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NEWSLETTER

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Latest update, New and Judgments

1. **No abuse of dominance by KAMCO as it had right to appoint other dealers for selling its product: CCI**

   Venkateswara Agencies v. Kerala Agro Machinery Corporation Ltd. - *[2020] 116 taxmann.com 854 (CCI)*

   In given case, the Informant, a sole proprietorship concern was engaged in sale of agricultural products as a dealer of a State Government Undertaking, i.e., KAMCO in the area of West Godawari District of Andhra Pradesh.

   The informant filed instant information alleging that KAMCO had appointed some new dealers in area where its dealership agreement was in operation and, secondly, KAMCO had stopped supply of new stock of agricultural products to it which resulted in huge financial loss.

   The CCI noted that as per dealership agreement between KAMCO and Informant, KAMCO had reserved right to appoint other dealers for its products even in the area allotted to the Informant and, so far as stoppage of supply of new agricultural products was concerned, no abusive conduct had been established against KAMCO in any manner, it was to be held that there existed no prima face case and information had to be closed herewith under section 26(2) of the Act.

2. **Appellate tribunal is not empowered to condone delay in filing appeal beyond 15 days after expiry of period of 30 days**

   Dhirendra Kumar v. Randstand India (P.) Ltd. - [2020] 116 taxmann.com 906 (NCL-AT)

   In given case, the Appellant, Managing Director of corporate debtor, filed instant appeal against order of Adjudicating Authority admitting application filed under section 9 of the Insolvency and Bankruptcy Code, 2016.

   Since, appellant filed instant appeal with a delay of 360 days, an application for condonation of delay was also filed under the Code.

However, the proviso to sub-section (2) of section 61 does not empower appellate Tribunal to condone delay beyond 15 days after expiry of period of 30 days, even if it is satisfied that there is sufficient cause shown for not filing appeal.

Therefore, delay of 360 days in filing appeal could not be condoned. Consequently, instant appeal was to be dismissed being barred by limitation.

3. **Civil Court's jurisdiction is ousted to entertain suit in respect of matter falling within jurisdiction of DRT: HC**

Punjab National Bank v. Parshwa Veer Builders & Developers (P.) Ltd. - [2020] 116 taxmann.com 925 (Madhya Pradesh)

The Petitioner's case was that borrower had taken loan by submitting original sale deed of a piece of land wherein it was categorically mentioned that it was a freehold land and also a diverted land. Since the borrower did not repay loan, the petitioner bank took action under Act and sold land mortgaged in auction

According to the petitioner bank, the respondent participated in process of auction and deposited 25 per cent of purchase price being successful bidder. However, on account of the respondent's failure to make payment of remaining sale consideration within prescribed period of 45 days, the petitioner issued a letter informing the respondent that bank would be forfeiting 25 per cent amount deposited by respondent.

The Respondent thereafter preferred a Civil Suit stating that land which had been sold, was not a diverted land and, therefore, it was entitled for refund of entire amount. An application was preferred by petitioner bank under Order VII Rule 11 of Code of Civil Procedure, 1908 code stating that in case respondent was aggrieved in matter, it did have a remedy to prefer an appeal under section 17 before Debts Recovery Tribunal.

However, Trial Court rejected said application by stating that in terms of section 34, jurisdiction of Civil Courts has been specifically ousted to entertain suit or to pass interim order in respect of those matters which, by virtue of section 17(1), fall within jurisdiction of Debts Recovery Tribunal. Since, in instant case, remedy available to respondent was remedy of appeal by approaching Debt Recovery Tribunal, civil suit was not at all maintainable.

4. **Last date to view status of/deficiency in claim applications and rectification of deficiencies is July 31, 2020: SEBI**

Press Release No. 32/2020, Dated 03.06.2020

The Justice (Retd.) R.M. Lodha Committee (the "Committee") vide Press Release dated January 15, 2020 requested investors/applicants with claims upto Rs. 5,000/- to check the status of their claim applications online on https://www.sebipaclrefund.co.in and rectify the deficiencies, if any. The portal for rectifying the deficiencies in applications was made operational from January 24, 2020. Further in this regard, the SEBI clarified that the investors/applicants with claims upto Rs. 5,000/-, whose claim applications were found deficient, are again requested to check the status of their claim applications online on https://www.sebipaclrefund.co.in and rectify the deficiencies, if any, before July 31, 2020

5. **Now start up Cos. may issue sweat equity not exceeding 50% of its share capital upto 10 yrs from date of registration**

Notification No. F [F. No. 01/04/2013-CL-V-Part-IV], Dated 05.04.2020

The MCA has notified the Companies (Share Capital and Debenture) Amendment rules, 2020. Amendment has been made to second proviso to Rule 8 (4) which allows a start-up company to issue sweat equity shares not exceeding 50 % of its paid up capital up to ten years from the date of its incorporation or registration. Earlier, start up Companies could issue sweat equity shares not exceeding 50% of its paid up capital upto five years. Further amendment has been made to the rule 18(7)(b)(v) which provides that if a company is covered as listed company issuing debenture to public or a listed company privately placing debentures then it shall on or before the 30th day of April in each year, in respect of debentures issued by such a company, invest or deposit, as the case may be, a sum which shall not be less than 15 % of the amount of its debentures maturing during the year, ending on the 31st day of March of the next year in any one or more methods of investments or deposits.

6. **Corporate debtor was to be ordered for liquidation as no resolution plan received before expiry of CIRP**

Thripura Chits (P.)Ltd., In re. - [2020] 116 taxmann.com 953 (NCLT-Chennai)

An application under section 9 of the Code was admitted against the corporate debtor and Interim Resolution Professional (IRP) was appointed. Since books of account and other records of corporate debtor were seized by the Economics Offences Wing (EOW), RP was unable to appoint registered valuer for determination of liquidation value of corporate debtor and issue EOI/

The CoC unanimously decided not to seek extention of time beyond period of 180 days for CIRP. Since no Resolution Plan was received by the Authority under sub-section (6) of section 30 before expiry of CIRP period of 180 days, therefore the corporate debtor was to be ordered for liquidation.

7. **IRDAI asks insurers to obtain 'Legal Identifier Code' on or before July 31, 2020**

Circular No. IRDAI/F&A/CIR/MISC/134/06/2020, Dated 05.06.2020

The Insurance Regulatory and Development Authority of India (IRDAI) has asked insurers not to grant loan renewals or enhancements if the borrowers do not get the LEI code from the Legal Entity Identifier India Ltd. Therefore, it has asked insurers and others regulated by it to get the Legal Entity Identifier (LEI) code on or before July 31, 2020.

In addition to that insurers are also advice their existing corporate borrowers having total exposures of Rs. 50 crore and above, and have not obtained LEI till now, shall obtain LEI and provide the LEI information on or before June 30, 2020. However, it is pertinent to note that no new loan proposals shall be sanctioned by the insurers without LEI information.

8. **Corporate debtor can directly be ordered for liquidation if there is no possibility for it's revival**

GNB Technologies (India) P. Ltd., In re - [2020] 115 taxmann.com 188 (NCLT-Beng.)

The petitioner cum corporate applicant was engaged in to business of manufacturing sealed maintenance free batteries etc. On account of consistent losses, the petitioner closed down its manufacturing facility.

The Petitioner had settled claims of its financial creditors however, payment to its operational creditor could not be made from available funds. The Board of Directors of the petitioner - corporate debtor resolved to file application under provisions of Insolvency and Bankruptcy Code.

The NCLT noted that the corporate debtor was facing financial difficulty since 2011 and could not revive its operations sufficiently to generate adequate revenue to stay afloat. The Petitioner also filed a memo inter alia stating that Adjudicating Authority could initiate liquidation process instead of initiating CIRP due to huge volume of debt owned by the corporate debtor and extremely limited assets.

Since there was hardly any possibility of any resolution plan likely to be received during first stage of CIRP, if initiated, it was just and proper to put the corporate debtor under liquidation process in order to liquidate the corporate debtor, rather than to out it in CIRP in first instance.

9. **CIRP to be admitted when corporate debtor admitted default in repayment of dues**

ManishbhaiBaghabhaiAahir v. Shree Raghuvanshi Fibres (P.) Ltd. - [2020] 116 taxmann.com 960 (NCLT - Ahd.)

In instant case, the operational creditor and corporate debtor were in business relationship from 2018 and the corporate debtor had been placing orders with the operational creditor for purchase of cotton.

The Operational creditor supplied goods to the respondent aggregating to Rs. 12.21 lakhs and same was accepted by the corporate debtor company.

The Operational creditor submitted that an amount of Rs. 12.21 lakhs was in default against the corporate debtor as per terms and conditions mentioned in invoices raised, therefore a demand notice was sent to the corporate debtor.

On filing of instant CIRP petition by the operational creditor, the corporate debtor admitted default and stated that the corporate debtor had no objection if CIRP was commenced in respect of the corporate debtor. On facts, instant application was to be admitted against the corporate debtor.

10. **NCLT approves of resolution plan as bid amount of H-1 was higher than liquidation value approved by CoC**
Allahabad Bank v. Meghalaya Infratech Limited - *[2020] 116 taxmann.com 895 (NCLT - Guwahati)*

An application under section 7 against the corporate debtor was admitted. The Committee of Creditors (CoC) had received four resolution plans out of which, the CoC with a 100 per cent voting share had approved resolution plan of H-1 bidder. It was held that since resolution plan bid amount of H-1 was higher than liquidation value and all provisions of mandatory requirements were complied by the resolution applicant and, therefore, resolution plan of H-1 was to be approved.

11. **CIRP rejected due to pre-existing dispute on quantum of terminal benefit payable to operational creditor**
Damodar Muddukrishna v. Cygilant (India) Research & Development (P.) Ltd. - *[2020] 116 taxmann.com 897 (NCLT - Hyd.)*

The Operational creditor was employed with corporate debtor as manager. On termination of operational creditor's service, an instant instant application was filed under section 9 by the Operational Creditor claiming that he was not paid terminal benefits as per terms of employment with the corporate debtor. The Corporate debtor claimed that all terminal benefits as per terms of employment of the operational creditor had already been paid and therefore arbitrary claim made by the operational creditor in demand notice was not payable in law and was also disputed. It was held that since an e-mail correspondence between parties indicated that there was pre-existence of dispute between the operational creditor and the

corporate debtor in respect of claims made by the operational creditor, CIRP application against corporate debtor was to be rejected.

12. **Insolvency plea was to be admitted when debtor failed to make payment to operational creditor**
Indraj Sharma v. Navrang Roadlines P. Ltd. - *[2020] 115 taxmann.com 115 (NCLT - Ahd.)*

In instant case, the operational creditor was engaged in business of body repairing for trucks and other vehicles. The Corporate debtor got body repairing work done from operational creditor. Operational creditor raised invoices but corporate debtor failed to make payment.

A demand notice was issued by operational creditor. In reply to said notice corporate debtor fairly admitted debt but did not file any reply towards outstanding dues. The Operational creditor filed CIRP application under section 9 against corporate debtor.

In support of its claim, operational creditor had furnished relevant documents like copy of demand notice, table showing calculation of operational debt, bank statement, etc. Since document produced by operational creditor clearly established debt and there being default on part of corporate debtor in payment of operational debt, CIRP was to be initiated.

13. **IRDAI issues guidelines on Standardization of General Terms and Clauses in Health Policy contract**
Circular No. IRDAI/HLT/REG/Cl R/152/06/2020 11th June, 2020

The IRDAI has issued guidelines on Standardization of General Terms and Clauses in Health Policy contract. The Objective of the guidelines is to standardize the general terms and clauses incorporated in indemnity based Health insurance [excluding Personal Accident and Domestic / Overseas Travel products by simplifying the wordings of general terms and clauses of the policy contracts and ensure uniformity across the industry. The Guidelines are issued under the provisions of Section 34(1) of the insurance Act, 1938 read with Regulation 20 and Schedule lll of IRDAI (Health insurance) Regulations, 2016. These guidelines are

applicable to all General and Health Insurers offering indemnity based Health Insurance. All policy contracts of the existing health insurance products that are not in compliance with these guidelines shall be modified as and when they are due renewal from 01.04.2020 onwards.

14. **Insurers are advised to cover telemedicine in health policies**
Circular No. IRDAI/HLT/REG/ClR/149/06/2020 11th June, 2020

Medical Council of lndia has issued 'Tele Medicine practice guidelines' on 25th of March 2020, enabling registered Medical Practitioners to provide Healthcare using Tele Medicine. ln the above background, IRDAI has advised insurers to allow telemedicine wherever consultation with a medical practitioner is allowed in the terms and conditions of policy contract. IRDAI also clarified that the Telemedicine offered shall be in compliance with the Telemedicine Practice Guidelines dated 25th of March 2020 and as amended from time to time. Insurers are also advised that provision of allowing telemedicine shall be part of claim settlement of policy of the insurers and need not be filed separately with the Authority for any modification. However, the norms of sub limits, monthly / annual limits etc. of the product shall apply without any relaxation.

15. **CIRP against corporate debtor to be admitted on its failure to make payment against supply of security services**
Home Tech Services (P.) Ltd. v. Abra Motors (P.) Ltd. - *[2020] 117 taxmann.com 38 (NCLT- Chennai)*
Operational creditor, a security agency, deployed its skilled men and requisite machineries to provide security services to corporate debtor's office at various locations. Since corporate debtor failed to make payment against supply of security service, operational creditor filed instant application to initiate CIRP.
The Corporate debtor pleaded financial difficulties in non-payment to operational creditor. Since documents on record clearly showed that corporate debtor had no defence to claim made by operational creditor and operational creditor had proved that there was an existence of operational debt and default of such operational debt, CIRP against corporate debtor was to be admitted.

16. Promoter’s daughters holding over 10% voting shares are part of the promoter group irrespective of their marital status

SEBI has issued an informal guideline clarifying that promoter's married daughters holding more than 10% of total voting rights in the listed company are classified as 'promoter group' and therefore, cannot seek re-classification from 'promoter group' to 'public group'.

Mirza International Ltd. vide a letter dated 12 March 2020 sought guidance under the SEBI (Informal Guidance) Scheme, 2003, regarding reclassification of status from Promoter/Promoter Group to Public.

Mirza International Ltd. ("Company") is a public listed company with its equity shares listed on the Bombay Stock Exchange and the National Stock Exchange. Mr. Rashid Ahmad Mirza, promoter and Managing Director ("MD") of the Company holding 11.27% shares of the Company, as on 31 December 2019. Mr. Rashid wished to gift some of his shares to 2 of his married daughters who have independent lives and do not have any part or involvement in the management of the Company. At the moment, the daughters do not hold any shares of the Company and hence, as per the shareholding pattern their names do not form part of the Promoter/Promoter Group category. Subsequent to the transfer of shares by the promoter, Mr. Rashid, the names of the daughters would be included under the Promoter/Promoter Group category. The two daughters desire their names to be reclassified from the Promoter/Promoter Group category to the Public category as they are married and have independent lives and are not involvement in the management of the Company. Further, they do not wish to be bound by the trading window restriction which is applicable to the Promoter/Promoter Group category.

The Company sought guidance on whether the married daughters of MD/whole time director, holding more than 10% of the total voting rights in the company, living independent lives and not being involved in the management of the company, can be re-classified from the 'Promoter and Promoter Group' to 'Public category' under regulation 31A of the SEBI (LODR) Regulations, 2015.

17. **Corporate debtor's plea that it was solvent and 'going concern' was rejected as it failed to repay financial debt**
Canara Bank v. Easun Reyrolle Ltd. - [2020] 117 taxmann.com 56 (NCLT-Chennai)

In instant case, the financial creditors granted loan to the corporate debtor, a public limited company. Since the corporate debtor failed to repay loan despite of issuance of demand notice, the financial creditors filed instant applications under section 7 of the Code.
The Corporate debtor resisted the initiation of Corporate Insolvency Resolution Process (CIRP) on ground that it was suffering cash crunch because various state utilities had not cleared its bills and that it had a substantial worth of inventories in transit lying at customs bonded warehouse.

Therefore, plea of the corporate debtor that company was a solvent and 'going concern', could not be made a ground for delaying initiation of CIR process or to keep in abeyance application under section 7 of the Code.

The NCLT noted that there was an existence of a 'financial debt' and its 'default' and debt was also not time barred, instant application for CIRP was to be admitted.

18. **No Mutual fund schemes are allowed to invest in physical goods except in 'gold' through Gold ETFs: SEBI**
SEBI/HO/IMD/DF2/CIR/P/2020/96, Dated 05.06.2020

The Market Regulator, SEBI has come up with circular related to actively Participation of Mutual Funds in Commodity Derivatives Market in India whereby it has clarified that no Mutual fund schemes shall invest in physical goods except in 'gold' through Gold ETFs. However, as mutual fund schemes participating in ETCDs. may hold the underlying goods in case of physical settlement of contracts, in that case mutual funds shall dispose of such goods from the books of the scheme, at the earliest, not exceeding the timeline prescribed below: -

a) For Gold and Silver: - 180 days from the date of holding of physical goods,
b) For other goods (except for Gold and Silver):

1) By the immediate next expiry day of the same contract series of the said comm.

2) However, if Final Expiry Date (FED) of the goods falls before the immediate next expiry day of the same contract series of the said commodity, then within 30 days from the date of holding of physical goods."

19. **Govt. takes ordinance route to suspend initiation of insolvency proceedings for default occurring post Mar 25, 2020**
Act No 9 of 2020, Dated 05.06.2020

Due to combat the spread of COVID-19 which has added to disruption of normal business operations and it is difficult to find adequate number of resolution applicants to rescue the corporation person. Therefore, the President of India has promulgated an Ordinance amending the IBC, whereby a Section 10A has been inserted to the Code which prohibits application for initiation of insolvency resolution process against a debtor occurring on or after March 25, 2020 for 6 months or till such period not exceeding 1 year from such date. The amendment also bars RP from filing any application u/s 66 of IBC in respect of such default against which initiation of insolvency proceedings is suspended as per Sec. 10A of the Code.

20. **President promulgates two ordinances to improve farmer's position in economy**
Act of Parliament 10 & 11/ 2020, Dated 05.06.2020

The President has promulgated Farmers' Produce Trade and Commerce (Promotion & Facilitation) Ordinance 2020 and Farmers (Empowerment and Protection) Agreement on Price Assurance and Farm Services Ordinance 2020 with the aim of raising the income of the farmers. The Ordinance will promote efficient, transparent and barrier-free inter-state and intra-state trade and commerce of farmers' produce outside the physical premises of markets or deemed markets notified under various State agricultural produce market legislations.

Moreover, the Farmers (Empowerment and Protection) Agreement on Price Assurance and Farm Services Ordinance 2020 will provide for a national framework on farming agreements that protects and empowers farmers to engage with agribusiness firms, processors, wholesalers, exporters or large retailers for farm services and sale of future farming produce at a mutually agreed remunerative price framework in a fair and transparent manner.

Goods and Service Tax (GST)

Latest Updates, News and Judgments

1. **Extension in time limit for issuance of refund order**
   Notification 46/2020 - Central Tax, dated 9-6-2020
   The govt. has notified that cases where notice for rejection of refund claim has been issued, in full or in part, and time limit to issue order falls during the period from 20-3-2020 to 29-6-2020, then the time limit to issue the refund order shall be extended to fifteen days after the receipt of reply to the notice from the registered person or the 30 June, 2020, whichever is later.

2. **Validity of e-way bill generated on or before 24-3-2020 & expiring on or after 20-3-2020 extended till 30-6-2020**
   Notification 47/2020 - Central Tax, dated 9-6-2020
   The validity of an e-way bill generated on or before 24 March, 2020 and whose validity has expired on or after 20 March, 2020 shall be deemed to have been extended till the 30 June, 2020.

3. **Transition date in GST due to merger of erstwhile UTs of Daman & Diu and Dadra & Nagar Haveli extended till 31-7-2020**
   Notification 45/2020 - Central Tax, dated 9-6-2020
   The transition procedure prescribed by CBIC to ascertain tax period, to transfer ITC and taxes for persons whose place of business was in the erstwhile Union territory of Daman and Diu or in the Union territory of Dadra and Nagar Haveli till the 26-1-2020 and is in the merged Union territory of Daman and Diu and Dadra and Nagar Haveli from 27-2-2020 onwards, has now been extended to July 31, 2020.

4. **Products 'Parota' are not ready to eat & not similar to ' khakhra or roti', taxable @18% GST: AAR**

   ID Fresh Food(India)(P.) Ltd., In re - *[2020] 117 taxmann.com 55 (AAR - KARNATAKA)*

   The applicant is a food product company involved in preparation and supply of wide range of ready to cook, fresh foods including idli and dosa batter, chapattis, curd, paneer, whole wheat parota and Malabar parota. The applicant has sought advance ruling on to determine whether whole wheat parota and Malabar parota attracts 5% GST?

   The applicant contended that product 'parota' is classifiable under heading 1905 whose description is akin to 'khakhra, plain chapatti or roti' and thus, taxable at 5% GST.

   The Authority for Advance Ruling observed that the whole wheat parota and Malabar parota are made up of whole wheat floor and refined flour respectively. The other ingredients which are used are RO purified water, edible vegetable oil or refined oil, edible common salt and edible vegetable fat. These products are not readily consumable i.e., are not ready to eat but need to be heated before consumption.

   The GST rate of 5% is applicable to the products that are either khakhra, plain chapati or roti and the applicant's products are neither khakhra, plain chapatti nor roti but described as parota. The khakhra, plain chapatti or roti are completely cooked preparations which do not require any processing for human consumption and hence are ready to eat foods preparations. On the other hand, the product parota require further processing for human consumption.

   Therefore, the product whole wheat parota and Malabar parota are covered under residuary category of food preparations which are not elsewhere specified and, are taxable at 18% GST.

5. **SC dismissed SLP filed against HC order directing authorities to re-open GST portal or allow manual filing of Tran-1**
Union of India v. Chogori India Retail Ltd. - *[2020] 117 taxmann.com 54 (SC)*

The assessee filed writ before the Hon'ble High Court of Delhi to allow it to file Tran-1 electronically or accept manually after the due date. The assesssee tried to fie Tran-1 prior to the deadline numerous times but the system displayed an error and it was unable to upload the form. The assessee stated that apart from sending E-mail, it also visited the GST helpdesk several times to resolve the technical issues to enable it to claim the transitional credit. Due to its inability to file TRAN-1, the assessee faced difficulty in filing its monthly returns under GST.
The Hon'ble High Court issued direction to the department to either re-open the GST portal or allow manual filing of Form Tran-1 to the assessee.

The department filed Special Leave Petition (SLP) before the Hon'ble Apex Court against the order of Delhi High Court. However, the Hon'ble Supreme refused to interfere with SLP filed and accordingly dismissed it.

Income Tax

Latest Updates, News and Judgments

1. **ITR forms for AY 2020-21 notified; new 'Schedule DI' to avail benefit of investment made till 30-06-2020**

   Notification No. 31/2020, dated 29-05-2020

   The Central Board of Direct Taxes (CBDT) has notified new Income-tax Return (ITR) forms applicable for the Assessment Year 2020-21. The board has notified 7 ITR forms without releasing the return filing utilities.

   For the Assessment Year 2020-21, the Dept. has notified the ITR forms twice. In the month of January 2020, two ITR forms (ITR-1 and ITR-4) were notified. Now, in the month of May 2020, all ITR Forms (ITR-1 to ITR-7) have been notified which eventually replace the two previously notified forms.

   The Board has removed the restrictions which were imposed on the individual taxpayers, when the ITR Forms 1 & 4 were notified in the month of January 2020. While notifying these forms, the Govt. had amended Rule 12 to provide that ITR-1 can't be used by the person falling under two categories. First, who owns house property in joint-ownership and second, who has entered into specified transactions mentioned in seventh proviso to section 139(1), like, paid electricity exp. in excess of Rs. 1 lakh, deposited more than Rs. 1 crore in current account, etc. However, person falling under the second category are allowed to furnish return in ITR-4.

   Now, these restrictions have been omitted from the Rule 12. Thus, a person owning a property in joint-ownership or covered under the seventh proviso can file return in ITR-1 or ITR-4 if they fulfil other conditions. Further, in the new ITR forms, a new 'Schedule DI' has been inserted to claim benefit of investment/ deposit/payments made between 01-04-2020 to 30-06-2020 for the previous year 2019-20.

2. **Appropriate officer to assess taxpayer is AO having jurisdiction over area in which business is carried on**

   Abdul Azeez Haroon v. DCIT - *[2020] 115 taxmann.com 289 (Madras)*

   Assessee was a non-resident Indian. Assessment in case of assessee was completed. Subsequently, Commissioner (International Taxation) issued a reopening notice against assessee at its address at Madurai as PAN address of assessee was in Madurai and accordingly transferred case of assessee to Assessing Officer at Madurai.

Assessee contended that assessee was residing in Shimoga, Karnataka and thus appropriate officer to assess assessee would be officer at Shimoga and impugned notice issued at Madurai was not valid.

The Madras High Court held that assessee was staying in Madurai prior to period relating to assessment year 2011-12 and no return of income was filed by him during his stay at Madurai as he had not earned any income liable to tax in that period. From assessment year 2010-11 onwards, assessee had shifted to Shimoga, Karnataka, carrying on business there and returns of income were filed from assessment year 2012-13 onwards at Shimoga, till date.

These returns of income were processed and intimations were issued wherein address of assessee was stated to be Shimoga. Thus, appropriate officer to assess assessee was officer at Shimoga. Therefore, impugned reopening notice issued at its address at Madurai was not valid.

3. **US to investigate into Digital Services Taxes imposed by various countries including India**

Docket No. USTR-2020-0022

The United States (US) Trade Representative has launched an investigation in to the Digital Services Taxes (DSTs) imposed by various countries including India. DST is a tax imposed by a Country on the revenues generated by a foreign entity from the digital services rendered to users in that Country.

Investigation has been initiated with respect to DSTs adopted or under consideration by Austria, Brazil, the Czech Republic, the European Union, India, Indonesia, Italy, Spain, Turkey and the United Kingdom. The investigation will focus on the following concerns with DSTs:

a) Discrimination against U.S. companies;
b) Retroactivity; and
c) Possibly unreasonable tax policy.

With respect to tax policy, the DSTs may diverge from norms reflected in the U.S. tax system and the international tax system in several respects. These departures may include: extraterritoriality; taxing revenue not income; and a purpose of penalizing particular technology companies for their commercial success.

In India, the Digital Services Tax is imposed by way of Equalisation Levy tax on the online advertisement services and e-commerce supply or services.

4. **Petition filed before HC for condonation of delay valid as ITAT had no power to condone delay beyond 6 months**

   Karuturi Global Ltd. v. DCIT - *[2020] 116 taxmann.com 924 (Karnataka)*

   Assessee approached Dispute resolution penal on the draft assessment order passed under Section 143(3) read with Section 144C. Assessee filed its objections and same was disposed of ex parte. Aggrieved assessee filed an appeal before ITAT. ITAT dismissed assessee's appeal on the ground that there was no representation by the assessee on the date of hearing.

   Assessee further filed a miscellaneous application before ITAT for condonation of delay of 497 days. Miscellaneous application was also dismissed on the ground that ITAT was not competent to condone the delay beyond 6 months. The assessee contended that due to some miscommunication between with its Chartered Accountant, it did not appear before ITAT. Thus the delay caused in filing of miscellaneous petition required to be condoned. It further contended that in view of statutory limitation provided under proviso to section 254(2), the only remedy available was to invoke writ jurisdiction

   On writ, the Karnataka HC held that the miscellaneous petition was filed with delay of 497 days before ITAT. ITAT had no power to condone delay beyond 6 months. The Division Bench of this Court in identical circumstances in the case of. *Practice Strategic Communications India (P.) Ltd. v. CST ILR 2016 Kar. 4493* had held that remedy available to the assessee to seek for condonation of delay beyond the statutory period of limitation was only under Article 226 and 227 of Constitution of India. Thus, as approaching HC under Articles 226 and 227 could not be held to be unjustifiable.

5. **Receipt of shares through family realignment amongst members of Late O.P Jindal's family not sham transactions**

   Glebe Trading (P.) Ltd. v. ITO - [2020] 116 taxmann.com 866 (Delhi - Trib.)

   Assessee was an investment company. During course of assessment proceedings, Assessing Officer (AO) observed that assessee claimed that it had received shares of various companies as gift without any consideration. AO further observed that financials filed by assessee clearly shows that 99.6% shares of the assessee which were held by Smt. Arti Jindal were transferred to M/s P R J holdings private trust

as gift. AO made additions in the hands of the beneficiary under section 2(24)(iv) by lifting the corporate veil.

Assessee filed appeal against the order of AO before CIT(A). CIT(A) dismissed the appeal of the assessee. Assessee contended that it was a family arrangement and internal family realignment amongst the members of the family of Late Shri O.P. Jindal and couldn't be taken as gift. The MOU for realignment of equity share holdings was also submitted. Further, extract of the resolution which was passed at the meeting of the Board of Directors thereby giving the approval for the acceptance of the gift of equity shares was also submitted.

On appeal, ITAT held the MOU submitted by assessee clearly showed that it was a family arrangement and internal family realignment amongst the members of the family and could not be taken as gift. The AO, by lifting the corporate veil, without providing any cogent reasons and without appreciating that the beneficiary never obtained any benefit from this transaction at any time could not comment on the said transaction sham and bogus.

Thus, the ITAT held that the observations made by AO were without any jurisdiction. In fact, the AO had overstepped the provisions of the Income Tax Act wherein the Assessment was nil and commented on the third party assessee which was not permissible under the Act.

6. No capital gain exemption to 'Tiger Global' on its sale of stake in Flipkart: AAR

Tiger Global International II Holdings, In re - [2020] 116 taxmann.com 878 (AAR - New Delhi

Applicant-Tiger Global International is a private company limited by shares incorporated under the laws of Mauritius. It held shares of Flipkart Private Limited, a private company limited by shares incorporated under the laws of Singapore. Flipkart-Singapore had invested in multiple companies in India. Applicant transferred certain shares of Flipkart-Singapore to Fit Holdings S.A.R.L, a company incorporated under the laws of Luxembourg. These transfers were undertaken as part of a broader transaction involving the majority acquisition of Singapore Co. by Walmart Inc. (USA incorporated Co.).

Applicants approached the Authority for Advance Ruling (AAR) to seek clarification whether gain arising on sale of shares held by applicant in Flipkart-Singapore to Fit Holdings S.A.RL. would be chargeable to tax in India under the

Income-tax Act, 1961 read with the Double Taxation Avoidance Agreement between India and Mauritius

AAR held that real management and control of applicant was not with their respective Board of Directors in Mauritius but with one US based person, who was beneficial owner of entire group structure. Applicant-company was only a 'see-through entity' to avail benefits of India-Mauritius DTAA.

Though tax residency was stated to be established to take benefit of Mauritius tax treaty network with various countries and not just India, applicant had not made any other investment other than in shares of Flipkart. Thus, real intention of applicant was to avail benefit of India-Mauritius treaty. Since capital gains had not been derived by alienation of shares of any Indian company, rather capital gains arose on sale of shares of Singapore Company and entire arrangement was nothing but an arrangement for avoidance of tax in India, instant application was to be rejected

7. **AO can't make 100% disallowance u/s 40(A)(2(b) on payment made to related parties: Delhi I**

Amit Mehra v. ITO - *[2020] 116 taxmann.com 870 (Delhi - Trib.)*

Assessee paid interest to his mother and Amit mehra (HUF). After going through bank accounts of the entities involved, Assessing Officer (AO) held that loans received from these entities were amount given by the assessee himself. AO held that the assessee transferred the funds from proprietary concern to his personal account. From his personal accounts fund were transferred to the firm in which assessee is a partner from where the amount was transferred to his HUF and his mother.

AO disallowed the interest under section 40A(2)(b) on the ground that the loan were not given for genuine business purpose. CIT(A) confirmed the additions by holding that the HUF and assessee's mother received the amount from the assessee himself in a circuitous route.

On appeal, ITAT held that this was not a case where borrowed funds had been diverted to interest free advances without any commercial expediency. Section 40A(2)(b) provides disallowance if any expenditure is excessive and unreasonable having regard to its fair market value. In this case HUF and assessee's mother received amount from the partnership firm. If any disallowance was to be made it had to be made in the hands of the partnership firm but not in the hands of the assessee.

Further, section 40A(2)(b) does not envisage 100% disallowance unless expenditure is proved to be excessive or unreasonable having regard to fair market value. No such finding had been established by the revenue, thus, disallowance was to be deleted

8. **Fall in direct tax collection during FY 2019-20 is on expected lines & temporary in nature: CB**

Press Release, dated 07-06-2020

The Central Board of Direct Taxes (CBDT) has said that the reports circulating in certain section of media that the growth of direct taxes collection for the FY 2019-20 has fallen drastically don't portray correct picture regarding growth of direct taxes.

It is a fact that the net direct tax collection for the FY 2019-20 was less than the net direct tax collection for the FY 2018-19. But this fall in the collection of direct taxes is on expected lines and is temporary in nature due to the historic tax reforms undertaken and much higher refunds issued during the FY 2019-20.

The board discussed the bold tax reforms undertaken by the Govt. which had a direct impact on the direct taxes collections for the Financial Year 2019-20. Further, in the Financial Year 2019-20, amount of total refunds given was Rs. 1.84 lakh crore as compared to Rs. 1.61 lakh crore in FY 2018-19, which is a 14% increase year-on-

9. **ITAT deleted additions as there no difference was found in physical inventory inspected during survey**

Stone Age (P.) Ltd. v. DCIT - *[2020] 116 taxmann.com 930 (Jaipur - Trib.)*

A survey was conducted at assessee's premises. The survey party valued the stock in excess of that recorded in the books of accounts. Accordingly, difference was proposed to be added to be added to the income of the assessee. Assessing Officer (AO) held that sales director of assessee had agreed to offer difference as income in the statement recorded during survey.

During the assessment proceedings, assessee contended that valuation done by survey team was based solely on the rate provided by sales director. No efforts were made by survey team to verify books and find out process cost. Survey team relied on the unsubstantiated or unverified figure of processing charges as admitted by the directors of the assessee. Under misconception and under normal pressure of

such survey action the process cost was admitted at a higher figure. There was no basis available from where this figure was derived by the survey team. The director of the assessee got misplaced and confused by this figure.

On appeal, ITAT held that during survey statement of assessee's sale director was reported wherein he surrendered the excess value of stock found during survey. However, at the time of audit, it was found that valuation done by survey team was erroneous. While filing return of income assessee did not offer such excess value of stock. Subsequently, sales director retracted his statement surrendering excess stock. AO had made additions on the basis on sole evidence in the form of statement recorded during survey. The assessee's director was not aware of the costing aspects as well as inventory valuation. Complete details of quantity and valuation of inventory was submitted during the assessment proceedings. AO ignored the same.

Based on various judicial pronouncements, ITAT held that it is a settled legal proposition that additions made merely and solely on the basis of statements recorded with no corroborative material on record has no legal force as only oral statements are not conclusive evidence for making any addition.

10. Kerala HC directed CIT(A) to decide appeal on merits without asking for deposit of 20% of tax demand

Aranattukara Oriental Service Co-Operative Bank Ltd. v. CIT - [2020] 116 taxmann.com 900 (Kerala)

Petitioner was a primary Co-operative Agricultural Credit Society registered under the Kerala Co-operative Societies Act. It approached Kerala High Court that neither the appeal nor stay petition had been considered by the CIT(Appeals). Assessee relied on the upon the judgment of the Division Bench of High Court, dated 31.5.2019 W.P.(C)12843/19. The Division Bench after noticing the decision of the Full Bench and connected cases decided that for considering the appeal, the demand of 20% tax as a condition precedent, was negated.

CIT(A) submitted that the appellate authorities was required to ask for deposit 20% of the tax amount to entertain the appeal, in consonance with the provisions of Section 144 of the Income Tax Act and the Circular dated 31.7.2017.

The Kerala High Court held that the Assessing Officer or the Appellate Authority while exercising the power of appeal or stay of the assessment proceedings, are enjoined obligation to give regard and respect to the directions of the Hon'ble High Court.

In other words, it would not be necessary that the payment of 20% could be dispensed with only if there was an order of the High Court. The judgment of the Full Bench followed by the Division Bench has an enduring effect on all the authorities.

Therefore, CIT(A) was directed to decide the appeal on merits within six months, without asking for 20% of the demanded amount, after affording an opportunity of hearing to the petitioner.

11. CBDT notifies '301' as Cost Inflation Index for FY 2020-21

Notification No. 32/2020, dated 12-06-2020

The Central Board of Direct Taxes (CBDT) notifies the Cost of Inflation Index (CII) every year. It is used to compute long-term capital gains/losses wherein the cost of acquisition/improvement is indexed with reference to the applicable CII of the relevant year. The CBDT has notified '301' as CII for the Financial Year 2020-21.

CII for the Financial Year 2020-21 shall be used to compute long-term capital gains or losses on the capital assets which have been or planned to be sold during the financial Year 2020.21. The CII for the last financial year, i.e., the financial year 2019-20 was 289.

12. Roaming charges paid to other telecom operators don't fall under category of FTS; no TDS under section 194J

Vodafone Idea Ltd. v. ACIT-TDS - *[2020] 117 taxmann.com 42 (Cuttack - Trib.)*

During a survey conducted at assessee's premises, it was found that the assessee had not deducted tax at source (TDS) in respect of certain payments made towards roaming charges to certain telecom operators. He passed an order holding assessee as assessee-in-default on the ground that provision of section 194J were applicable payment of those charges.

Assessee contended that it had made an agreement with other cellular service providers for roaming facilities where its networks were not functioning. It was only a facilitator between the subscriber and the other service providers for enabling the subscriber to make a roaming call. Its job was confined to collection of roaming charges from subscriber and transferring it to other service providers. It did not use equipment involved in providing roaming facility.

On appeal, ITAT held that the assessee had entered into roaming arrangements with other telecom operators to enable its subscribers to make or receive calls when they move out of the licensed territory. Service in respect of roaming charges did not require any human interaction or skill. It was a standard automated service. Accordingly, roaming charges were not paid for rendering any managerial, technical or consultancy services. Hence, it did not fall under the category of "Fee for technical services". Therefore, ITAT held that assessee was not required to deduct tax on such roaming charges under section 194J.

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