision is made in the BAP Module to enable Insurers to unlock returns up to 3 times without reference to the Authority, from the date of submission till the due date. Insurers can utilize this opportunity to rectify any errors detected in the returns and re-upload the revised returns. This option of unlocking is provided only for the Chief Compliance Officer.

Once all the 3 unlocking attempts or due date of submission of the returns, whichever is earlier, elapses, the unlocking facility will be disabled to the Insurer.

Delayed submission of returns or submission of inaccurate returns is liable for regulatory action under the relevant provisions of the Insurance Act, Regulations and Guidelines or Circulars.

These instructions shall come into force for the returns to be filed for the period pertaining to June 2020 onwards.

29. Liability for prior offences will not apply if no resolution plan was approved by CoC as on date of provisional order

Raj Kumar Ralhan v. Deputy Director - [2020] 117 taxmann.com 297 (NCLT - Hyd

The Corporate debtor was under Corporate Insolvency Resolution Process (CIRP) and moratorium order was in effect in its case. The Applicant i.e. Resolution Professional filed instant application seeking removal of provisional attachment order passed by respondent by taking a plea that said order was violative of terms of moratorium. In support of said plea, applicant relied upon provisions of section 32A(2) of the Code.

The Tribunal observed that in view of fact that when provisional attachment order was passed there was no resolution plan approved by CoC, which was confirmed by Adjudicating Authority under section 31, provisions of section 32A(2) would not apply to provisional attachment order passed by respondent. Therefore, instant application filed by Resolution Professional was to be dismissed.

30. Cartel stood established when key competitors in bearing market colluded to decide price quotation

ABC Bearings Ltd., In re - [2020] 117 taxmann.com 89 (CCI)

In the instant case, the representatives of key competitors in bearings market had several telephonic discussions with view to mutually determine prices of bearings sold by them to Original Equipment Manufacturer (OEM) customers.

They also attended meetings regarding commercially sensitive price related information. In these meetings price revision along with minimum percentage of price increase to be quoted to OEMs were discussed and they agreed to send letters to automotive and industrial OEMs regarding price increases.

Since very factum of parties meeting with each other to decide price revisions to be quoted to OEMs, compromised their independence, enabling them to quote price revisions to OEMs, different than what they would have otherwise quoted independently, 'cartel' as defined under Section 2(c) stood established. Therefore, these companies were guilty of contravention of provisions of Section 3(3)(a), of

the Act and persons in-charge of these competitor companies who were responsible to their respective companies for conduct of business of companies would be liable in terms of section 48 (1) for acts of contravention of provisions of Act committed by their respective companies.

31. Plea to initiate Corporate Insolvency Resolution process accepted as it wasn't barred by limitation

Vivek Jha v. Daimler Financial Services India (P.) Ltd. - [2020] 117 taxmann.com 98 (NCL-AT)

The Appellant, a director of the corporate debtor-company stated that there was an agreement between the appellant and the financial creditor pertaining to securing loan in respect of car and EMI was to be paid in 36 instalments out of which the appellant had paid 11 instalments.

The Grievance of the appellant was that copy of CIRP petition was not served on the appellant and NCLT passed ex parte order and further that CIRP petition was barred by limitation.

The NCLT noted that attempt of service was taken on address as available on MCA website. It was also not in dispute that the corporate debtor and its director-the appellant as the co-applicant approached the respondent-financial creditor to avail financial assistance and entered into a loan cum hypothecation agreement dated 28-3-2013 with the financial creditor.

On 18-3-2015 payment was made by the corporate debtor vide cheque and no payment was made thereafter. However, on 17-8-2017 demand notice was issued to the corporate debtor. Since CIRP application was filed on 16-12-2017 same was not barred by limitation. The Corporate Insolvency Resolution Process (CIRP) application filed by the financial creditor against the corporate debtor was to be admitted.

Goods and Service Tax (GST)

Latest Updates, News and Judgments

1. **Refund of amount deposited in PLA before GST introduction is admissible w.e.f 1-7-2017**

Sun Ultra Tech (P.) Ltd. v. Commissioner, Central Goods & Service Tax, Excise & Customs - [2020] 117 taxmann.com 95 (New Delhi - CESTAT)

The assessee was registered under Central Excise Act and had deposited amount in its PLA for further utilization. On introduction of GST, with effect from 1 July 2017, the deposits in PLA became non-usable. CBIC clarified that only the balance in Cenvat could be transferred to GST account. There were no provisions for transfer of PLA amount in GST Act.

The assessee filed an application for refund of amount available as a closing balance in its PLA. The Adjudicating authority rejected the refund application on the ground that the application was filed beyond the period of one year from the date of deposit. The assessee filed an appeal before the Commissioner (Appeals) against the order of adjudicating authority. The Commissioner (Appeals) upheld the order-in-original passed by the adjudicating authority. The assessee filed an appeal before the Customs Excise and Service Tax Appellate Tribunal (CESTAT) seeking relief in this regard.

The tribunal relied on the judgement of Fluid Controls Pvt. Ltd. Vs. Commissioner of Central Excise & Service Tax, Pune-I wherein the tribunal held that the PLA deposit is nothing but the ‘duty waiting to be debited' and ‘not a duty under the Act’ and hence, limitation provisions would not apply to the same. If assessee is not able to utilize the PLA deposit, the depositor is entitled for refund of the same.

In the present case, if the PLA deposit could not be used on account of introduction of GST and there being no transitional provision for transfer of such PLA deposit, the amount would be refundable to the assessee. The lower authorities were wrong in rejecting the application on the ground of limitation. Further, the refund of amount deposited in PLA before GST introduction becomes admissible to the assessee only with effect from 1 July, 2017 and not before that. Therefore, the said order passed by the adjudicating authority is set aside.

2. **Transitional Credits: Publicize and upload Brand Equity's decision on website by 19 June 2020 - Delhi HC**

Mangla Hoist (P.) LTD. v. Union of India - [2020] 117 taxmann.com 174 (Delhi)

The assessee had made repeated efforts to upload its claim for credit in Form Tran-1 on the GST portal. However, due to errors in the GST portal including technical difficulties Form Tran-1 could not be filed. The assessee submitted that despite several requests the authorities refused to extend the deadline of Form Tran-1. The assessee filed petition before the High Court of Delhi seeking relief so as to enable it to file Tran-1 by opening the GST portal.

Recently, a Division Bench of this Court in Brand Equity Treaties Limited v. UOI case, had held that time limit of 90 days prescribed in rule 117 was not mandatory but directory in nature. It also directed the competent Authorities to publicise the said judgment by uploading it on GST website so that all assessees, who were unable to upload Form Tran-1, could do so on or before 30-6-2020. The department submitted that they had decided to challenge the above judgment and were in process of filing an appeal before the Supreme Court.

The Honourable High Court observed that the above judgment had not been stayed so far, hence, the authorities were under an obligation to abide by directions issued therein by adequately publicising the said decision and uploading it on the GST website. Also, GST common portal shall be opened to enable assessee and all similarly placed parties to upload Form Tran-1 for claiming CENVAT tax credit.

The Honourable High Court directed the authorities to ensure compliance of the aforesaid judgment by 19 June 2020, since the cut of date fixed by the court in the above case was 30 June 2020, which would leave only ten days for all the assessees to take necessary steps to file Form Tran-1.

3. **Companies allowed furnishing GSTR-3B & GSTR-1 through EVC till 30 September, 2020**

Notification No. 48/2020-Central Tax, 19-6-2020

The govt. has notified that the companies registered under the provisions of the Companies Act, 2013 shall be allowed to furnish GSTR-3B return through EVC during the period from 21 April, 2020 to 30 September, 2020. Also, the said companies shall be allowed to furnish GSTR-1 through EVC during the period from 27 May, 2020 to 30 September, 2020.

4. **Transitional Credits: Supreme Court stayed Delhi HC decision in case of Brand Equity**

UNION OF INDIA v. BRAND EQUITY TREATIES LIMITED & ORS- Special Leave to Appeal (C) No(s). 7425-7428/2020

The Hon'ble High Court of Delhi in the case of Brand Equity Treaties Ltd. pronounced on May 5, 2020 held that Rule 117 of the CGST Rules is directory in nature, as far as it prescribes the time-limit for transitioning of credit. In case the credit is not availed within the period prescribed, it would not result in the forfeiture of the rights. However, it does not imply that the availing of CENVAT credit can be in perpetuity. In absence of any specific provisions under the GST Act, the residuary provisions of the Limitation Act, the period of 3 years should be the guiding principle. Therefore, period of 3 years from the appointed date would be the maximum period for availing of transitional credit.

Accordingly, all the Petitioners who have filed or attempted to file Form TRAN-1 within the aforesaid period of 3 years shall be entitled to avail the credit. Hence, petitioners were permitted to file Form TRAN-1 on or before 30.06.2020. The authorities were directed to either open the GST portal enabling Petitioners to file TRAN-1 electronically or to accept the same manually.

The department filed petition before the Hon'ble Apex Court against the above mentioned order of Delhi High Court. The Hon'ble Apex Court has stayed the operation of the said order of Delhi High Court.

5. **Gujrat HC set aside Ex-Parte order passed during COVID 19 Pandemic**

Remankhan Belin v. State of Gujarat - [2020] 117 taxmann.com 175 (Gujarat)

The assessee had challenged the order passed under Section 130 of the GST Act in Form GST MOV-11 before the High Court of Gujarat.

The assessee submitted that notice of hearing was issued to him but considering the current situation of outbreak of COVID 19 pandemic, he preferred to remain safe and was not present at the time of hearing. However, thereafter, the order was passed in the absence of the assessee, resulting in the breach of principles of natural justice.

The Hon'ble High Court quashed and set aside the said order as it was passed without hearing the assessee. The authorities were directed to pass fresh order on merits after giving an opportunity of hearing to the assessee. The authorities shall

inform the assessee in advance about the next date of hearing and he shall be required to remain present on the date fixed for hearing.

6. Confiscation notice issued due to discrepancy in registration number of vehicle mentioned in e-way bill is valid: HC

Om Sai Traders v. State Tax Officer - [2020] 117 taxmann.com 209 (Gujarat)

The assessee purchased 17,500 units of the tobacco from a supplier situated in Kalol. During the transit, the original vehicle carrying the goods to the premises of the assessee was broken down. Thereafter, another vehicle was arranged and goods were transferred to the second vehicle for being carried up to its destination.

However, the second vehicle was intercepted by the concerned authority before it reached the destination. The vehicle and the goods were seized on ground of discrepancy in registration number of vehicle mentioned in the e-way bill. The authority issued notice to the assessee to show cause as to why the goods and vehicle should not be confiscated. The assessee filed a writ petition before the High Court of Tamil Nadu seeking relief in this regard.

The assessee submitted that there was no valid reason for the authority to issue a show cause notice under Section 130 of the GST Act. While the concerned authority was of the view, materials on record prima facie indicated that the intention of the assesee was to evade payment of tax. In such circumstances, the authority was justified in issuing the show cause notice under Section 130 of the GST Act.

The Honourable High Court permitted the Competent Authority to adjudicate the show-cause notice in accordance with the law and refused to interfere with the said show cause notice issued by concerned authority. Also, the assesee was directed to deposit the amount towards tax and penalty and bank guarantee to the concerned authority for release the goods and the vehicle.

7. Extension granted in period for revocation of cancellation for registrations cancelled till 12.6.2020

Order No. 01/2020-Central Tax, dated 25-6-2020

CBIC has allowed taxpayers to file application for revocation of cancellation of registration up to 30.09.2020, in all cases where registrations have been cancelled till 12.06.2020.

8. No bar to apply for anticipatory bail for GST offences: HC
Hanumanthappa Pathrera Lakshmana v. State - [2020] 117 taxmann.com 280 (Karnataka)

The assessee was a registered dealer dealing in both ferrous and non-ferrous scrap. The Competent Authority had received information from Intelligence authorities that assessee was engaged in availing input tax credit on the invoices received from the persons without actual supply of goods. Accordingly, the authority issued summon to the assessee to appear before the Authorised Officer. The assessee filed petition under section 438 of CrPC before the High Court of Karnataka seeking grant of anticipatory bail.

The assessee submitted that he was ready to appear before the authority and co-operate with the investigation. However, the authority had already completed their investigation and he apprehended his arrest for an offence punishable under GST. The department raised an objection that anticipatory bail sought by assesee is not maintainable. Assessee could only file a writ petition for seeking relief under GST Act and, hence, instant petition for grant of anticipatory bail under CrPC was not maintainable.

The Honourable High Court observed that where an assessee has reasons to believe that he may be arrested on accusation of having committed a non-bailable offence under GST Act, he could seek anticipatory bail by filing a petition under section 438 of CrPC. Therefore, the petition under section 438 of the Cr. P.C. is maintainable for the offences committed under the CGST Act and there was no statutory bar in the GST Act for invoking or exercising power under section 438 of the Cr. P.C. for the offence committed under the provisions of the CGST Act.

The Honourable High Court allowed the petition. The assessee was ordered to be enlarged on bail in the event of his arrest.

Income Tax

Latest Updates, News and Judgments

1. **No relief from MAT provisions from AY when assessee was discharged by BIFR from purview of SICA**
   Windsor Machines Ltd. v. DCIT - [2020] 117 taxmann.com 65 (Mumbai - Trib.)

   Assessee was declared as a sick company under the provisions of the Sick Industrial Companies (Special Provisions) Act, 1985 (SICA). The BIFR sanctioned the rehabilitation scheme for assessee with implementation directions for revival of assessee. The scheme envisaged certain tax concessions such as relief from the provision of section 115JB for a period of 8 years from the cut-off date i.e. from 31-03-2009. Assessee's net worth turned positive on 31-03-2011. It received a letter from Directorate of Income Tax (Recovery) [DIT] stating that the relief from the provisions of section 115JB would be applicable only till the net worth becomes positive. Since the assessee was discharged by SICA and its net worth turned positive, assessee would be precluded from the section 115JB relief.
   On appeal, Mumbai ITAT held that explanation to section 115JB provides for reduction of profits for a period commencing from the assessment year relevant to the previous year in which the company has become a sick industrial company and ending with the assessment year during which the entire net worth of such company becomes equal to or exceeds the accumulated losses.
   Further, as per the letter of DIT, it was evident that BIFR had discharged assessee from the purview of SICA on the ground that the revival had substantially been implemented and net worth had turned positive. Thus, the ITAT held that the assessee was not eligible for relief from Assessment year 2011-12 onwards.

2. **ITAT quashes assessment order passed beyond limitation period when assessee failed to file objections before DRP**
   TDK Electronics AG v. ACIT - [2020] 116 taxmann.com 986 (Pune - Trib.)
   Assessee was a non-resident company which established two subsidiaries in India. It filed return of income wherein certain international transactions were reported. Assessing Officer (AO) made a reference to Transfer Pricing Officer (TPO) for determining Arm's length price of international transactions.

Pursuant to order passed by TPO, AO passed draft order making addition on account of income from fees for technical services. Assessee filed objections before Dispute Resolution Panel (DRP) which opined that objections ought to have filed within 30 days of receipt of draft order which was actually delayed by one day and eventually dismissed assessee's objection in limine as time barred. Thereafter AO passed final assessment order.

It was also noted that going by mandate of section 144C(3)/144(4), AO was supposed to complete assessment on basis of draft order by February 2019, against which it was completed on 24-10-2019.

ITAT held that DRP was justified in not condoning delay in filling of objection, however, completion of assessment by AO was not only under wrong provisions but also beyond limitation period, thus same was ultra vires and hence could not stand. Therefore, assessment order was time-barred and the return of income was to be automatically accepted as finally assessed income.

3. **Bombay HC allows deduction of 'Education Cess' while computing income chargeable under PGBP - Sesa Goa Ltd.**

The issue before the Bombay High Court was:

'Whether Education Cess and Higher and Secondary Education Cess is allowable as a deduction in the year of payment?'

The Applicant-Sesa Goa Ltd. had contended that t the expression does not include "cess" and therefore, the amounts paid towards "cess" were liable to be deducted in computing the income chargeable under the head "profits and gains of business or profession" (PGBP).

However, Assessing Officer (AO) contradicted that "cess" is also included in the scope and import of the expression "any rate or tax levied" under section 40(a)(ii). Thus, the amounts paid towards the "cess" were not liable for deduction.

The Bombay High Court held in favour of assessee as under:

There is no reference of any 'Cess' in the text of the provisions of section 40(a)(ii). It has been provided that "any rate or tax levied" on "profits and gains of business or profession" shall not be deducted. Thus, it couldn't be accepted that "cess" being in the nature of a "Tax" is equally not deductible.

If legislature intended to prohibit deduction of amounts paid by towards say, "education cess" or any other "cess", then, legislature could have easily included

reference to “cess” in Section 40(a)(ii). Since it has not done, it means that the legislature did not intend to prevent the deduction of amounts paid towards the “cess”.

Futher, the legislative history bears out that the Income-tax Bill, 1961, as introduced in the Parliament, had Section 40(a)(ii) which provided that ‘any sum paid on account of any cess, rate or tax levied on the profits business or profession or assessed at a proportion of, or otherwise on the basis of, any such profits or gains’.

However, when the matter came up before the Select Committee of the Parliament, it was decided to omit the word “cess” from the aforesaid clause from the Income-tax Bill, 1961.

Since the deletion of expression “cess” from the Income-tax Bill, 1961, was deliberate, there is no question of reintroducing the expression that the word “any rate or tax levied” include ‘cess’ also.

4. **Order passed by Chennai SetCom can’t be challenged before Madras HC if assessee having jurisdiction in other state**
   Mulberry Silks Limited v. Settlement Commission (IT & WT) - [2020] 117 taxmann.com 62 (Madras)

   Petitioner-assessee was in business of import, export and local sale purchase of yarn and fabrics. During search, it was noticed that there was stock deficit of imported yarn. Petitioner filed returns and also an application for settlement.

   The Settlement Commission accepted the settlement application filed by the petitioner. However, it passed final order and petitioner's request for re-computing the deduction under Section 80HHC was declined. Petition filed the writ petition before the High Court. Petitioner contended that no valid reason was given by the Settlement Commission to conclude that the relief under Section 80HHC was not required to be computed.

   The Madras High Court held that petitioner and Assessing Authorities both belonged to Bangalore jurisdiction. Merely because order under challenge had been passed by Chennai Bench of Settlement Commission, cause of action could not be said to have arisen within territorial jurisdiction of Madras High Court, when events leading to filing of proceedings before Chennai Bench of Settlement Commission and parties to such proceedings were outside territorial jurisdiction of

Madras High Court. Therefore, it would not be appropriate for Madras High Court to entertain the instant writ petition

5. **ITAT deleted Sec. 68 additions as identity and creditworthiness of share applicant Cos was established**
Satyam Smertex (P.) Ltd. v. DCIT - [2020] 117 taxmann.com 93 (Kolkata - Trib.)

Assessee's case was selected for scrutiny. Assessing Officer (AO) noticed that assessee had introduced share application money into the company from two private limited companies. AO believed that assessee had introduced its undisclosed income in the guide of share application money into its own company. He issued a notice to the assessee that he wanted to meet the directors of share applicant companies for examination of genuineness of the transaction.

Assessee submitted some documents relating to investment but did not produce any of the investors before AO. AO opined that assessee failed to prove the authenticity, genuinity and creditworthiness of investors. Assessee had entered into sham transaction and introduced unaccounted money in the form of share application. AO made additions under section 68 on the basis that assessee was unable to prove with proper evidence the investor companies as their own group companies. Assessee preferred an appeal before CIT(A) and same was dismissed.

On appeal, ITAT held that section 68 provides that if any sum is found credited in respect of which assessee fails to explain the nature and source, it shall be assessed as undisclosed income. Assessee had explained both the nature and source of share application. Assessee had discharged its onus to prove the identity, creditworthiness and genuineness of the share applicants. It has placed PAN, bank account statements, audited financial statements and Income-tax acknowledgements of the directors and shareholders on AO's record. Accordingly, all the three conditions as required under section 68 i.e. the identity, creditworthiness and genuineness of the transaction was placed before the AO.

Thus, the onus had shifted to AO to disprove the materials placed before him. Without doing so, the addition made by the AO and confirmed by the CIT(A) were based on conjectures and surmises. So their action could not be justified and additions made by the AO were directed to be deleted.

6. **Sec. 115BBE couldn't be applied through rectification if no sec. 69 additions were made during assessment**

ACIT v. Sudesh Kumar Gupta - [2020] 117 taxmann.com 178 (Jaipur - Trib.)

A search was conducted at business premises of the assessee. During the survey proceedings, assessee surrendered undisclosed investment in stock from undisclosed income. Thereafter, surrendered income was offered and reflected in return of income filed by assessee. Subsequently, matter was taken up for scrutiny and assessment order was passed under section 143(3) accepting the income returned by assessee. A notice under section 154 was issued for charging tax on surrendered income at the rate of 30% in accordance with provisions of section 115BBE.

Assessee submitted that the excess stock was admitted on estimated basis and same was offer to tax in return of income which was accepted by Assessing Officer (AO). He further submitted that excess stock offered in survey was a part of business income and without any corroborative evidence, such stock was determined by valuing the business stock at current price instead of purchase price. Nothing was brought to suggest that the declared stock was not a regular item of stock dealt with by the assessee. Submission of assessee was not accepted by AO. On appeal, CIT(A) set aside the rectification order.

On revenue's appeal, ITAT held that return of income filed by assessee had been accepted by AO without making any adjustments. There was nothing on record to show that AO had called for any explanation from assessee regarding nature and source of investment and formation of opinion and recording of satisfaction by AO which was required before invoking section 69. Where the provision of section 69 had not been invoked while passing assessment order, section 115BBE which were contingent on satisfaction of requirement of section 69 could not be independently applied by invoking provisions of section 154.

7. **CBDT further extends various due dates for compliance under Income-tax Act**

Notification No. 35 /2020, dated 24-06-2020

The Central Board of Direct Taxes (CBDT) has extended the various due dates, which were previously extended, to June 30, 2020 by the Taxation and Other Laws (Relaxation of Certain Provisions) Ordinance, 2020.

A few silent features of the notification are as under:

a. Due date for furnishing revised/belated ITR for Assessment Year 2019-20 extended to July 31, 2020. Further, due date for furnishing ITR for Assessment Year 2020-21 has been extended to November 30, 2020 (for all categories of assessees)
b. Though the due date for filing of ITR for the Assessment Year 2020-21 has been extended to November 30, 2020 but there would be no relief in interest chargeable under section 234A if the tax liability exceeds Rs. 1 lakh.
c. The date for making various investment/ payment for claiming deduction under Chapter-VIA-B which includes section 80C (LIC, PPF, NSC etc.), section 80D, section 80G, etc. has also been extended to July 31, 2020.
d. The date for passing of order or issuance of notice by the authorities and various compliances under various Direct Taxes & Benami Law which are required to be passed/ issued/ made by 31-12-2020 has been extended to 31-03-2021.

8. **'ATM' is computer; eligible for higher rate of depreciation: High Court**
CIT v. NCR Corporation (P.) Ltd. - [2020] 117 taxmann.com 252 (Karnataka)

Assessee was engaged in the business of manufacture of Automated Teller Machine (ATMs). Return of income was filed by treating the ATMs as computer and depreciation was claimed at the rate of 60%. Return filed by assessee was processed under section 143(1). Assessing Officer (AO) passed assessment order under section 143(3) by holding that the ATMs couldn't be termed as computers and therefore were eligible for depreciation to the extent of 25% only.

Aggrieved by the order of AO, assessee preferred an appeal before CIT(A). CIT(A) upheld the order passed by AO. On further appeal, ITAT held that ATMs were computers and therefore assessee was eligible for depreciation at the rate of 60%.

On revenue's appeal, Karnataka HC held that the ITAT by placing reliance on the decision of Bombay HC in DCIT v. Data Craft India Ltd. [2010] 40 SOT 295 has held that so long as functions of the computers are performed with other functions and other functions are dependent on the functions of the computer, ATMs are to be treated as computers and are entitled to higher rate of depreciation.

Computer is integral part of ATM machine. On the basis of information processed by the computer in ATM machine, the mechanical function of the dispensation of cash or deposit of cash is done. Therefore, the HC upheld the order of ITAT by holding that ATMs were computers and are entitled to higher rate of depreciation.

9. **Employee opting for Sec. 115BAC eligible to claim exemption for tour, travel and conveyance exp.**
Notification No. 415(E), dated 26-06-2020

The Finance Act, 2020, has introduced a new section 115BAC with effect from Assessment Year 2021-22. This section provides an option to Individuals and HUF for payment of taxes at reduced tax rates subject to fulfilment of various conditions. One of such conditions is assessee has to forego various exemption and deduction including exemption under section 10(14). However, CBDT was empowered to prescribe certain exemption under section 10(14) which can be availed by an assessee even if he has opted for section 115BAC.

In exercise of such powers, the CBDT has prescribed the following exemption which can be claimed by an assessee opting for section 115BAC:

Any allowance granted for meeting the cost of travel on tour or transfer [Rule 2BB(1)(a)];

Any allowance, whether, granted on tour or for the period of journey in connection with the transfer, to meet the ordinary daily charges incurred by an employee on account of absence from his normal place of duty [Rule 2BB(1)(b)];

Any allowance granted for meeting the expenditure incurred on conveyance in performance of duties of an office or employment of profit if free conveyance is not provided by the employer; and

Transport allowance granted to an employee, who is blind or deaf and dumb or orthopedically handicapped with disability of lower extremities, to meet his expenditure to commute between the place of his residence and the place of his duty.

CBDT has further provided that while determining the value of perquisite, no exemption shall be available in respect of free food and non-alcoholic beverage provided by employer through a paid voucher.

10. **Income from sub-leasing taxable as house property income though assessee wasn't real owner of premises**

Nahalchand Laloochand (P.) Ltd. v. DCIT - [2020] 115 taxmann.com 367 (Mumbai - Trib.)

Assessee took premises on lease which was further let out to a bank for more than 12 years. Assessee filed return of income declaring rental income taxable under the head 'Income from business or profession'. Assessing Officer (AO) treated assessee as deemed owner of property and held that lease rentals received was taxable as 'income from house property'. Assessee contened that tenancy was on month to month basis which could be terminated by tendering 15 days notice. Thus, it couldn't be treated as house property income.

The Mumbai ITAT held that from the perusal of lease agreements entered into by assessee with bank, it was observed that assessee had entered into a long-term lease agreement for period exceeding 12 years and that too with a nationalized bank who requires the approval of regulatory authority to open or operate the branches.

Therefore, it could safely be gathered that the Bank was assured of peaceful enjoyment of the said premise for the agreed period of lease without any interruptions. Hence, it couldn't be accepted that the tenancy was on 'month to month' basis and the assessee was covered in the exceptions contained in Section 27(iiib).

Accordingly, for the purpose of Section 27(iiib) read with section 269UA(f)(i), the assessee was deemed owner of the property and therefore, the stated income was rightly brought to tax by revenue authorities as 'Income from House Property'.

11. **No denial of Sec. 54F relief if new house was used for commercial purpose though sanctioned for residential purpose**

Navin Jolly v. ITO - [2020] 117 taxmann.com 323 (Karnataka)

Assessee had sold shares of a company and derived long term capital gain. He declared before Assessing Officer (AO) that he had constructed a residential property and claimed exemption under section 54F. AO held that assessee was owner of nine residential flats. Income derived from said residential properties was declared under the head income from house property. Therefore, AO held that assessee was not eligible to claim exemption under section 54F. AO further held

that the properties owned by assessee were two residential apartments, therefore section 54F exemption was denied.

Assessee contended that submitted that out of nine flats, seven flats have been sanctioned for commercial purposes and only two flats have been sanctioned as residential units which were being used for commercial purposes later.

On appeal, ITAT held that the assessee should not have more than one residential unit on the date of transfer of original asset. It further held that it was immaterial as to how the residential units were utilised by assessee so long as these were recognised as residential units. Therefore, it was held that the assessee couldn't claim the benefit of exemption under section 54F.

On further appeal, Karnataka HC held assessee owned two apartments in same building and therefore, it had to be treated as one residential unit. Further, the usage of property has to be considered for determining whether the property is a residential property or a commercial property. Assessee's claim for deduction under section 54F was to be allowed where two apartments owned by him even though had been sanctioned for residential purpose, yet same were in fact being used for commercial purpose as service apartments.

12. CBDT grants Sec. 56(2)(x) exemption to investors receiving shares under Yes Bank Ltd. Reconstruction Scheme

Notification No. 40 /2020, dated 29-06-2020

The Central Board of Direct Taxes (CBDT) has amended Rule 11UAC which prescribes class of persons to whom provisions of section 56(2)(x) shall not apply. Rule 11UAC has been substituted to include two new class of persons within the ambit of exemption. The following two new class of persons have been added in the rule:

i) Any movable property, being unquoted shares, of a company and its subsidiary and the subsidiary of such subsidiary received by a shareholder in case where a tribunal has suspended Board of Directors of Such Company & has nominated new directors. The shares received by the shareholders must have been in pursuant to resolution plan approved by tribunal.

ii) Any movable property, being equity shares, of the reconstructed bank, received by the investor/investor bank under the Yes Bank Limited Reconstruction Scheme, 2020. Share must be allotted at the price specified under Reconstruction Scheme.

13. Sec. 68 not applicable on assessee providing accommodation entries on commission basis

PCIT v. Alag Securities (P.) Ltd. - [2020] 117 taxmann.com 292 (Bombay)

Assessee was engaged in the business of providing accommodation entries to entry seekers. It received cash amount from customers/beneficiaries and issued them cheques of the slightly lower amount after charging its commission.

Assessing Officer (AO) held that the identity of the parties involved in the transactions were not furnished as well as genuineness of the transactions relating to cash deposits were not satisfactorily explained by the assessee. Thus he made additions under section 68 for the amount which were found in deposits in various bank accounts as unexplained income from undisclosed sources.

Assessee challenged the order passed by AO before CIT(A). CIT(A) held that same issue had cropped up before ITAT in several appeals wherein ITAT held that only 0.15% of the deposits were to be treated as income from commission. Following the same CIT(A) directed AO to adopt 0.15% of the deposits as commission and delete the balance additions. ITAT upheld the order passed by CIT(A).

On revenue's appeal, Bombay HC held that section 68 would come into play when any sum is found credited in the books of assessee and it offers no explanation about nature and source thereof or the explanation offered by it is not satisfactory in the opinion of AO. It was consistent stand of the assessee that its business was centred around customers or beneficiaries making cash deposits and in lieu thereof taking cheques for a slightly lesser amount. The difference represents the commission realized by assessee. Cash deposited by customers had been accounted for in the assessment orders of beneficiaries.

Thus, the HC held that the question of adding such cash credits to the income of the assessee, more so when it was only concerned with the commission earned on providing accommodation entries didn’t arise.

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KEY TEAM

Adv. Vivek Aggarwal
(Senior Partner)

CS. Kumkum Gupta
(Senior Partner)

Adv. Ritika Sharma
(Senior Associate)

Adv. Amar Phogat
(Senior Associate)

CA. Mukesh Aggarwal
(Senior Advisor)

Adv. Lata Goswami
(Advisor)

CA. Sachin Singhal
(Advisor)

Vinay Gupta
(Advisor)

CA Anjavi Pandya
(Advisor)

CA. Divya Madan
(Advisor)

CA. Vinit Agarwal
(Advisor)

CA. Arun Bhargav
(Advisor)

OUR SYNERGISTIC NETWORK

KSMC & ASSOCIATES
Chartered Accountants

www.ksmc.in

ACROPOLIS

Acropolis Advisory Pvt. Ltd.
www.acroadvisory.in

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www.aalawcorp.com

Email: aalawcorp@gmail.com

CONTACT US

Registered Office
G-5, Vikas House, 34/1,
East Punjabi Bagh,
New Delhi-110026
T: 011-41440483, 42440483

Delhi Branch Office
E-16/391, Sector-8, Rohini,
Delhi – 110085
T: 011- 47506498
M: +91 9811770164

Delhi High Court Office
155, Old Chambers Block
Delhi High Court - 110503

Singapore Office
10, Anson Road,
International Plaza, #33-13,
Singapore – 079903
T: +65 62243466
M: +65 83141339