A & A LAW CORP.

POWER OF COLLABORATION
A house of like minded professionals from
various specialised fields
offering expert solutions

NEWSLETTER
MAY 2020- VOL.II

Compiled By: CA. Sachin Singhal
CA. Vinit Aggarwal

Activities we're great at:

- ARBITRATION
- BANKRUPTCY & INSOLVENCY
- MERGER & ACQUISITIONS
- CORPORATE ADVISORY
- CORPORATE LITIGATION
- DUE DILIGENCE
- LABOUR & EMPLOYMENT
- REAL ESTATE
- TAXATION LITIGATION
- INTELLECTUAL PROPERT RIGHTS

Contents

Corporate Laws

Latest update, New and Judgments

1. **Key highlights from second tranche of measures taken in today's press conference held by the Finance Minister**

On May 13, 2020, the Finance Minister had announced first set of measures of the Special relief package focusing primarily on MSMEs, NBFCs, Housing Finance Banks, Power Discoms etc. Now today on May 14, 2020, the Finance Minister, Mrs. Nirmala Sitharaman has come up with second tranche of measures to revive the economy which mainly focus to aid distressed migrant workers, Marginal Farmers, Middle class families by providing measures for affordable housing, street vendors etc. The key take away from second set of measures are summarized hereunder.

1. **Emergency working capital:** Rs. 3 lakhs crore has been announced as emergency working capital facilities to pick up the pieces for businesses including MSMEs.

2. **Credit boost to farmers:** A special drive is proposed to be undertaken to provide concessional credit to PM-Kishan beneficiaries through Kishan credit cards. This move would enable farmers to gain access to institutional credit at concessional interest rate.

3. **Housing subsidy scheme:** In order to provide benefit to middle class families, it has been decided to extend the credit linked subsidy scheme up to 31.03.2021. Due to this scheme, more than 2.5 lacs middle income families will get benefit during 2020-21 and somehow it will help to generate employment.

4. **Job creation in urban and rural area through CAMPA funds:** There is need of the hour to create the job opportunities in urban, semi-urban and rural area. Therefore, it has been decided to approve the plan of worth Rs. 6000 crore for employment generation. This fund will be used by the State Government afforestation and plantation work, forest management and so on.

5. **Emergency working capital fund for farmers:** NADARD will extent additional refinance support of Rs. 30,000 crore for crop loan requirement of Rural Co-op Banks & RRBs. This will benefit around 3 crore farmers.

6. **Credit facility for street Vendor:** In this testing time, the local vendors have played an insignificant role to provide livelihood to various families. Therefore, the Govt. decided to launch scheme within a month to easy access of credit facility to street vendors. The total worth of Rs. 5000 crore will be allocated specially for street vendors.

7. **Affordable Rental Housing Complex for migrant workers:** Due to COVID-19 pandemic, migrant labour are facing challenges in getting houses at affordable rent. The Govt. has come up a scheme under PMAY for migrant labour to provide affordable rental housing complex under various scheme.

8. **Utilization of State disaster fund:** The Govt. of India has permitted State Governments to utilize State Disaster Response fund for setting up shelter for migrants and providing them food, and water. In addition to that, Central Govt. also released rs. 11002 crores of its contribution in advance to all states.

9. **Food facilities for migrants:** In order to provide benefit to 8 crores migrants, it has decided to provide 5Kg of grains per person and 1 Kg Chana family per month for two months.

10. **E-mode for access Public Distribution System:** The technology has come in a long way and providing new avenues to explore in various field. Therefore, tech-system to be used enabling migrants to access public distribution system (ration) from any Fair Price shop in India by March 2021.

2. **IRDAI allows grace period upto May 31, 2020 for all life insurance policies renewal falling due in March 2020**

Circular No. Ref: IRDAI/Life/Cir/MISC/114/05/2020 9, Dated 09.05.2020 On a review of the recent situation of lockdown resulting from Global Pandemic of Covid-19 across the country and representations received, the IRDAI has decided that, for all life insurance policies where the premium falls due in the month of March 2020, the Grace period shall be allowed till 31st May 2020.

3. **Inability to dispatch of notice by listed cos. for right issue wouldn't be viewed as violation u/s 62 of Cos. Act, 2013**

General Circular No. 21/2020, Dated 12.05.2020 In view of difficulties faced by the companies in sending notices through postal services on account of the threat posed by COVID-19 pandemic, the issues have been raised by several representatives to the Ministry of Corporate Affairs (MCA). In order to provide one time solution to the listed companies, the MCA has clarified that for the right issue opening 31.07.2020, in case of listed companies, which has to send notices to their shareholders through registered post, if they failed to do so, then this would not considered as violation under section 62 of the Companies Act, 2013.

4. **Plea to initiate CIRP admitted when co. failed to make payment for silver utensils**

Sangam Silver Arts LLP v. Sangam Handicraft (P.) Ltd. - *[2020] 115 taxmann.com 283 (NCLT-Jaipur)* In instant case, the applicant supplied silver utensils to the respondent company. On account of the respondent's failure to make payment for goods supplied, the applicant issued a demand notice under section 8 of the Insolvency and Bankruptcy Code. Despite receipt of said notice, the respondent did not make any payment. Thus, instant application was filed under section 9 of the Code. The Respondent neither appeared in proceedings nor raised any dispute in respect of amount payable. On facts, there existed an operational debt which respondent failed to discharge and, thus, instant application was to be admitted.

5. **Resolution plan approved by CoC with 100% voting and meeting all requirements was to be accepted: NCLT**

Elite Brilliant Ltd. v. ILC Industries Ltd. - *[2020] 116 taxmann.com 453 (NCLT-Beng.)* The resolution professional of corporate debtor filed application under section 30(6) of the Insolvency and Bankruptcy Code, 2016 seeking to accept resolution plan for corporate debtor submitted by resolution applicant which was approved by CoC at their meeting. A compliance certificate in Form-H under regulation 39(4) of IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 was also placed on record. Since resolution plan was approved by CoC with 100 per cent voting share and confirmed all requisite conditions so as to approve it, same was to be approved under section 31(1) of the Code.

6. **Convertible debentures is in nature of financial debt: CIRP was to admitted**

Eight Capital India (M) Ltd. v. Wellknit Apparels (P.) Ltd. - *[2020] 115 taxmann.com 279 (NCLT- Chennai)* In the instant case, the Corporate-debtor company entered into a debenture subscription agreement and master facility agreement with applicant-financial creditor whereby applicant subscribed to fully convertible debentures of corporate debtor. As per terms of agreement subscription to debenture was done for a period of 84 months and interest was to be paid at rate of 12 % annum and for default an additional interest of 6 % per annum. As the corporate debtor failed to make payment as per agreement and also failed to convert debentures into equity share capital after specified period, the applicant filed Corporate Insolvency Resolution Process (CIRP) application under section 7 of the Code. However, fully convertible debentures are financial instruments within meaning of section 5(8) and there being clear default on part of respondent in repayment, CIRP was to be initiated.

7. **Limitation in file petition u/s 9 would start after expiry of date of payment given in last invoice**

S.S.V. Fab Industries (P.) Ltd. v. SNS Starch Ltd. - ***[2020] 115 taxmann.com 278 (NCLT - Hyd.)*** The applicant-operational creditor supplied goods to the corporate debtor and raised invoices. Thereafter, the Corporate debtor made only part payment. Despite issue of notice of demand, no payment was made by the corporate debtor. On being aggrieved, the operational creditor filed petition under section 9 of the Insolvency and Bankruptcy Code, 2016 on 24-7-2019. In counter, the corporate debtor averred that goods supplied by operational creditor were not of good quality and petition was also barred by limitation. The Tribunal held that since the alleged dispute regarding quality of material was raised after filing of Corporate Insolvency Resolution Process (CIRP) petition and there was absolutely no material on record to suggest that there was a pre-existing dispute, same could not be taken as a ground for not admitting petition. However, last invoice was on 11-6-2016 and payment under invoice was to be made within 60 days, therefore, limitation would start after expiry of 60 days. Thus, petition filed on 24-7-2019, was within period of limitation.

8. **CIRP to be admitted as corporate debtor couldn't prove that debit note were raised against defective supply of goods**

Vijay Kumar Todi v. Siddarth Organisation Ltd. - ***[2020] 116 taxmann.com 454 (NCLT-Jaipur)*** The operational creditor carried out job work of printing and designing on fabric/material supplied by corporate debtor. However, the corporate debtor failed to discharge its liability arising out of said job work. On being aggrieved, the Operational creditor filed Corporate Insolvency resolution Process (CIRP) application. The Corporate debtor raised dispute that demand notice under section 8 of the Insolvency and Bankruptcy Code, 2016 was not received by it and supplies made by operational creditor were rejected due to poor quality against which debit noted were raised to operational creditor and due intimation was given through email. The NCLT found that the operational creditor had furnished proof of delivery of said demand notice from Department of Posts. Further, copy of debit notes issued by corporate debtor could not establish that same were raised against defective goods supplied by operational creditor. Also, said email conversation claimed to be raising dispute was with respect to transactions between corporate debtor and a firm was different from the operational creditor. In view of aforesaid circumstance, there was no substantive proof that dispute existed relating to subject matter of said CIRP application, therefore, same was to be admitted.

9. **CCI issues advisory to businesses in time of COVID-19; cautions not to take advantage of Covid-19 by contravening any provision of Act**

News, Dated 19.04.2020 The Competition Commission of India (CCI) has issued an advisory to businesses in the time of COVID-19 pandemic. It has been evident that COVID - 19 has caused disruptions in supply chains, including those of critical healthcare products and other essential commodities/ services. To cope with significant changes in supply and demand patterns arising out of this extraordinary situation, businesses may need to coordinate certain activities, by way of sharing data on stock levels, timings of operation, sharing of distribution network and infrastructure, transport logistics, R& D, production etc. to ensure continued supply and fair distribution of products. The CCI Act has active harsh provisions which prohibit conduct that causes or is likely to cause an appreciable effect on competition. The advisory has emphasized the CCI Act has in-built safeguards to protect businesses from sanctions for certain coordinated conduct, provided such arrangements Therefore, CCI Act cautioned not to take advantage of COVID-19 to contravene any of the provisions of the Act.

10. **MCA allows Cos. to conduct AGM via video conferencing or audio visual means during calendar year 2020**

General Circular No, 20/2020, dated 05.06.2020 Due to COVID-19 pandemic outbreak, the Ministry of Corporate Affairs (MCA) has allowed the companies to hold their Annual General Meeting by Video Conferencing or other means during the year 2020. Earlier, it allowed the companies whose financial year ended on December 31, 2019 to hold AGM by September 30, 2020. In addition to that, the Companies are not in a position to send physical copies of the financial statement, therefore, the relaxation allows the companies to send their financial statements along with board report, auditor report, and other documents required to be attached, only through e-mails. The companies are also providing a window to the stakeholders for registering their mandate for transferring dividends electronically to them through electronic clearing services or any other means. It is pertinent to note that on the part of the companies that they shall ensure that all other compliances associated with the provisions relating to general meetings such as taking of disclosures, inspection of related documents/registers by members, or authorizations for voting by bodies corporate, etc as provided in the Act and the articles of association of the company are made through electronic mode.

11. **Recovery process u/s 13 of SARFAESI Act applies to Co-op/multi-State co-op banks: SC**

Pandurang Ganpati Chaugule v. Vishwasrao Patil Murgud Sahakari Bank Ltd. - ***[2020] 116 taxmann.com 414 (SC)*** In this landmark ruling, the Supreme Court ruled that

Cooperative banks under State legislation and multi-State cooperative banks are 'banks' under section 2(1)(c) of Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002. With regard to the question on competency of the Parliament to enact law on co-operative societies/banks, the Apex Court ruled that "Parliament has legislative competence under Entry 45 of List I of Seventh Schedule of Constitution of India to provide additional procedures for recovery under section 13 of Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 with respect to cooperative banks. Provisions of Section 2(1)(c)(iva), of Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002, adding "ex abundanticautela", 'a multi-State cooperative bank' is not ultra vires as well as notification dated 28.1.2003 issued with respect to cooperative banks registered under State legislation"

12. **CIRP plea to be admitted where corporate debtor admitted its inability to repay debt due to financial crisis**

Indian Steel Corporation Ltd. v. Windcastle Exports (P.) Ltd. - ***[2020] 116 taxmann.com 443 (NCLT - Mum.)*** In given case, the Operational creditor supplied steel products and agro commodities to the corporate debtor and total debt of Rs. 40.74 crores was due on the corporate debtor company. The Operational creditor served a demand notice under section 8 of the Insolvency and Bankruptcy Code, 2016 to the corporate debtor. Thereafter, the Corporate debtor had failed to reply to the demand notice. The operational creditor filed Corporate Insolvency and Resolution Process (CIRP) petition. The Corporate debtor filed affidavit and admitted its liability stating that it was not in position to repay debt. Since there was a clear admission on part of the corporate debtor that due to financial crisis, it was not in a position to repay due amount to the operational creditor and existence of debt and default was established, instant CIRP petition was to be admitted.

13. **Directors who were in default while issue of redeemable preference share were liable to refund amount to investors**

Orion Industries Ltd., In re - ***[2020] 116 taxmann.com 436 (SEBI)*** The SEBI received a complaint alleging money mobilization by company Orion Industries Limited (OIL), it was alleged that OIL had issued Redeemable Preference Share (RPS) and mobilized funds in violation of respective provisions of SEBI Act, 1992 and Companies Act. The number of allottees and funds mobilized had been collated from information on Ministry of Corporate Affairs (MCA) Portal and documents received from complainant. The SEBI passed an interim order whereby OIL and its Directors were restrained from (i)

mobilizing funds or inviting subscription through issue of RPS from public (ii) accessing securities market or buying, selling or otherwise dealing in securities market, either directly or indirectly and (iii) from disposing of, alienating or encumbering any of its/their assets or diverting any funds raised from public through offer and allotment of RPS till further orders. The Investigation revealed that OIL had allotted RPS to more than forty-nine allottees, hence, offer of RPS was a 'public issue' requiring it to comply with public issue norms as prescribed under companies Act. The SEBI found that OIL had not complied with provisions of section 73(3) which mandates that amounts received from investors shall be kept in a separate bank account. Further, OIL had also not complied with provisions of section 2(36), as it had not submitted any record to indicate that it had registered a prospectus with RoC, in respect of Offer of RPS. Neither OIL nor its directors produced any record to show that it had issued prospectus containing disclosures mentioned in section 56(1), or issued application forms accompanying abridged prospectus. Thus, it was to be held that OIL was engaged in fund mobilizing activity from public, through Offer of RPS and had contravened provisions of sections 56(1), 56(3), 2(36) read with 60, 73(1), 73(2), 73(3) of Companies Act. Therefore, all Directors of OIL, at time of issuance of RPS, were officers in default and they would be jointly and severally liable to refund amounts collected from investors with interest at rate of 15 % per annum, for non-compliance of above mentioned provisions.

14. **CIRP plea admitted as corporate debtor disputed claim but couldn't provide any proof of existing dispute**

Quazar Infrastructure (P.) Ltd. v. Minarch Overseas (P.) Ltd. - ***[2020] 116 taxmann.com 435 (NCLT - New Delhi)*** In this case, the Corporate debtor awarded work contract to the operational creditor for carrying out 'civil work' for construction of its 'proposed office complex'. The operational creditor had raised bills for Rs. 11.09 crore on the corporate debtor, whereas total payment received by the operational creditor was only Rs. 6.14 crore. On failure to pay outstanding dues by the corporate debtor, the operational creditor filed application to initiate Corporate Insolvency Resolution Process (CIRP) against the corporate debtor. The Operational creditor had placed on record all invoices stating that corporate debtor itself had acknowledged said invoices. The Corporate debtor had disputed said claim of the operational creditor. However, the corporate debtor had not annexed any proof of dispute. Therefore, without any specific details of material particulars or evidence, fact of existence of a dispute could not be sustained. Thus, instant application to initiate CIRP was to be admitted.

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

Krupa Polymers (India) (P.) Ltd. v. Nakshatra Distilleries & Breweries Ltd. - ***[2020] 116 taxmann.com 346 (NCLT - Mum.)*** In instant case, the operational creditor had earlier instituted Corporate Insolvency Resolution Process (CIRP) proceedings under section 9 of the Insolvency and Bankruptcy Code, 2016 against corporate debtor wherein corporate debtor admitted debt and agreed to pay outstanding debt in five instalments. However, out of five instalments corporate debtor paid only first instalment and defaulted in paying balance amount. Hence, operational creditor instituted fresh CIRP proceedings to recover balance amount but corporate debtor neither replied to demand notice nor to CIRP petition. Since on facts it was clear that corporate debtor was in default of a debt due and payable, CIRP petition was to be admitted.

16. **CIRP was to be dismissed where there was dispute between parties before issuance of the demand notice**

Sagaya Annal Associate v. Store N Move P. Ltd. - ***[2020] 116 taxmann.com 363 (NCLT- Chennai)*** In instant case, the operational creditor provided man power supply and other services to the corporate debtor's client on behalf of the corporate debtor and raised invoices. Since the corporate debtor had failed to pay due amount despite various reminders, a notice was issued under section 8 of the Insolvency and Bankruptcy Code, 2016. In response to said notice, the corporate debtor gave evasive replies and, therefore, operational creditor filed CIRP petition under section 9 of the Code. The Corporate debtor contended that petition was fraudulent and malicious. The NCLT found that managing partner of the operational creditor through whom instant petition had been filed was holding 36.84 per cent stake of shareholding in the corporate debtor and he had filed company petition before NCLT alleging oppression and mismanagement against the corporate debtor under sections 241 and 242 of Companies Act, 2013 which was still pending. Since there had been a pre-existing dispute which was much before issuance of demand notice, instant application was liable to be dismissed.

17. **Claim of employee in excess of limit prescribed by section 4 of Payment of Gratuity Act is not maintainable, rules SC**

BCH Electric Limited v. Pradeep Mehra - ***[2020] 116 taxmann.com 395 (SC)*** In the year 1979, a Trust Deed executed between the appellant, a company registered under the Indian Companies Act, 1956 on one hand and three trustees on the other, an “Approved Gratuity Fund” was constituted “for the purpose of providing Gratuities to the employees

of the Company under the Payment of Gratuity Act, 1972. In 2012, one of the employee resigned after rendering service of 12 years. His last drawn wages were Rs. 24,50,000/- per month. As payment towards gratuity, the petitioner sent out of Rs.10,00,000 as the maximum amount of gratuity payable to him whereas the respondent claimed a total of Rs.1,83,75,000 as gratuity for the entire period of his service. On reply, the company contended that he was entitled to gratuity amount of Rs 10 lakhs only, as per the upper limit fixed by Section 4(3) of the Act. However, the employee raised an alarm and stated that the scheme of the company never had upper limit for gratuity. Contending the gratuity scheme of Company, the employee approached the claims commissioner. Referring to the Section 4(5) of the Gratuity Act, 1972, the commissioner ruled that employee was entitled to receive gratuity which is more beneficial to the employee with no upper limit. Aggrieved by the decision of the Commissioner, the Company took the matter into the appellate authority and later to HC however, the ruling was upheld in favour of employee. On appeal to the Apex Court, it was held observed that Section 4(5) of the Payment of Gratuity Act, 1972 will apply only when there are alternative options for the employee under the Act and under the terms of the contract of employee. The Court also held that employee must take complete package offered by the employer or that which is available under the Act and there cannot be any combination of terms under both the alternatives. The Apex Court concluded that a claim for gratuity in excess of the ceiling limit prescribed under Section 4(3) is not at all beyond the scope of the Payment of Gratuity Act, 1972. If an employee is covered by provisions of Payment of Gratuity Act, gratuity of such employee has to be calculated in accordance with provisions of Act. While so calculating, not only basic principle available in Section 4(2) as to how gratuity is to be calculated must be applied but also ceiling which is part of Section 4(3) must also apply and, thus, claim made by employee in excess of limit prescribed by section 4 would not be maintainable.

18. **IRDAI extends timelines for review and updation of existing stewardship policy**

Circular No. IRDA/F&A/CIR/MISC/_102_/04/2020 Date: 30.04.2020 All the insurers were advised to review and update their existing stewardship policy based on the revised guidelines within three months from the date of issue of the circular, i.e., by May 07, 2020. Therefore, due to the present lock down stipulations owing to covid-19, IRDAI has granted extension of timelines to insurers for furnishing various Regulatory Returns and periodic compliances vide various circulars issued in this regard. In continuation of the same, it has been decided to extend the timelines for review and updation of the existing stewardship policy to be compliant with the above said Circular upto May 31, 2020.

19. **MCA comes up with draft procedure for Submission of Audit Files to NFRA**

Circular No. NF-20011/3/2020 Dated. 28.04.2020. The Ministry of Corporate Affairs has issued draft procedure for submission of audit files to NFRA. These procedures are applicable to all Audit firms/ Chartered Accountants covered under the jurisdiction of the National Financial Reporting Authority (NFRA) as laid down vide Section 132 of the Companies Act, 2013. These procedures govern the submission of Audit Files to NFRA and are issued under the mandate given to NFRA by the Companies Act 2013, and to discharge the functional responsibilities defined under NFRA Rules 2018.

Goods and Service Tax (GST)

Latest Updates, News and Judgments

1. **Manufacturer guilty of profiteering for denying benefit of GST rate reduction to customers on suit case: NAPA**

Rahul Sharma v. Samsonite India - *[2020] 116 taxmann.com 558 (NAA)*

The assessee filed an application before the Standing Committee on Anti-profiteering complaining that the benefit of GST rate reduction had not being passed on to it by the manufacturer of 'American Tourister Sky Trolley'. The Standing Committee on Anti-profiteering had examined the application and forwarded it to the Director General of Anti-Profiteering (DGAP) for detailed investigation.

The National Authority on Anti-profiteering (NAPA) observed on the basis of DGAP's report that the manufacturer did not reduce the selling price of its product when the GST rate was reduced from 28% to 18% w.e.f. 15.11.2017 and thus, the benefit of reduction in GST rate was not passed on to the recipients by way of commensurate reduction in the prices. The DGAP also submitted in its report that the MRP remains the same as before the GST rate reduction but the base prices were increased to offset the reduction in GST rate. As per the provisions of the GST Act, any reduction in rate of tax on any supply of goods or services or the benefit of input tax credit shall be passed on to the recipient by way of commensurate reduction in prices.

The NAPA held that the manufacturer had contravened the provisions of GST Act and, thus, resorted to profiteering by denying the benefit of GST rate reduction to customers.

2. **Municipal Corporation directed to release amount wrongly withheld towards service tax: HC**

Metrro Waste Handling (P.) Ltd. v. South Delhi Municipal Corporation - *[2020] 116 taxmann.com 553 (Delhi)*

The assessee was providing the services of lifting or collecting of municipal solid waste/garbage/malba/drain silt etc. and dumping the same to nearby designated site as per the agreement with Municipal Corporation of Delhi. The assessee was of the view that the above services provided by it were not taxable services as the same formed part of the exempted list of services under the Finance Act, 1994. The Municipal Corporation of Delhi withheld a sum towards element of service tax from running account bills raised by the assessee on ground that services provided by assessee was liable to service tax for the period w.e.f. June, 2012 to May, 2016. The assessee filed petition before the High Court

of Delhi seeking relief in this regard.

The Hon'able High Court observed that the assessee had entered into an agreement with the Municipal Corporation Delhi (MCD) for hiring of light motor vehicle for the purpose of lifting/collecting of municipal solid waste/garbage/malba/drain silt etc. for a maximum period of five years or as required by the MCD at an agreed rate of Rs. 1934 per day per vehicle. When the Agreement was executed between parties, there was no service tax leviable on service of waste collection or disposal. A notification was also issued which specifically exempted waste collection or disposal services provided to the Government or local parties.

Immediately after the work order, the assessee commenced raising invoices for the services provided which had no reference of the service tax payable. The MCD have paid full invoices w.e.f. June 2012. However, it was only some time in 2015, the MCD pursuant to the auditor's objection started deducting the amounts from the agreed rate on the ground of non-application of service tax and withheld it. On perusal of the agreement, it was seen that the rate was fixed at Rs.1934 and could not vary based on increase or decrease of various stipulated components including service tax. Hence, the conclusion of the audit team was wrong as the agreement did not warrant deduction of rates other than on account of full or minimum wages. Thus, there was no justification by the MCD to deduct the payments of the assessee on account of exemption of service tax.

The Honourable High Court held that MCD had acted illegally, wrongly and malafidely by withholding the amount on the ground that service tax was not applicable to the agreed rate. The Honourable High Court also directed MCD to release all pending payments to the assessee deducted on the ground of non-payment of service tax.

3. **HLA testing services provided by overseas laboratory to Indian entity are health care services, exempt from GST**

DKMS BMST Foundation India, In re - *[2020] 116 taxmann.com 423 (AAR - KARNATAKA)*

The applicant is a not for profit charitable organization which facilitates the treatment of blood cancer and other blood disorders. It promoting awareness and encourage people to register as potential blood stem cell donors. Human Leukocyte Antigen (HLA) testing is an integral part in treatment of blood cancer and other blood disorder. The applicant has sought advance ruling on whether the HLA testing services performed by the overseas laboratories outside India falls under the definition of Health Care Services provided by clinical establishment and exempt from GST?

The Authority for Advance Ruling observed that the applicant collects the samples from the potential donors of blood stem cells and sends the same for testing to the foreign laboratory. The foreign laboratory is providing testing services to the applicant for which applicant is liable to pay consideration.

Under GST Law, the services by way of treatment or care for illness, injury, deformity and abnormality are covered under the 'health care services'.Also, the hospitals, clinic, sanatorium or any other institution by whatever name called that offers services or facilities requiring treatment or care for illness, injury, deformity and abnormality is covered under 'clinical establishment'. The overseas laboratories test the HLA of samples under the allopathy system of medicine in India to identify and list potential donors which is an integral step in entire process of treatment of an illness, injury, deformity and abnormality i.e., blood cancer and other blood disorders. Without the test and the donation, the treatment of illness would not be possible. Therefore, the HLA testing services provided by the overseas laboratories are classifiable under health care services. The above investigative services provided by the overseas laboratories under the allopathy system of medicine in India would qualify as clinical establishment under GST Law.

Hence, the HLA testing services provided by overseas laboratory to Indian entity are covered under health care services exempted from GST.

4. **Supply of power packs along with freight& insurance services is a 'composite supply': AAR**

San Engineering & Locomotive Company Ltd., In re - *[2020] 116 taxmann.com 422 (AAR - KARNATAKA)*

The applicant is a manufacturer of power packs and provides installation and commissioning service. It has sought an advance ruling to determine whether freight and insurance service and installation/commissioning can be treated as 'composite supply' under GST?

The Authority for Advance Ruling observed that as per the submissions of the applicant installation and commissioning can be carried out by the recipient itself or by availing the services of any other supplier. Thus, installation and commissioning is an independent service and not a part of supply of power packs.

The applicant has to transport the goods and deliver the power packs to the recipient. As per the valuation provisions under GST, value of supply shall include incidental expenses charged by supplier from the recipient and any amount charged for anything done by the supplier in respect of the supply of goods or services or both at the time of, or before

delivery of goods or supply of services. Hence, the freight and insurance charged are part of value of supply of power packs. Moreover, even if, freight and insurance are distinct supplies, both supplies are covered under 'composite supply' being naturally bundled and supplied in conjunction with each other in the ordinary course of business, thereby forming part of supply of power packs.

The Authority for Advance Ruling held that freight and insurance service is a composite supply of power packs.

5. **Remuneration received by Non-Executive Director is includable in aggregate turnover being a taxable service in GST**

Anil Kumar Agrawal, In re - ***[2020] 116 taxmann.com 428 (AAR - KARNATAKA)***

The applicant is an unregistered person. It has filed an application for advance ruling to determine whether salary received as director from a private limited company shall be considered for aggregate turnover for registration.

The Authority for Advance Ruling observed that as per the provisions of CGST Act, the aggregate turnover is equal to the sum of value of all taxable supplies, exempt supplies, export of goods or services or both and inter-State supplies of persons having same PAN to be computed on all India basis. It excludes the value of inward supplies on which tax is payable by a person on reverse charge basis and CGST, SGST, UTGST, IGST and cess.

In the given case, the applicant receives salary as director of private limited company. If the applicant is an Executive director of such company, he will be treated as employee of the company. In that case, the services of the applicant as an employee to the employer are neither supply of goods nor supply of services in accordance with Schedule III of the CGST Act. If the applicant is Non-Executive director, the remuneration paid by the company is liable to GST in the hands of company under reverse charge mechanism. The applicant has not submitted any documentary evidence to support whether the salary received by him is towards his services as Executive director or Non-Executive director.

In view of the above, in case remuneration is received by the applicant as Executive director then it is not includable in aggregate turnover, as it is the services given by the applicant as an employee. However, if the applicant receives remuneration as Non-Executive director, then the company is required to pay tax on reverse charge basis. Thus, the services of the applicant as a Non-Executive director are includable in the aggregate turnover, as it is the taxable services supplied by the applicant, even though the tax is discharged by the company.

6. **Second hand gold jewellery purchased from unregistered person can be valued as per marginal scheme in GST**

Attica Gold (P.) Ltd., In re - *[2020] 116 taxmann.com 411 (AAR - KARNATAKA)*

The applicant is engaged in the business of second-hand goods. It purchases used gold jewellery from unregistered persons and sells it. The applicant has sought advance ruling on whether tax is to be paid on difference between selling price and purchase price as per margin scheme in GST on second hand gold jewellery purchased from unregistered person?

The Authority of Advance Ruling observed that as per the valuation rules under the CGST Act, a person dealing in buying and selling of second hand goods i.e., used goods as such or after some minor processing which does not change the nature of the goods and where no input tax credit has been availed on the purchase of such goods, then the value of taxable supply provided by such person shall be the margin which is the difference between the selling price and the purchase price.

In the given case, the applicant is supplying second-hand jewellery which is taxable under GST. The applicant purchases jewellery and sells it as second hand after cleaning and polishing which does not change the nature and form of jewellery. It does not melt the jewellery to convert it into bullion and then remarking it to new jewellery. Also, the applicant has not availed input tax credit on purchase of the jewellery as it purchases from unregistered person.

Since the applicant satisfies the conditions prescribed under the above valuation rule for second hand goods, it can value second-hand jewellery supplied by it as per marginal scheme.

The Authority of Advance Ruling held that the second hand gold jewellery purchased by the applicant from an unregistered person can be valued as per the marginal scheme in GST.

7. **Another clarification issued by CBIC addressing challenges faced by taxpayers in GST due to COVID-19 pandemic**

Circular No. 138/08/2020-GST, dated 06-05-2020

CBIC has issued clarification on COVID-19 related representations and IBC, 2016 issues. It is clarified that due date of furnishing Form ITC-04 for quarter ending March,

2020 is extended to 30-6-2020 and the requirement to export goods by merchant exporter within 90 days from invoice date also stand extended to 30-6-2020 where 90 days are completed during 20-3-2020 to 29-6-2020. Further, IRP/RP is not required to take fresh registration where GSTR-1 and GSTR-3B for all tax periods prior to appointment of IRP/RP have been furnished under registration of Corporate Debtor.

8. **Delhi HC permits rectification in GSTR-3B for the period to which error relates instead of subsequent months**

Bharti Airtel Ltd. v. Union of India - *[2020] 116 taxmann.com 416 (Delhi)*

The assessee had challenged Rule 61(5) of the GST Rules, Form GSTR- 3B and Circular No. 26/26/2017-GST dated 29-12-2017 as ultra vires the provisions of CGST, 2017. As per the above, the assessee was prevented from correcting its monthly GST returns, and consequently sought refund of the excess taxes paid.

The Hon'ble High Court observed that GSTR-2 and GSTR-3 could not be operationalized by the Government. Later on Rule 61(5) and the Rule 61(6) were introduced in the CGST Rules which provided filing of monthly return in Form GSTR-3B which is only a summary return. In the given case, ITC claim of assessee for months of July, 2017 and September, 2017 was based on estimation as the exact amount was not known. Assessee discharged the GST liability for the above period in cash, whereas ITC was available with it but not reflected in the system on account of lack of data. However, if the statutorily prescribed returns i.e. GSTR 2 and GSTR 3 had been operationalized by the Government, the assessee would have known the correct ITC amount available to it during such period, then, it could have discharged its liability through ITC. As a consequence, the assessee made excess payment of tax by way of cash in the months of July-September 2017 in the Form GSTR- 3B. ITC which stood under reported was discovered in the month October 2018, when the Government operationalized Form GSTR-2A for the past periods.

As per Para 4 of the Circular No. 26/26/2017-GST dated 29-12-2017, Form GSTR-3B can be corrected only in the month in which the errors were noticed. No valid reasoning could be found for restricting rectification only in the period in which the error is noticed and corrected, and not in the period to which it relates. There is no provision under the GST Act which would restrict such rectification. Therefore, the assessee has a substantive right to rectify/adjust the ITC for the period to which it relates. The rectification/ adjustment mechanism for the months subsequent to when the errors are noticed is contrary to the GST Act. It is to be noted that the refund of excess cash

balance deposited by the assessee would not effectively redress assessee's grievance.

The Hon'ble High Court held that the rectification of the return for the same month to which it relates was imperative and, accordingly, the restriction for rectification of Form GSTR-3B in respect of the period in which the error had occurred was not justified. Hence, the assessee was allowed to rectify Form GSTR-3B of the period to which the error relates, i.e. for July, 2017 and September, 2017.

9. **Due date to furnish GST annual return for F.Y. 2018-19 extended to September 30, 2020**

   Notification No. 41/2020-Central Tax, dated 5-5-2020 CBIC has further extended the time limit to furnish GST annual return from June 30, 2020 to September 30, 2020 for the financial year 2018-19.

10. **Filing of Form GSTR-3B allowed through EVC for companies till June 30, 2020**

    Notification No. 38/2020-Central Tax, dated 5-5-2020 CBIC has allowed furnishing of return in Form GSTR-3B verified through electronic verification code (EVC) in case of registered person being company during the period April 21, 2020 to June 30, 2020.

11. **Validity of e-way bill expiring between 20-3-2020 to 15-4-2020 extended till 31-5-2020**

    Notification No. 40/2020-Central Tax, dated 5-5-2020 CBIC has extended the validity period of e-way bill generated on or before March 24, 2020 and expiring during the period March 20, 2020 to April 15, 2020 till May 31, 2020.

12. **New time limit for taking separate GST registration by person going through CIRP prescribed**

    Notification No. 39/2020-Central Tax, dated 5-5-2020 Registered persons who are corporate debtors under the IBC, 2016 undergoing corporate insolvency resolution process (CIRP) and management of whose affairs are being undertaken by interim resolution professional (IRP) or resolution professional (RP) shall be liable to take new registration in each of the States or Union territories where corporate debtor was registered earlier, within 30 days of appointment of IRP/RP or by June 30, 2020, whichever is later.

13. **Due date of filing Form GSTR-3B extended for UT of Jammu & Kashmir & UT of Ladakh**

Notification No. 42/2020-Central Tax, dated 5-5-2020 CBIC has extended time limit of furnishing of GSTR-3B for registered persons whose principal place of business is in the Union Territory of Jammu & Kashmir for period November, 2019 to February, 2020 to March 24, 2020. For registered persons whose principal place of business is in the Union Territory of Ladakh, time limit of filing GSTR-3B for the months of November and December, 2019 has been extended to March 24, 2020 and for the period January to March, 2020 extended to May 20, 2020

14. **FIR lodged against assessee for generating fake invoices to evade GST would not be quashed: HC**

Shahzad Alam v. State of U.P. - ***[2020] 115 taxmann.com 185 (Allahabad)***

The GST Authorities had lodged First Information Report (FIR) under the Indian Penal Code and GST Act against the assessee. The allegations in the FIR were in respect of getting bogus firms registered under GST and fabricating documents/invoices with a view to evade Tax. A search was conducted at the assessee's declared place of business under GST wherein it was found that no business activity was carried out and no goods were found. The assessee filed a writ petition before the High Court of Allahabad requesting to quash the FIR.

On behalf of authorities, it was submitted that the FIR was lodged after scanning the information available at the GST Portal, the information received from mobile squad in respect of seizure of goods without documents, information gathered from search and seizure operation followed by an enquiry which led to an inference that the declared place of business was bogus. Instead, the place of business was being used for the purpose of preparing false documents or invoices.

The assessee submitted that no FIR could be registered without a specific order under the GST in respect of evasion of tax. The GST Law do not explicitly repealed the provisions of Indian Penal Code or the Code of Criminal Procedure and therefore, an offence punishable under the Indian Penal Code could very well be reported and investigated as per respective law.

The Honourable High Court relied on the judgment of Court in case of Govind Enterprises v. State of U.P wherein the High Court held that there was no bar in any Act on lodging an FIR under the Indian Penal Code for offences punishable under the

Penal Code even though, for the same act or conduct, prosecution could be launched under any other Act.

The Honourable High Court rejected assessee's contention that no FIR could be lodged against him under the provisions of Indian Penal Code for offences punishable under the GST Act. Since, the FIR disclosed commission of cognizable offences, the FIR lodged against assessee would not be quashed.

15. **Car mats not to be classified as parts and accessories of vehicles: SC**

Commissioner of Central Excise v. Uni Products India Ltd. - *[2020] 116 taxmann.com 401 (SC)*

The assessee was manufacturer of textile floor coverings and car matting. The Commissioner passed an order wherein 'car matting' was to be treated as a parts and accessories of motor vehicles classified under heading 8708. The assessee filed an appeal before the Customs Excise & Service Tax Appellate Tribunal (CESTAT).

The Tribunal held that chapter 57 covers both carpets and other floor coverings. As per interpretative notes in HSN, it has been clarified that textile carpet identifiable for use in motor cars are not to be classified as accessories of motor cars in heading 8708 but in heading 5703 where they are more specifically described as carpets. Though, in common parlance the given product may not be considered as carpets. In view of the wordings of the chapter, the section notes, and the explanatory notes, the given product is correctly classified under heading 5703.

The appeals were filed against the decision of the Tribunal before the Hon'ble Apex Court. The question under consideration was whether 'car matting' would be classified in Chapter 57 of the First Schedule to the Central Excise Tariff Act, 1985 under the heading 'Carpets and Other Textile Floor Coverings' or under Chapter 87 which relates to 'Vehicles other than Railway or Tramway Rolling-Stock and Parts and Accessories Thereof'.

The Hon'ble Supreme Court observed that Chapter 87 of the Central Excise Tariff of India did not contain car mats as independent tariff entry. The HSN Explanatory Notes specifically exclude 'tufted textile carpets, identifiable for use in motor cars' from heading 8708 and place them under heading 5703. The revenue argued that the car mats are made specifically for cars and also used in cars, hence, should be identified as parts and accessories. However, the Tribunal, after detailed analysis on various entries, Rules and Notes have found that the product car mats appropriately fit the description of goods under heading 5703 and tariff item 57039090.

The Hon'ble Supreme Court upheld the order of Tribunal that the product 'car mats' are not to be treated as parts and accessories of motor vehicles under heading 8708 but as carpets under heading 5703.

16. **Assessee arrested for offence committed under GST denied bail as no case of COVID-19 reported in jail's premises: HC**

Rajinder Bassi v. State of Punjab - *[2020] 116 taxmann.com 398 (Punjab & Haryana)*

The assessee was arrested for evading GST payment of Rs. 20 crores approx. He filed a writ petition before the High Court of Punjab and Haryana seeking grant of interim bail due to prevalent conditions of spread of COVID-19 virus.

Assessee submitted that the threat of spread of pandemic COVID-19 still prevailed. Moreover, policy had been framed by the State Government for release of the prisoners, the assessee deserved to be released on bail in terms of the policy.

The Hon'ble Supreme Court, vide its order dated 23.03.2020 had directed all the States or Union Territories to constitute High Powered Committees which would decide the prisoners who 'may' be released on interim bail or parole during the pandemic (COVID-19) to protect the health of the prisoners and to restrict transmission of COVID-19 by decongestion of prisons. The purpose was to prevent the overcrowding of prisons so that in case of an outbreak of corona virus in the prisons, the spread of the disease is manageable.

The High Court observed that in the given case there were allegations against the assessee for committing offence under GST which is punishable for a maximum sentence of 5 years. As per the policy cases of under trials charged with offences punishable for a sentence of up to 7 years could be considered. However, the offence committed by the assessee involve huge amount which need to be considered while releasing the assessee on bail. It was also noticed that jail was decongested and no case of COVID-19 was reported within the premises of jail. Thus, the prisoners within the jail were relatively safe.

Therefore, in view of the nature and gravity of offence, the amount involved and no reported case of COVID-19 in jail, interim bail was denied to the assessee.

17. **No separate registration needed for works contract executed in another state other than principal place of business**

T & D Electricals, In re - *[2020] 116 taxmann.com 390 (AAR - KARNATAKA)*

The applicant is registered under GST Act as works contractor and wholesale supplier in Jaipur, Rajasthan. It has been awarded works contract which includes electrical, installation, testing and commissioning of township in the State of Karnataka. The applicant has sought advance ruling on whether the applicant requires separate registration in the State of Karnataka for executing the above works contract?

The Authority for Advance Ruling observed that as per the provisions of CGST Act, supplier is liable to be registered in the state from where he makes taxable supply of goods or services or both subject to threshold limit of aggregate turnover in a financial year. The applicant intends to supply goods or services or both from its principal place of business for which registration has been obtained i.e. Rajasthan and does not have any other fixed establishment. The location of the applicant is its principal place of business which is Rajasthan. Moreover, the applicant will execute the works contract at the temporary small space for office and store provided by the contractee in its premises located in Karnataka. Therefore, there is no requirement for a separate registration in Karnataka state for execution of works contract.

The Authority for Advance Ruling held that no separate registration is required by the applicant for execution of works contract in the State of Karnataka unless the applicant intends to have a fixed establishment at the project site in Karnataka.

Income Tax

Latest Updates, News and Judgments

1. **Various Reliefs in "Income Tax" announced by the Ministry of Finance in the Second tranche of COVID stimulus of Rs 20 lakh Crores**

Finance Minister Nirmala Sitharaman announced various reliefs in Income Tax in the Second tranche of COVID Stimulus of Rs 20 lakh Crore. Key takeaways are:

- **Return Filling date Extension-** Due date for all income-tax return for FY 2019-20 will be extended from 31 July 2020 to 30th November 2020 and tax audit from 30th September 2020 to 31st October 2020.
- **Reduction in TDS and TCS rate-**
    - TDS, TCS rate for non-salaried payments for period up to March 31, 2021 has been slashed by 25%, If date of deduction is 14.5.20 to 31.3.21, TDS @ 75% of normal rates to deducted on non- salary payments to residents.
    - TDS has been cut on 23 items such as securities, bank accounts, securities, payments to professionals etc. Also, TCS on 12 items have been cut. This has been done so that more money is left at the disposal of the people.
    - TDS on ecommerce participants which is applicable from 1st October 2020 @ 1% would be now 0.75 % till March 31st 2021.
    - The benefit of latest reduction in the rates of TDS and TCS will not apply to those not furnishing PAN or Aadhaar.

- **Vivaad se Vishwas-**The date for making payment without additional amount under the "Vivad Se Vishwas" scheme will be extended to 31st Dec 2020.

2. **No reassessment if disputed amount was subject matter of block assessment u/s 158BC: HC**

AudhutTimblo v. ACIT - ***[2020] 116 taxmann.com 478 (Bombay)*** A search was made at the office and residential premised of the petitioners and a block assessment was carried out. Notice under section 158BC was passed by making additions for unexplained cash credits. The assessee appealed against such order before CIT(A). CIT(A) set aside the order passed by the Assessing Officer (AO). Further, the revenue's appeal against the order of CIT(A) was dismissed by the ITAT. Thereafter, AO issued notice under section 148 for reopening of assessment. The assessee raised objections against reopening of assessment. The assessee submitted that the income which was

alleged to have escaped assessment was the subject matter of the order passed under section 158BC in which a block assessment was carried out. Further, regular assessment was undertaken for the same year and in the course of these proceedings as well information was sought in respect of the same income and upon furnishing such information, the assessment orders were made. The Bombay HC held that the amount had become the subject matter of the assessment both under section 158BC and section 143(3). There could have been no reason to believe that the income chargeable to tax had indeed escaped assessment. In the course of regular assessment, the AO had in fact asked for the information on respect of the amount alleged to have escaped assessment. The information was duly furnished by the assessee and the AO made orders under section 143(3). Thus, it was no longer open for the AO to issued order under section 148.

3. NBFC financing 'Fastway' for purchase of STBs was loan though title of asset was retained by NBFC as security

Fastway Transmission (P.) Ltd. v. ACIT - ***[2020] 116 taxmann.com 427 (Chandigarh - Trib.)*** Assessee-Fastway was engaged in the business of Multi System operators and Digital Cable Services (DCS). The DCS services were rendered through Set Top Boxes (STBs). The assessee was acting as an intermediate between local cable operators and broadcasters. During the assessment proceedings, Assessing Officer (AO) noticed that the assessee had entered into a financial lease agreement with NBFC for supply of STBs. Assessee treated STBs as fixed assets as transaction with NBFC was treated as Finance Lease, whereas, for the purpose of Income Tax Act, the transaction was treated as operating lease and lease rental paid to NBFC was claimed as deduction. AO disallowed the deduction claimed for lease rental by holding that the assessee had entered into finance lease and was entitled to claim depreciation on the leased assets. CIT(A) upheld the order passed by the AO. On further appeal, ITAT held that Income tax act does not differentiate between different types of lease transaction. Any expenditure incurred on capital assets cannot be allowed as deduction. However, an assessee can claim depreciation on the value of such asset. However, if such asset is not owned by the assessee and the same has been procured on lease for using it solely for business purpose, the lease rental paid will be admissible as revenue expenditure under section 37. The transaction between the assessee and NBFC was a loan/ finance transaction. The only role of the NBFC was to finance the transaction of purchase of equipment with the assessee selecting the equipment to be supplied by the dealer, using it for its expected economic life, paying back the entire cost of the equipment over the lease tenure. Assessee was exercising all rights of ownership over the asset and also bearing the risks of losses, damages, etc. associated with the ownership of the asset.

There was no option to the assessee to terminate the lease and return the asset before the end of the lease term. Thus, it was neither a lease, nor a hire purchase agreement, but a loan/ finance arrangement between the parties even if title of asset was retained by NBFC as security for recovery. Assessee was not entitled to claim principal component of alleged lease rent paid as 'revenue expenditure' under section 37(1) - However, it was entitled only to claim interest paid as part of lease rentals as expenditure under section 36(1)(iii). Further, it was also entitled to claim depreciation on assets purchased from borrowed capital.

4. CBDT notifies reduced TDS/TCS rates applicable from May 14, 2020

Press Release, dated 13-05-2020 The Central Board of Direct Taxes (CBDT) has notified the reduced rate of TDS and TCS for the period from 14-05-2020 to 31-03-2021. The board has also clarified that the benefit of reduced rate shall not be available if tax is required to be deducted/collected due to non-furnishing of PAN/Aadhaar number.

5. Interest exp. not allowable if assessee deliberately discounting LC to bore interest burden of sister concern

Yenepoya Resins & Chemicals v. DCIT - ***[2020] 116 taxmann.com 457 (Karnataka)***
The assessee was engaged in the business of manufacture of resins and chemicals with the help of credit purchases bearing interest and largely selling its finished products to its sister concern. Instead of using the sale bill pertaining to sister concern, it had availed of the letter of credit (LC) discounting with the banks and had availed of the loan and paid interest on the bank credit. Assessing Officer (AO) disallowed the interest expenditure claimed by assessee holding that it had deliberately adopted artificial and colourable device for reducing its income through arrangement of LC discounting in respect of sale bills raised in the name of the sister concern CIT(A) dismissed assessee's appeal by holding that LC was obtained allowing the sister concern to enjoy higher income which was subjected to deduction under section 80HHC. On further appeal, the ITAT held that no prudent businessman pays interest on the payment to creditors and at the same time does not charge corresponding interest on delayed payment from its debtor. The aforesaid arrangement was made with an object to circumvent the provisions of the Act to facilitate its sister concern to rest on the shoulders of the assessee. Assessee had deliberately created an artificial and colourable devise for reducing its income offered for taxation through an arrangement of LC and thus, the deduction claimed by the assessee on account of interest paid to the bank and also to its creditors were not allowable. On further appeal, the Karnataka HC

held that since all the authorities had assigned valid and cogent reasons, it could be held that the sister concern was eligible for more deduction under section 80HHC on mere surmise and conjectures. Accordingly, the order passed by the ITAT was to be upheld.

6. CBDT allows Sec. 80G deduction on donations made to 'Shri Ram Janmabhoomi Teerth Kshetra'

Notification No. 24/2020, dated 08-05-2020 Section 80G of the Income-tax Act, 1961 allows deduction of any sum paid by assessee by way of donation. Donation is required to be made to the prescribed funds, institutions or associations etc. mentioned under the section. Section 80G(2)(b) also provides deduction of any sum paid for renovation or repair of any such temple, mosque, gurdwara, church or other place where donation which is notified by the Central Government to be of historic, archaeological or artistic importance or to be a place of public worship of renown throughout any State or States. The Central Board of Direct Taxes has notified 'Shri Ram Janmabhoomi Teerth Kshetra' as place of historic importance and a place of public worship of renown for the purpose of section 80G. The taxpayers shall be eligible to get deduction of donation made from the Financial Year 2020-21.

7. CBDT relaxes residency provisions for Individuals who unable to leave India due to COVID-19

Circular 11 of 2020, dated 08-05-2020 Various representations have been received by the Central Board of Direct Taxes (CBDT) stating that due to declaration of the lockdown and suspension of international flights owing to outbreak of Novel Corona Virus (COVID-19), many individuals who had come on a visit to India, are required to prolong their stay in India. Concerns have been expressed that this extra stay in India may make them a resident of India under section 6 of the Income-tax Act, 1961. In order to avoid genuine hardship in such cases, the CBDT has granted following reliefs while determining residential in respect of individuals who has come to India on visit before March 22, 2020: a) Individual who has been unable to leave India on or before 31st March, 2020, his period of stay in India from 22nd March, 2020 to 31st March, 2020 shall not be taken into account. b) Individual has been quarantined in India on account of Covid-19 on or after March, 2020 and has departed on an evacuation flight on or before 31st March, 2020 or has been unable to leave India on or before 31st March, 2020, his period of stay from the beginning of his quarantine to his date of departure or 31st March, 2020, as the case may be, shall not be taken into account. c) Individual who has departed on an evacuation flight on or before 31st March, 2020, his

period of stay in India from 22nd March, 2020 to his date of departure shall not be taken into account.

8. **New procedure for registration/approval u/s 10(23C), 12AA, 35 & 80G deferred to 31-10-2020: CBDT**

Press release dated 09-05-2020 The Finance Act, 2020 has rationalized the procedure for approval/registration/ notification for certain entities under sections 10(23C), 12AA, 35 and 80G. Such procedures were applicable from 01-06-2020. As per the said procedure, the entities already approved/ registered/ notified under these sections would be required to file an intimation within 3 month i.e. by 31-08-2020. Further, new procedure for approval/ registration/ notification of new entities was also rationalized with effect 01-06-2020. The finance ministry has received various representation over the implementation of new procedure from 01-06-2020 due to outbreak of COVID-19 and consequent lockdown. Thus, the CBDT has decided to defer the new approval/registration/ notification procedure to 01-10-2020. Accordingly, already registered entities are required to file an intimation within 3 months from 01-10-2020 i.e. by 31-12-2020. Further, the amended procedure for approval/ registration/ notification of new entities shall also apply from 01-10-2020.

9. **HC justified additions as 'Suzlon' failed to deposit employee's contribution towards PF and ESI within time**

PCIT v. Suzlon Energy Ltd. - ***[2020] 115 taxmann.com 340 (Gujarat)*** The assessee-Suzlon Energy Ltd had failed to deposit employees contribution to the Provident Fund (PF) and Employees State Insurance (ESI) within the time prescribed in this behalf. Assessing Officer (AO) made additions by invoking section 36(1)(va) read with section 2(24)(x). The assessee preferred appeal against order of AO before the CIT(A). CIT(A) dismissed assessee's appeal and upheld the order passed by the AO. On further appeal, ITAT reversed the order passed by the AO by relying on the judgment of CIT v. Gujarat State Road Transport Corpn. [2014] 41 taxmann.com 100 wherein the Gujarat high court held that the relevant due date to be seen from not from the relevant month of salary but one pertaining to its payment. On revenue's appeal, the Gujrat HC held that section 38 of the Employee provident Fund and Miscellaneous Provisions Act, 1952, makes employer liable to deduct employee's contribution along with employer's contribution as fixed by the Government before payment of wages. Further, employer is liable to deposit the same with 15 days from the end of the month. The reference to 15 days from end of the month must be in relation to month for which wages are required to be paid. Thus, the HC quashed the order passed by the ITAT and

confirmed the additions made by AO.

10. AO couldn't invoke rule 8D if entire investments were made out of interest free own funds

ACIT v. PNB Gilts Ltd. - *[2020] 116 taxmann.com 418 (Delhi - Trib.)* Assessee received dividend income from investment including shares which were held as stock-in-trade. The assessee also received interest on bonds. Both the amount of dividend and interest were claimed by the assessee as exempt. In the return of income, no disallowance of expenses was made by the assessee for earning such exempt income. However, AO invoked provisions of section 14A read with Rule 8D and made disallowance for proportionate interest towards investment in assets yielding exempt income. The Delhi Tribunal restored the case back to AO for deciding a fresh. The Tribunal held that assessee shall provide all details of the investment in assets yielding exempt income as well as own funds and funds borrowed to AO. It also provide details of apportionment of interest expenses in relation to a stock-in-trade towards earning dividend income as well as towards earning trading profit. If the AO finds that entire investment in assets yielding exempt income had been made out of the interest free own funds, then no disallowance will be called for under rule 8D(2)(ii) and he will not be required to look into the apportionment of the expenses towards dividend income form shares held as stock in trade.

11. CBDT revises norms for invoking Mutual Agreement Procedure (MAP)

Notification No. 23/2020, dated 06-05-2020 The Central Board of Direct Taxes (CBDT) has notified the Income-tax (8th Amendment) Rules, 2020 wherein it has substituted the Rule 44G and omitted Rule 44H from the Income-tax Rules, 1962. Rule 44G provides for making application to the Competent Authority in India for invoking the Mutual Agreement Procedure (MAP) in Form No. 34F. The new Rule 44G has also prescribed revised norms for processing of such application by the Competent Authority. The existing Rule 44H has been omitted by the board. An average time of 24 months have been prescribed in the revised Rule 44G for the Competent Authority to arrive at a mutually agreeable resolution of the tax disputes in accordance with the agreement between India and the other country. No such time period was prescribed earlier.

12. No infirmity if rectification order isn't passed within 6 months as ITAT has power to extend such limitation period

PCIT v. ITAT - ***[2020] 116 taxmann.com 451 (Bombay)*** Appeal of assessee against order of the CIT(A) was dismissed by the Tribunal. Assessee filed misc. application recalling the ITAT's order and for hearing the appeal afresh. The ITAT passed an order recalling its earlier order and fixing the appeal for hearing afresh. Assessing Officer (AO) filed a writ petition challenging the validity of order passed by the ITAT. Revenue contended that time limit of six months is provided to rectify any mistake in the order which is apparent from the record. However, in the instant case, ITAT did not dispose of the misc. application of assessee within that prescribed limitation period. The Bombay HC held that use of word may in section 254(2) clearly indicates that the limitation period could not be construed in a manner that it cannot be extended. This is so because the assessee or AO can only bring the mistake to the notice of ITAT and due to the inability of the ITAT to pass such an order within the period provided, neither the assessee nor the revenue should suffer. Further, Rule 24 of the Income-tax (Appellate Tribunal) rules, 1963, provides that ITAT is vested with the power to recall an ex-parte order. For recalling such order, ITAT must be satisfied that there was sufficient cause for non-appearance of the appellant. No time limit is prescribed in the rule. In this case the ITAT had called the ex-parte order and fixed the appeal for hearing afresh which had been filed by the assessee only. No prejudice had been caused to the revenue by ITAT's order. Thus, the HC held dismissed the petition filed by the revenue

13. Surcharge and education cess is not leviable if tax rate is prescribed under DTAA: Delhi ITAT

JC Decaux S.A. v. ACIT - ***[2020] 116 taxmann.com 408 (Delhi - Trib.)*** The issue before the Delhi Tribunal was: *'Whether the AO was right in levying Surcharge and Education Cess on receipts in the nature of Royalties and reimbursements of other expenses, which was offered to tax by the Appellant on gross basis under the India - France DTAA?'* The Delhi Tribunal held that the education cess, as introduced in India initially in year 2004, was nothing but in the nature of an additional surcharge. Article 2(1) of the India-France DTAA provides that the taxes covered shall include tax and surcharge thereon. Once we come to the conclusion that education cess is nothing but an additional surcharge, it is only corollary thereto that the education cess will also be covered by the scope of Article 2. Accordingly, the provisions of Article 11 and 12 must find precedence over the provisions of the Income Tax Act and restrict the taxability, whether in respect of income tax or surcharge or additional surcharge -

whatever name called, at the rates specified in the respective article. Thus, the surcharge and education cess is not leviable when the tax rate is prescribed under DTAA.

14. Sum received for rectification & rework couldn't be treated as FTS without considering evidence filed by assessee

JCB Heavy Products Ltd. v. DCIT - *[2020] 115 taxmann.com 137 (Delhi - Trib.)*

Assessee was wholly owned subsidiary of a UK based company. It had entered into Technology Transfer Agreement to license patents, know-how,& designs and to transmit technical information for manufacture of licensed products in India. It received certain amount on account of rectification and rework done by assessee. Assessing Officer (AO) being of view that benefit extended by assessee or services provided by assessee to payers of such 'rectification of work' was not elaborated. Further no documentary evidence in support of same was furnished so as to corroborate that such receipts were merely reimbursements. Thus he treated said receipt was fees for technical services (FTS) under article 13 of DTAA between India and UK. Delhi Tribunal held that assessee had provided details of rectification and rework but Assessing Officer had not at all discussed same while giving aforesaid findings. Therefore, matter was to be remanded back to Assessing Officer/TPO for proper adjudication in consonance with evidences filed by assessee.

15. HC waives off Sec. 234A/B/C interest for subsistence of winding up order considering financial weakness of Co.

Tvl. Sanmac Motor Finance Ltd. v. CCIT - *[2020] 116 taxmann.com 437 (Madras)*

The assessee was engaged in the business of sale of motor vehicle and also operated as a Non-Banking Financial Company (NBFC). It had encountered difficulties in serving the depositors as a result of which it faced several hardships including arrest of Managing director. All the other directors and principal and responsible officers had resigned, as a result, interest of company could not be protected. The Official liquidator also failed to protect the assesssee's interest. The assessee accepted the tax liability but prayed for waiver of interest under section 234A, 234B and 234C on the ground that when the reassessment proceedings were taken up and notice under section 148 was issued, the assessee was already undergoing financial strains and was on the verge of being wound up before court. On writ, the HC held that during the period of dispute, the assessee was under a disability and could not discharge liability without the permission of the court. Since the assessee was being wound up, interest under income-tax act could not be levied as it was suffered a legal disability to pay tax. As

the assessee was under legal disability during the subsistence of winding up order and it was under the control of the court and the official liquidator, there should be a waiver of interest under section 234A, 234B and 234C for such period.

16. ITAT dismissed stay of demand appeal as assessee failed to prove financial difficulties faced by it

Shantananda Steels (P.) Ltd. v. ITO - ***[2020] 116 taxmann.com 335 (Chennai - Trib.)*** Assessee was trader in Steel. During assessment proceedings, Assessing Officer (AO) concluded that assessee had introduced its own unaccounted money in form of share capital and share premium into assessee-company from accommodation entry providers based in Kolkata, which led to additions been made in hands of assessee by invoking provisions of section 68. On appeal, Commissioner (Appeals) upheld addition made by the AO. Aggrieved-assessee filed the instant appeal before the Tribunal. In the appeal before the tribunal, assessee had filed stay application seeking stay of outstanding tax and interest thereon contending that it was facing severe financial crisis. The Tribunal held that genuineness of transactions as well as creditworthiness of creditors was doubted by authorities below and no evidence/material was placed by assessee to prove too contrary. Nor assessee could prove financial difficulties faced by it with evidences such as Balance sheet/bank statements, etc. Thus, on facts, no case had been made by assessee for stay of demand on all grounds of prima facie case, balance of convenience, irreparable loss and financial difficulties and, hence, stay petition stood dismissed.

17. Interest accrued on grant received from Govt. for constructing houses for Police Officials not taxable

PCIT v. Punjab Police Housing Corporation Ltd. - ***[2020] 116 taxmann.com 400 (Punjab & Haryana)*** The assessee was regularly given grants by the State of Punjab for various purposes including construction of houses for police officials. In a particular year, grant has remained un-utilised and money was parked in bank which earned interest. The Assessing Officer (AO) has opined that the interest was exigible to tax. On appeal, CIT(A) reversed the order passed by the AO. On further appeal, ITAT upheld the order passed by CIT(A) by holding that the amount of interest which accrued on the money parked in the bank would be deemed to be a further grant allowed for that particular purpose. It could be used for that purpose only and in the event it couldn't be used for that purpose, it had to be refunded back to the Government. The AO further file appeal before the High Court with the following grounds: a) Assessee was not able to show that it had ever returned the interest to the

Government. b) No such stipulation was there in the notification releasing the funds;. c) The Assessee was not a Company registered under section 25 of the Companies Act, 1956; d) Even in the hands of the Government it would be a revenue receipt; and e) The accrual of this interest couldn't be taken to be a casual income. The Punjab & Haryana High Court held that the findings of the AO were conjectural. Instead of saying that the interest income had been utilized by the Assessee on its own free will, he had inverted the law and held that merely because the Assessee had never refunded any amount of interest to the Government it means it was its income. The CIT had found that certain funds were released to the State of Punjab by the Central Government and if those are un-utilized and interest accrues on them, the amount of interest was deducted by the Central Government while giving subsequent grant. It was further held by the CIT that certain buildings which were required by the Punjab Government like the Cyber Police Cell had to be constructed by the Assessee out of the interest income because the Government did not release any funds for those purposes. Thus the order passed by the ITAT to be upheld by holding that question of law raised by the revenue does not arise.

18. Sec. 69B additions couldn't be made by presuming high purchase value of land on basis of amount of stamp duty paid

Gayatri Enterprise v. ITO - ***[2020] 116 taxmann.com 359 (Gujarat)*** The assessee acquired a land. The Principal Commissioner of Income-tax (PCIT) computed the value of such land by considering the amount paid as stamp duty. Accordingly, the PCIT made addition under section 69B for the difference between the value so computed and the value recorded of land by the assessee. The ITAT upheld the order passed by the ITAT. On further appeal, the Gujarat HC held that the provision of section 50C couldn't be applied for the purpose of making addition under section 69B. The provisions of Section 50C apply to the seller of the property and not to the purchaser of property. Unless it was established on record by the department that the consideration did pass to the seller from purchaser, it couldn't be said that department had right to make additions. Section 69B does not permit an inference to be drawn from the circumstances surrounding the transaction that the purchaser of the property must have paid more than what was actually recorded in his books of account. It is for the simple reason that such an inference could be very subjective and could involve the dangerous consequence of a notional or fictional income being brought to the tax contrary to the strict provisions of Article 265 of the Constitution of India.

Disclaimer

The information contained herein is of general nature and is not intended to address the circumstances of any particular individual or entity. Although we endeavour to provide accurate and timely information, there can be no guarantee that such information is accurate as of the date it is received or that it will continue in the future. No one should act on such information without appropriate professional advice after the thorough examination of particular situation.

The document is meant for private circulation only.

KEY TEAM

CA. Mukesh Aggarwal
(Senior Advisor)

Adv. Vivek Aggarwal
(Senior Partner)

CS. Kumkum Gupta
(Senior Partner)

Adv. Ritika Sharma
(Senior Associate)

CA. Sachin Singhal
(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

ABOUT US

A&A Law Corp is a full service law firm where lawyers, company secretaries, chartered accountants and other various legal experts works together as a team with a determination and focussed approach, providing spectrum of services and giving one stop solution for every business need and requirements.

We at A&A Law Corp believe in interpreting Law in its most reasonable way and applying legal principles to advance the cause of our clients. Each team member of A&A Law Firm is committed to the practice of Law equipped with an in-depth research on the subject and all its manifestations. As a team we are pledged to the oath of ensuring deliverables of foremost level with consummate proficiency and efficiency.

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

Singapore Office
10, Anson Road,
International Plaza, #33-13,
Singapore – 079903

T: +65 62243466
M: +65 83141339