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NEWSLETTER

Oct' 2020 Vol. I

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Latest update, New and Judgments

1. **Application of oppression and mismanagement dismissed as transfer of inter se members did not require approval of Board**

   Ajay M. Patel v. Aarohi Polymers (P.) Ltd. - *[2020] 119 taxmann.com 346 (NCL-AT)*

   The Appellant-shareholder filed the instant oppression and mismanagement application against the respondents alleging that they did not keep the appellant informed about decision of transfer of shares from one member to another.

   The Appellant alleged that the respondents denied applicants opportunity to exercise its pre-emptive right of purchase of shares which violated article 7 of Article of Association (AoA). However, the respondents took stand that transfer of shares in question was governed by article 8 which stated that previous sanction from the Board of Directors would not be required if sale was made in favour of existing member/members, their spouses, children or legal heirs.

   It was further stated that transfer of shares had not inducted any third party/stranger in nucleus of members/shareholders and the appellant himself was beneficiary in a similar transfer of shareholding.

   The Adjudicating Authority held that neither did transfer of share inter-se members required prior approval of the Board of Directors nor option of purchase to all existing members prior to effecting of such transfer was required. Order of the Adjudicating Authority being perfectly in consonance with settled position of law, instant application was to be dismissed.

2. **HC rejects writ petition as effective alternative remedy of appeal before NCLAT was available to petitioner u/s 61**

   K. Sailendra, In re - *[2020] 119 taxmann.com 447 (TELANGANA)*

   In the instant case, the petitioner filed a writ petition challenging order of the NCLT admitting petition for initiation of Corporate Insolvency Resolution Process against the corporate debtor on ground that respondents had manipulated and falsified accounts and misappropriated funds apart from committing fraud.

The NCLT held that said aspects could be considered by the NCLAT, if appeals were preferred by the petitioners under section 61 of the Code and, therefore, the writ petition could not be entertained since petitioners had an effective alternative remedy before NCLAT under section 61 under the Insolvency and Bankruptcy Code, 2016.

3. **No prior permission from Registrar of Chits is required for amalgamation of company into business of chit funds**
Shriram Chits (Karnataka) (P.) Ltd. v. Registrar of Co-operative Societies & Chits - *[2020] 119 taxmann.com 344 (NCL-AT)*

The Appellant filed an application seeking directions with regard to convening and holding meeting of shareholders and creditors of company for purpose of approving, with or without modifications, to obtain sanction of Tribunal to scheme of amalgamation.

However, the NCLT rejected said application with observation that ordinary public was involved in 'chit funds' business of company and it was necessary for company to take permission from the Registrar of Co-operative Societies and Chits. But nothing was brought to record to suggest that for merger of chit funds companies, there was a need of such prior permission nor Tribunal had shown any provision and ground. Thus, the matter was to be remitted to the NCLT to pass an appropriate order approving scheme of amalgamation.

4. **MCA extends late date of filing of various IEPF e-form**
General Circular No. 35/2020, Dated 29.09.2020

The Ministry of Corporate Affairs (MCA) extended the Companies Fresh Start Scheme, 2020 till Dec 31, 2020. Necessary relaxations, insofar as filing of various IEPF e-forms (IEPF-1, IEPF, 1A, IEPF-2, IEPF-3, IEPF-4, IEPF-7) and e-verification of claims filed in e-forms IEPF-5 without additional fees till Dec 31, 2020 have also been provided in the said circular. MCA has advised stakeholders to plan other concomitant actions accordingly.

5. **SEBI further relaxes timelines for compliance with regulatory requirements by trading members**
SEBI/HO/MIRSD/DOP/CIR/P/2020/191 October 01, 2020

In view of the prevailing situation due to Covid-19 pandemic and representation received from the Stock Exchanges, SEBI has decided to further extend the timelines for compliance with the regulatory requirements by the trading members / clearing members in respect of Maintaining call recordings of orders / instructions received from clients, KYC application form and supporting documents of the clients to be uploaded on system of KRA within 10 working days etc.

6. **SEBI provides operational guidelines for monitoring of foreign holding in Depository Receipts**
Circular No. SEBI/HO/MRD/DCAP/CIR/P/2020/190, Dated October 01, 2020

The market regulator, SEBI has issued operational guidelines for monitoring of foreign holding in Depository Receipts. The guidelines are put in place based on discussions with market participants. Indian depositories, in consultation with each other and market participants, may prescribe formats and other details to operationalize the guidelines.

As per framework, a listed Co. will appoint one of the Indian depositories as the designated depository for monitoring of limits in respect of depository receipts and the Designated Depository in co-ordination with Domestic Custodian, other Depository and Foreign Depository (if required) shall compute, monitor and disseminate the Depository Receipts (DRs) information as prescribed in the framework.

The said information shall be disseminated on website of both the Indian Depositories. To be noted the Designated Depository shall act as a Lead Depository and the other depository shall act as a Feed Depository.

7. **HC directs banks to provide a moratorium of EMI payable by borrower - company due to Covid-19 pandemic**
Subramanya Construction and Development Co. Ltd. v. Union Bank of India - *[2020] 119 taxmann.com 375 (Karnataka)*

In the instant case, the petitioner entered into an agreement with Karnataka Housing Board to develop and allot residential sites to public at large. The Petitioner took a term loan from the respondent-bank. The Loan was sanctioned against future receivables of rent from tenants of property, which were agreed to be deposited in an escrow account.

In terms of standing instructions, EMIs were recovered from escrow account and the petitioner-company stated that in view of COVID-19 pandemic and Government of India/State Government declaring lockdown with effect from 24-3-2020 in entire country, construction and development activities were affected and the petitioner-company faced a severe cash crunch.

Therefore, the petitioner informed the respondent-bank that it was electing to opt for a moratorium for a period of three months, as per guidelines issued by the Reserve Bank of India. The Petitioner also sought repayment of all such amounts withdrawn by bank from escrow account for period of moratorium. However, bank did not favorably respond to requests made by company, and, therefore, the petitioner filed writ petition for direction to the respondent-bank to provide a moratorium for EMIs payable for a period between 1-3-2020 till 31-5-2020 with regard to payment of instalments by petitioner in respect of loan account and also to direct bank to release all amounts received by it towards loan account for EMIs payable from 1-3-2020 to 31-5-2020 from rents received from tenants.

Since the respondent-bank had withdrawn amounts from escrow account towards EMIs from month of January 2020 till 30-4-2020, question of classifying the petitioner-company as NPA, would not arise .If petitioner was prevented from utilizing lease rentals towards funding its business, entire business of petitioner-company would collapse and, therefore, the respondent-bank was directed to provide a moratorium of EMIs payable by the petitioner-company for period from 1-3-2020 till 31-5-2020 with regard to loan account and would also re-deposit all

monies withdrawn from escrow account, back to account of the petitioner-company, which were withdrawn towards EMIs for months of March, April and May 2020

8. **NCLT directs Company to transfer shares to transferee as no complaint of loss of share certificate was filed**
R. Ajayender v. Karvy Computershare (P.) Ltd. ***[2020] 119 taxmann.com 412 (NCLT - Hyd.)***

In the instant case, the petitioner's father purchased 100 shares of the respondent company paying full sale consideration through share broker from its first registered joint holders 'M' and 'D'. However, the petitioner's father being ignorant of the procedure, kept shares with him on as is where basis.

The Petitioner later approached the respondent company requesting for transfer of physical shares into the petitioner's name. The Respondent - company returned the original transfer form and original shares stating shares as bad delivery on account of signature of transferor mismatch and directed the petitioner to re-lodge shares with transferor attestation.

In reply, the petitioner stated that the whereabouts of the transferor was not known and so he could not submit the required documents. The petitioner filed a petition under section 58 seeking directions to respondents to transfer the share certificate from its first registered holder to the petitioner and further to allot bonus shares and all other benefits in favor of the petitioner

Since the notice was sent to the original transferor/shareholders, 'M' and 'D' but notices could not be served and further no complaint was lodged regarding theft/loss of share certificate till date, the respondent was be directed to register the transfer of shares in favor of petitioner provided petitioner furnished indemnity for an amount to be fixed by the respondent. Thus, the petition filed by the petitioner was to be allowed and the respondent was directed to transfer impugned 100 shares, in favor of the petitioner.

9. **Petition filed u/s 7 withdrawn on settlement between parties and payment to financial creditor**
Ravi Kizhakedath v. Heartwares Medicals India (P.) Ltd. ***[2020] 117 taxmann.com 477 (NCLT - Kochi)***

The applicant-financial creditor had granted a debt as an unsecured loan for a period of seven years to the corporate debtor. The Applicant filed a petition against the corporate debtor for the initiation of the corporate insolvency resolution process under section 7 of the Code.

The corporate debtor stated that the matter had been settled between parties and the Respondent-company had agreed to pay the debt amount in 5 (five) equal monthly installments and the applicant had agreed to accept the same as a settlement of its claim.

The Applicant accepted that, subject to realization of post-date cheques, all claims of the applicant with respect to respondent-company were fully realized and settled and no further claims were pending with respondent-company and the applicant released respondent-company from any further obligation with respect to any of the matters raised in the petition.

In view of the settlement arrived at between parties, the financial creditor filed a withdrawal memo with NCLT and the application filed by it was to be withdrawn.

10. **SEBI introduces a new indicator to "Risk-o-meter" to depict high risk for mutual fund products**
Circular No. SEBI/HO/IMD/DF3/CIR/P/2020/197, Dated October 05, 2020

Based on the recommendation of Mutual Fund Advisory Committee (MFAC), the SEBI has reviewed the guidelines for product labeling in mutual funds whereby it has introduced another level 'very high risk' to the risk-o-meter with effective from January 1, 2020.The risk-o-meter helps investors gauge the level of risk through a meter. It has 6 level of risk namely, Low Risk, Low to moderate Risk, Moderate risk, High risk and very high risk. Based on the scheme characteristics, Mutual Funds shall assign risk level for schemes at the time of launch of scheme/New Fund Offer.

In addition to that, any change in risk-o-meter shall be communicated by way of Notice cum Addendum and by way of an e-mail or SMS to unit holders of that particular scheme. Therefore, Mutual Funds shall disclose the risk level of schemes as on March 31 of every year, along with number of times the risk level has changed over the year, on their website and AMFI website.

11. **Proceeding u/s. 9 are summary in nature, AA couldn't go into questions regarding contractual agreement between parties**
Indo Alusys Industries Ltd. v. SMW Metal (P.) Ltd. - *[2020] 119 taxmann.com 461 (NCL-AT)*

In the instant case, two companies IA and SM had long standing business relations in view of which they arrived at a reconciliation of accounts wherein credit notes were issued by SM to IA to be adjusted against future supplies. The MOU was followed by an Indemnity Bond executed by SM wherein IA would not claim an amount beyond Rs. 2.46 crores in future.

At time when first tranche was getting adjusted, SM revoked agreement stating that credit notes were in nature of discount/benefit offered by SM to IA for subsequent purchases at competitive market rates as a special offer keeping in mind their long business relations which were never issued against any outstanding and since IA had failed to place adequate orders they were constrained to terminate MOU.

Thereafter, there were cross petitions, in first petition IA prayed for initiation of resolution process against corporate debtor, whereas second petition was filed by SM as operational creditor claiming principal amount together with interest accruing thereon.

The Appellate Tribunal held that the proceedings under section 9 of the Insolvency and Bankruptcy Code, 2016 are summary in nature, therefore, Adjudicating Authority could not have gone into questions whether SM could or could not have unilaterally withdrawn from MoU and Indemnity bond given. Further, since there was a pre-existing contested dispute, Adjudicating Authority rightly held that it could not quantify liability, which would be matter of Trial.

12. **Regulating Authority cannot rewrite procedure of dissolution obliterating provisions of IBC: NCLT**
Invest Asset Securitisations & Reconstruction (P.) Ltd. v. Mohan Gems & Jewels (P.) Ltd. - *[2020] 120 taxmann.com 35 (NCLT - New Delhi)*

Liquidator filed an application as per Regulation 45(3)(a) of IBBI Liquidation Process Regulations, 2016 for closure of Liquidation Process of the corporate debtor without opting for dissolution of the corporate debtor in terms of section 54. The premise of the corporate debtor was sold as going concern in E-auction held on 20-11-2019.

The NCLT held that when dissolution is made explicit, IBBI ought not to have ignored mandate under section 54; when procedure itself is part of enactment, Regulating Authority cannot rewrite procedure obliterating provisions of IBC and what could be liquidated is assets of debtor company, this concept of liquidation of assets shall not be construed as inclusion of sale of company and, therefore there cannot be any other procedure which is militating procedure set out under Code and application was to be dismissed as misconceived.

13. **SEBI extends facility for conducting e-meetings of unitholders of REITs and InvITs up to Dec. 31, 2020**
Circular No. SEBI/HO/DDHS/DDHS/CIR/P/2020/201, Dated October 08, 2020

SEBI vide. SEBI circular no. SEBI/HO/DDHS/DDHS/CIR/P/2020/102 dated June 22, 2020 had permitted Real estate investment trusts (REITs) and infrastructure investment trusts (InvITs) to conduct meetings of unitholders through video conferencing (VC) or other audio visual means (OAVM) subject to compliance with the procedure specified up to Sept, 2020. In this respect, the SEBI had received representations for extending the facility of VC or OAVM for conducting extraordinary meetings of unitholders for some more time due to the pandemic. In this regard, it has now been decided to extend the facility of VC or OAVM for conducting extraordinary meetings(s) of unitholders by InvITs/ REITs upto December 31, 2020, subject to compliance with the prescribed procedure.

14. Interest Subvention Scheme for MSMEs extended till March 31, 2021: RBI Circular No. DOR (PCB).BPD.Cir No.3/13.05.001/2020-21 October 7, 2020

Government of India, Ministry of Micro, Small and Medium Enterprises (MSMEs) had announced the 'Interest Subvention Scheme for MSMEs 2018' on November 2, 2018 for Scheduled Commercial Banks. The scheme provides for an interest relief of 2% p.a. to eligible MSMEs on their outstanding fresh/incremental term loan/working capital during the period of its validity. Now, it has been decided to extend the validity of the scheme for another one year, i.e., March 31, 2021. Accordingly, fresh or incremental term loan / working capital limit extended by co-operative banks with effect from March 3, 2020 will be eligible for coverage under the scheme. The RBI further provided that Acceptance of claims in multiple lots for a given half-year by eligible institutions is permitted.

Requirement of Udyog Aadhaar Number (UAN) may be dispensed with for units eligible for GST. Units not required to obtain GST may either submit Income Tax Permanent Account Number (PAN) or their loan account must be categorized as MSME by the concerned bank. . Trading activities have also been allowed to be covered under the scheme without UAN.

15. Debt claimed in CIRP plea not barred by limitation when debtor had acknowledged debt
Gouri Prasad Goenka v. Punjab National Bank - *[2020] 119 taxmann.com 452 (NCL-AT)*

The Corporate debtor company availed various credit facilities from the financial creditor bank on 23-2-2005. However, the corporate debtor did not maintain financial discipline.

The loan facilities were restructured on 10-3-2008 and the operational creditor filed Corporate Insolvency Resolution Process (CIRP) petition in May 2018 which was admitted by the Adjudicating Authority.

On appeal, the corporate debtor raised a plea that debt claimed by the financial creditor was barred by limitation. Since in 2018 itself corporate debtor in a letter written to financial creditor agreed to settle its dues on an OTS basis which was not

accepted by the financial creditor, it could be considered as a clear acknowledgment of debt and, therefore, debt claimed by the financial creditor was not barred by limitation. Therefore appeal was to be dismissed.

16. **SEBI amends norms relating to Listing obligations and Disclosure requirements**

Notification No. No. SEBI/ LAD-NRO/GN/2020/33 Dated 08.10.2020

SEBI has amended the norms relating to Listing Obligations and Disclosure Requirements whereby amendment has been made to Regulation 54 requiring listed entities to maintain 100% asset cover as per the terms of offer document/information memorandum or debenture trust deed sufficient to discharge the principal amount at all times for the non-convertible debt securities issued.

Amendment has also been made to Regulation 56(1)(d) requiring listed entities to obtain half-yearly certificate from a statutory auditor regarding maintenance of 100% asset cover or asset cover as per the terms of offer document/ Information Memorandum and/or Debenture Trust Deed, including compliance with all the covenants, in respect of listed non-convertible debt securities along with the half-yearly financial results. The requirement of submission of half yearly certificate is however not applicable where bonds are secured by a Government guarantee.

As per amended norms, now listed entities are also required to make disclosure to stock exchanges with regard to Initiation of Forensic audit. The listed entities shall disclose the fact of initiation of forensic audit along-with name of entity initiating the audit and reasons for the same, if available. Entities shall have to disclose Final forensic audit report (other than for forensic audit initiated by regulatory / enforcement agencies) along with comments of the management, if any.

17. SEBI releases additional guidelines on Inter Scheme Transfers of Securities

SEBI releases additional guidelines on Inter Scheme Transfers of Securities

SEBI has come out with additional safeguards to ensure that transfers of securities from one scheme to another scheme in the same mutual fund are in conformity with the investment objective. Guidelines for inter-scheme transfer of securities in mutual funds provides that if a security gets downgraded following Inter-Scheme Transfers (ISTs) within a period of four months, fund manager of the buying scheme has to provide detailed justification to the trustees for purchasing such security.

18. SEBI tweaks Debenture Trustees Regulations

Notification No. SEBI/LAD-NRO/GN/2020/34 Dated, 08.10.2020

SEBI has amended norms relating to Debenture Trustees whereby regulation 14 has been amended requiring every debenture trustee to accept the trust deeds which shall contain the matters as specified in section 71 of Companies Act, 2013 and Form No. SH.12 specified under the Companies (Share Capital and Debentures) Rules, 2014. Such trust deed shall consist of two parts Part A containing statutory information on debt issue; Part B containing specific details to the particular debt issue.

SEBI has further expanded the scope of duties of debenture trustees now, before creating a charge on the security for the debentures, the debenture trustee shall have to exercise independent due diligence to ensure that such security is free from any encumbrance or that it has obtained the necessary consent from other charge-holders if the security has an existing charge, in the manner as may be specified by the Board from time to time. The Debenture Trustee must also ensure the implementation of the conditions regarding creation of security for the debentures, if any, debenture redemption reserve and recovery expense fund.

Also, in case where listed debt securities are secured by way of receivables/ book debts, it shall, - (i) on a Quarterly basis- (a) carry out the necessary due diligence and monitor the asset cover in the manner as may be specified by the Board from time to time. (ii) on a Half-Yearly basis- (a) obtain a certificate from the statutory auditor of the issuer giving the value of receivables/book debts including

compliance with the covenants of the Offer Document/Information Memorandum in the manner as may be specified by the Board from time to time.

19. <u>IBBI standardises meetings norms of Disciplinary Committee and Appellate Panel of RVOs</u>
<u>CIRCULAR No. IBBI/RVO/34/2020 Dated, October 09, 2020</u>

Insolvency and Bankruptcy Board of India has observed that the Registered Valuers Organisations (RVOs) have been following different practices in conducting the meetings of the Disciplinary Committee (DC) and Appellate Panel (AP) and, accordingly, with a view to bring uniformity in conducting meetings, the IBBI vide . CIRCULAR No. IBBI/RVO/34/2020 Dated, October 09, 2020 has come up with following directions that are to be followed by the DC and AP of the RVOs while conducting the meetings:

a. Meeting to be held only if there is an agenda:
The IBBI's directions provides that meetings of the DC and AP should be held only if there is an agenda for the meeting. Accordingly, the meeting of the DC will be held for considering the issue or disposal of a show cause notice (SCN) to a member. The meeting of an AP would be held to consider the issues raised in the appeal filed by the aggrieved against the order passed by the DC

b. E-meetings preferable during covid-19 pandemic:
Keeping in view the current pandemic, IBBI has prescribed that meetings must be held preferably, through an appropriate Video Conferencing (VC) facility

c. One week notice:
One week's notice is to be given to all the members for holding any meeting and notice for the same is to be sent through email

d. Signing of minutes and quorum:
The minutes shall be signed by the members of the committee present during the meeting; The quorum for the meeting should be as provided in the Bye

laws of the RVO but should be a minimum of two members including the Chairperson and;

e. Disclosure of conflict of interest:
If a member of the committee is related to the person against whom action is proposed by the DC or AP, or there is any other issue of conflict of interest, the member shall recuse himself/herself from the proceedings.

f. Other conditions:
The directions also prescribes that Governing Board of the RVO shall be the sole authority for fixing the amount of sitting fee to be paid to the members of the DC and AP, but it cannot be less than the amount payable to the independent director as sitting fee;

ii. In case, any of the member who has been nominated by the IBBI does not agree to the amount of fee proposed to be paid, than RVO shall bring this fact to the notice of IBBI within seven days, upon which another person will be nominated; and iii. The tenure of IBBI's nominee shall, in general be for two years from the date of appointment, unless decided otherwise by the IBBI.

20. <u>Sovereign Gold Bond Scheme (SGB) 2020-21, series VII opens for subscription</u>
<u>Circular No. RBI/2020-2021/52 IDMD.CDD.No.730/14.04.050/2020-21 October 9, 2020</u>

The Government of India has announced the Sovereign Gold Bond Scheme (SGB) 2020-21, Series VII, VIII, IX, X. XI and XII. There will be a distinct series for every tranche. The SGB Scheme 2020-21 Series VII will be open for subscription From October 12-16, 2020. SGB 2020-21 is issued by the RBI on behalf of Government. Bonds are denominated in multiples of grams of gold with a basic unit of 1 gram and tenure of the SGB will be 8 years with exit option after 5th year to be exercised on interest payment dates. The Subscription of the Gold Bonds under this Scheme shall be open (Monday to Friday) on the specified dates,

provided that the Central Government may, with prior notice, close the Scheme at any time before the specified period hereunder:

Subscription for the Bonds shall be made in the prescribed application form (Form A) or in any other form as near as thereto, stating clearly the grams (in units) of gold and the full name and address of the applicant. Every application must be accompanied by the 'PAN details' issued by the Income Tax Department to the investor(s).

Scheduled Commercial Banks (excluding RRBs, Small Finance Banks and Payment Banks), designated Post Offices (as may be notified), Stock Holding Corporation of India Ltd (SHCIL) and recognized stock exchanges viz., National Stock Exchange of India Limited and Bombay Stock Exchange Ltd. are authorized to receive applications for the Bonds either directly or through agents and render all services to the customers The Receiving Office shall issue an acknowledgment receipt in Form B' to the applicant.

21. Liability to pay invoices cannot be denied when goods were received by corporate debtor

Priya Trading Co. v. Veda Biofuel Ltd. - *[2020] 119 taxmann.com 409 (NCLT - Hyd.)*

In the instant case, the operational creditor and the corporate debtor entered into a raw material supply agreement for supply of broken rice and coal to the corporate debtor. The Operational debtor stated that despite timely and qualitative supply of broken rice and coal, the corporate debtor failed and neglected to pay amount of pending invoices of the operational creditor even after several reminders.

The Operational creditor filed petition under section 9 of the Code for initiating corporate insolvency resolution process against the corporate debtor stating that the corporate debtor had defaulted in repaying a sum.

The Corporate debtor contended that there existed no contract between the operational creditor and the corporate debtor for supply of raw material. It was found that two persons 'Ar' and 'An' entered into contract with the corporate debtor

for supply of raw material but they supplied raw material through their firm which was operational creditor.

The Corporate debtor was accepting consignment delivered by the operational creditor. Even in the absence of an agreement, the operational creditor was entitled for money for supply of raw material and the corporate debtor could not say that it was not liable to pay to the operational creditor on ground that it entered into contract with two individuals.

Having received raw material, it was duty of the corporate debtor to honour invoices raised by the operational creditor. Since the corporate debtor categorically admitted an amount was actually payable to supplier, the operational creditor had locus standi to file petition under section 9 against the corporate debtor. There was no material filed by the corporate debtor that there existed a dispute in fact between it and the operational creditor, and, therefore, petition filed by the operational creditor was to be admitted.

22. Foreign contribution to be received only in designated 'FCRA Account' at New Delhi branch of SBI: MoHA

Circular No. F. No. II/21022/23(35)/2019-FCRA-III, Dated 13.10.2020

The Ministry of Home Affairs (MHA) has amended section 17 of the Foreign Contribution (Regulation) Act, 2010 to provide that every person who has been granted certificate or prior permission under section 12 shall receive foreign contribution only in an account designated as ''FCRA Account'' which shall be opened in branch of the State Bank of India at New Delhi.

The Central Government has specified the New Delhi Branch (NDMB) of the State Bank of India (SBI), 11, Sansad Marg, New Delhi-110001 for the purpose of opening of the FCRA Account to receive Foreign Contribution.

All those NGOs/persons/associations who have already been granted certificate of registration to receive Foreign Contribution and whose present accounts are in banks or branches other than specified branch (NDMB) shall have to open FCRA Account in SBI, New Delhi branch by March 31, 2021

MHA further clarified that applicants shall have complete liberty to retain its present FCRA Account as another FCRA account in any branch of a scheduled bank of its choice. They can link this account with the designated FCRA account. MHA also clarified that NDMB shall not levy any transfer fee/charges for transferring the Foreign contribution from the existing FCRA account to the designated FCRA Account or other utilization account in a branch of scheduled bank.

23. CIRP plea rejected as civil suit was already filed against corporate debtor regarding supply of defective goods

Consumer Products Distribution Centre v. Genmedics Healthcare (P.) Ltd. ***[2020] 120 taxmann.com 69 (NCLT - Hyd.)***

The Petitioner-Operational creditor was distributor of vitamin gummies which was supplied by the corporate debtor. The Goods supplied by the corporate debtor were found to be defective and they were returned to corporate debtor.

However, the corporate debtor did not dispute receiving defective goods and issued credit notes for returned goods. The operational creditor raised debit notes but the corporate debtor did not pay value of those defective goods.

The Operational creditor filed suit but still the corporate debtor did not repay any amount and the operational creditor filed instant CIRP application.

Since the operational creditor was a distributor of goods supplied by the corporate debtor and it was nothing but a kind of service being provided to the corporate debtor in respect of goods supplied by the corporate debtor, petitioner would fall under definition of "Operational Creditor" and amount in question would fall under definition of "operational debt".

Since the operational creditor had already filed a civil suit against the corporate debtor in respect of repayment of amount, it amounted to pre-existing dispute and as such instant CIRP application was to be rejected.

24. Name of Co. struck off from register of companies was to be restored as appellant was carrying on its business

Jaishree Dealcomm (P.) Ltd. v. Registrar of Companies - *[2020] 119 taxmann.com 418 (NCL-AT)*

The Appellant cum directors filed an application for restoration of name of the company which was dismissed on ground that they being disqualified could not maintain an appeal. However, from share certificates and annual returns of company it was found that the appellants were shareholders of the company and thereby entitled to file appeal as per section 252(3) of the Companies Act.

Further, it was found that the appellants had not filed their annual returns since financial year 2013-14 onwards though the appellant company was regularly carrying on its business as evidenced by auditors reports and financial statement for year ended 31-3-2014 to 31-3-2017. Therefore, order striking name of company from register of companies was prejudicial to shareholders of company and was to be set aside and name of company was to be restored.

25. SEBI cautions Investors against unsolicited investment tips

Press Release No. 53/2020, Dated 14.10.2020

The market regulator, SEBI has cautioned all investors and the general public not to rely on unsolicited stock tips/investment advice circulated through bulk SMS, websites, and social media platforms such as WhatsApp, Telegram, etc.

SEBI further cautioned that such messages are sent to investors and the general public usually recommending to deal in specific stocks of listed companies, indicating target prices and giving fraudulent, misleading/false information relating to listed companies, inducing them to deal in these stocks, SEBI has advised investors to exercise appropriate due diligence before dealing in the securities market.

26. CIRP initiated when corporate debtor failed to repay a loan taken from financial creditor and cheques were dishonoured

Indus Container Lines (P.) Ltd. v. SVMR Logistics (P.) Ltd. - *[2020] 120 taxmann.com 94 (NCLT - New Delhi)*

The Corporate - debtor had availed a short term loan from a financial creditor under a revolving loan agreement entered into between both parties. The Corporate debtor issued two security cheques in lieu of the amount availed by it under said agreement. However, the corporate -debtor failed in honouring terms of the revolving loan agreement, and on further request to the corporate debtor for clearing outstanding amounts, the corporate debtor issued cheques in favor of financial creditors which were dishonoured by the bank due to insufficient funds.

The Applicant submitted a security cheque for encashment against repayment of loan amount and said security cheque was also not en-cashed due to insufficient funds in the account of the corporate debtor. Therefore, the applicant filed an application under section 7 of the Insolvency and Bankruptcy Code, 2016.

Since there was a clear default in repayment of financial debt by the corporate debtor, a petition filed for initiation of CIRP against the corporate debtor was to be admitted.

27. Dispute as to quantum of debt not material, when default on part of corporate debtor is more than Rs. 1 lakh

Andritz Hydro (P.) Ltd. v. Indira Priyadarshini Hydro Power (P.) Ltd. - *[2020] 120 taxmann.com 98 (NCLT - Hyd.)*

In the given case, a contract agreement was executed between the petitioner-operational creditor and the corporate debtor for the supply of electro-mechanical plant and equipment for the hydro - electric project. The Operational creditor kept performing its part of obligations by importing equipment as required for project and raised invoices.

However, payments were not being made by the corporate debtor and only part payments were made from time to time. The Corporate debtor admitted its liability to make payments towards pending outstanding as well as entry tax payments and

Demand notice was issued. In reply, the corporate debtor raised a dispute with regard to the quantum of claim.

Since, the dispute as to quantum of debt did not alter situation so long as there was default on part of the corporate debtor for more than Rs. 1 lakh. Hence, there was a clear admission of debt on part of the corporate debtor and there was a default in repayment, instant CIRP application to be admitted.

28. Advance consideration towards booking of flat is financial debt: NCLT Jitendra Kantilal Shah v. Sutlej Housing (P.) Ltd. - *[2020] 119 taxmann.com 406 (NCLT - Mum.)*

The Applicant advanced a sum as loan to the corporate debtor in form of advance consideration towards booking of eight flats in corporate debtor's project 'Dadar Gardens' which was repayable at option of applicant.

The Corporate debtor issued eight allotment letters to applicant for eight flats provisionally booked and acquired by applicant. The corporate debtor also issued Post Dated Cheques (PDCS) in favour of the applicant to ensure timely repayment of advance consideration along with interest.

The Applicant submitted that when it presented PDCS issued by the corporate debtor for encashment they were returned unpaid for reason 'payment stopped by drawer'. The Financial creditor/applicant filed application under section 7 of the Code against the corporate debtor, for initiating corporate insolvency resolution process.

The advance consideration was loan granted by the applicant to the corporate debtor as same was given for time value of money, and said financial facility amounted to financial debt within meaning of section 5(8) of the Code. Since debt and default of the corporate debtor had been established, application filed under section 7 was to be admitted.

29. Another CIRP against same corporate debtor by different operational creditor wouldn't be maintainable: NCLT

Jotun India (P.) Ltd. v. A.R. Coating Solutions India (P.) Ltd. - *[2020] 119 taxmann.com 405 (NCLT - Mum.)*

In the instant case, a Company petition was filed under section 9 of the Insolvency and Bankruptcy Code, 2016 by the operational creditor seeking to initiate Corporate Insolvency Resolution Process (CIRP) against the corporate debtor on ground that the corporate debtor defaulted in making payment.

However, after hearing the counsel for the operational creditor, it was found that said corporate debtor had already been placed under CIRP by the Adjudicating Authority in an earlier company petition filed by another operational creditor. Therefore instant petition would not be maintainable and was to be dismissed as in fructuous.

Goods and Service Tax (GST)

Latest Updates, News and Judgments

1. **Sub-contracted transporter is not GTA but merely a goods transport operator, MH AAR ruling upheld by AAAR**
Liberty Translines, In re - *[2020] 120 taxmann.com 9 (AAAR-MAHARASHTRA)*

The applicant is the owner of various goods transport vehicles and has registered itself as GTA under GST. M/s Posco ISDC Pvt. Ltd. ('POSCO') which is also providing transportation services has sub-contracted GTA related work orders to the applicant. The applicant has sought an advance ruling to determine whether it can also qualify as GTA in this arrangement with POSCO and issue consignment notes.

Earlier, the Authority for Advance Ruling ('AAR') held that the services rendered by the applicant to POSCO as a sub-contractor would not be classified as GTA services because POSCO as the main contractor is already classified as GTA. In the applicant's case, since all the details of the goods, would be shared with POSCO and not with the applicant, the consignment note shall be issued by POSCO who would be availing the services of the applicant by way of hiring vehicles of the applicant. It was held that multiple consignment notes cannot be issued for the same consignment. The applicant filed an appeal against the ruling pronounced by AAR.

The Appellate Authority for Advance Ruling ('AAAR') observed that the applicant is not receiving goods directly from the consignor or consignee of the goods but from POSCO who themselves are acting as GTA. The applicant is merely a goods transport operator and not a GTA. Also, e-way bill in this proposed arrangement is required to be issued by POSCO being the actual transporter and not by the applicant. Thus, the applicant is hiring out their vehicles to POSCO for a consideration and hence, their services would be classified as rental services of transport vehicles. Further, the AAR ruling does not debar the applicant from

acting as GTA in other transactions where it enters into transport contract with the consignor or consignee directly.

In view of the above, the AAAR has upheld the ruling of the AAR and the appeal filed by the applicant is dismissed.

2. **KN AAAR declared the ruling of AAR levying 18% GST on the product 'Parota' as void-ab-initio**
Karnataka Appellate Authority for Advance Ruling, M/s ID Fresh Food (India) Pvt. Ltd-Order No. AAR/ AAAR/02/2020-21.

The applicant is a food product company involved in preparation and supply of wide range of ready to cook, fresh food such as parotas, chapatis, paneer, etc. The parotas prepared by the applicant are in ready to cook condition and have a shelf life of 3-7 days. The applicant has sought an advance ruling to determine whether the products Whole Wheat Parota and Malabar Parota can be classified under heading 1905, attracting 5% GST.

The Authority for Advance Ruling ('AAR') held that the impugned products are classifiable under heading 2106, taxable at the rate of 18%. The applicant filed an appeal before the Appellate Authority for Advance Ruling ('AAAR').

The AAAR observed that the investigation was already initiated against the applicant by DGGI on the same issue that was raised before the AAR. As per the provisions of Section 98(2) of the Central Goods and Services Tax Act, 2017 ('CGST Act') the application for advance ruling could not be admitted in the given case. The applicant is guilty for not revealing the fact that an investigation was pending against it by DGGI on the issue of classification of parota at the time of applying for an advance ruling.

Given the above, since the ruling was obtained by suppressing the material facts, the ruling pronounced by AAR is void ab initio. Further, the AAAR did not give any ruling on the issue pertaining to classification of product 'Parota' as the matter is pending in a proceeding under GST Act.

3. **Construction of breakwater wall to protect jetty is not 'plant & machinery'; ITC is not available: MH AAAR**
Konkan LNG (P.) Ltd., In re- [2020] 120 taxmann.com 26 (AAAR-MAHARASHTRA)

The applicant is engaged in the regasification of LNG which reached the plant through jetty. In order to protect jetty from high tide and forceful sea, break water wall has been constructed. The applicant has sought an advance ruling to determine eligibility of ITC on construction of breakwater wall.

The Authority for Advance Ruling ('AAR') held that ITC cannot be claimed as per Section 17(5) (d) of the Central Goods and Services Tax Act, 2017 ('CGST Act') on construction of breakwater wall for being an immovable structure and cannot be considered as plant and machinery. The applicant filed an appeal before the Appellate Authority for Advance Ruling ('AAAR').

The AAAR observed that as per Section 17(5)(d) of the CGST Act, goods or services used for construction of an immovable property except plant or machinery by taxable person on his own account even when used in the course or furtherance of business shall not be available as input tax credit ('ITC'). Further, Explanation to Section 17(5) of the CGST Act 'plant and machinery' has been defined as apparatus, equipment, and machinery fixed to earth by foundation or structural support that are used for making outward supply of goods or services and includes such foundation and structural supports but excludes land, building or any other civil structures.

The construction of breakwater wall involves extensive earthwork, civil work and foundation laying in order to build the same. As mentioned in the Explanation to Section 17(5) of the CGST Act, civil structures is specifically excluded from the meaning of 'plant and machinery'. Thus, breakwater wall qualifies as immovable structure.

Therefore, breakwater wall do not qualify as 'plant and machinery' and hence, ITC is not eligible on goods or services used for its construction. Ruling of AAR has been upheld.

4. **Leased property used for providing paying guest accommodation do not qualify as residential dwelling: KN AAAR**
Taghar Vasudeva Ambrish, In re -*[2020] 120 taxmann.com 104 (AAAR-KARNATAKA)*

The applicant along with four other owners ('lessor') have given the building on lease to M/s D Twelve Spaces Pvt. Ltd ('lessee'). The lessee has sub-leased the building to individuals including students for long stay accommodation. The applicant has sought an advance ruling to determine whether leasing of property can be considered as renting of residential dwelling for use as residence which is exempt from GST

The Authority for Advance Ruling ('AAR') held that lease services in the given case, cannot be treated as renting of residential dwelling for use as residence and hence, shall be liable to GST. The applicant filed an appeal before the Appellate Authority for Advance Ruling ('AAAR').

The applicant has contended that lessee has taken the property on lease for purpose of running a paying guest accommodation for students who reside between 3 months to 12 months. Since there is a degree of permanency in the students stay at the property, it can be said that the property is used for purposes of residence.

The AAAR observed that the term 'residential dwelling' is not defined under GST law. As per Service Tax Education Guide, 'residential dwelling' is any residential accommodation but does not include hotel, motel, lodge, etc. meant for temporary stay. From the perusal of records, it is found that the applicant has constructed the building with the intention of providing hostel accommodation which is more similar to sociable accommodation rather than residential dwelling.

In the present case, the lessee is using the property for running the business of paying guest accommodation. The exemption is available only if the residential dwelling is used as a residence by the person who has taken the same on lease. However, the lessee is not using the leased property for use as residence but is using the same for operating its business of providing paying guest accommodation to students. Hence, the applicant is not eligible for exemption, ruling of AAR has been upheld.

5. **TDR, is a benefit rising out of land & not land itself, sale of TDR/FSI is liable to GST at the rate of 18%**
Vilas Chandanmal Gandhi, In re - *[2020] 120 taxmann.com 83 (AAAR-MAHARASHTRA)*

The applicant has entered into an agreement with the developer to develop the land owned by him. The applicant agreed to assign/ transfer the development rights in land to the developer for the purpose of construction of residential/commercial project on the land. The applicant has sought an advance ruling to determine the applicability of GST on sale of Transferable Development Right ('TDR')/ Floor Spacing Index ('FSI') in land.

The Authority for Advance Ruling ('AAR') held that GST is leviable on sale of TDR/FSI which is a service, attracting 18% GST. The applicant filed an appeal before the Appellate Authority for Advance Ruling ('AAAR').

The applicant has submitted that the development rights in the land can be construed as land only and therefore, any transaction pertaining to the sale of TDR would be sale of land and would not be treated as supply as per Clause 5 of the Schedule III of the Central Goods and Services Tax Act, 2017 ('CGST Act') and hence, would be out of the purview of GST.

The AAAR observed that TDR is not a land but a right arising out of land and hence it is an immovable property. The term 'land' has to be interpreted strictly and cannot be extended to cover the 'benefits arising out of land'. The Schedule III of the CGST Act only mentions 'land' to be outside the ambit of GST and not 'benefits' arising out of land. Thus, TDR is a benefit arising out of land and not land itself and hence, would be liable to tax.

Since TDR is an immovable property which is not covered under the definition of goods, but will be treated as service as benefits arising out of land is in the nature of service, attracting GST at the rate of 18%.

Hence, in view of the above, ruling of AAR has been upheld.

6. **Delhi HC stayed interest & permitted to pay profiteered amount in 6 monthly instalments due to COVID-19 pandemic**
Cilantro Diners (P.) Ltd v. Union of India - *[2020] 120 taxmann.com 64 (Delhi)*

The petitioner has challenged the order of the National Anti-Profiteering Authority ('NAA') wherein the petitioner has been found guilty of profiteering. The NAA directed the petitioner to deposit profiteered amount within 3 months along with interest.

The petitioner stated that the total profiteered demand which is required to be deposited as per the order passed by NAA includes GST component as well which has already been deposited by the petitioner with the Tax Department. It further prayed to allow the deposit of the said profiteered amount in instalments due to COVID-19 pandemic situation.

The Hon'ble High Court directed the petitioner to deposit profiteered amount excluding GST component in six equated monthly instalments. The interest amount is stayed till further orders.

7. **Penalty for violation of anti-profiteering provisions leviable w.e.f. 1-1-2020 & not with retrospective effect**
Pawan Kumar v. S3 Buildwell LLP - *[2020] 120 taxmann.com 62 (NAA)*

The notice was issued upon the assessee for imposition of penalty for indulging in profiteering and violating anti-profiteering provisions under Section 171(3A) of the Central Goods and Services Tax Act, 2017 ('CGST Act') during the period 1-7-2017 to 31-12-2018.

The assessee submitted that provisions of section 171(3A) of the CGST Act were inserted vide Section 112 of the Finance (No. 2) Act, 2019 which are effective prospectively from 1-1-2020 and cannot have retrospective operation.

The National Anti-Profiteering Authority ('NAA') observed that Section 171(3A) of the CGST Act provides for imposition of penalty in the case of violation of Section 171(1) of the CGST Act. The Central Govt. vide Notification No. 01/2020-Central Tax dated 1-1-2020 implemented the provisions of the Finance (No. 2) Act, 2019 from 1-1-2020 and Section 171(3A) was added in Section 171 of the CGST Act.

Since the penalty provisions were not in existence during the period 1-7-2017 to 31-12-2018 when the assessee violated Section 171 of the CGST Act, the penalty under Section 171(3A) cannot be imposed on the assessee retrospectively. Thus, the notice issued to the assessee for imposition of penalty under section 171(3A) has to be withdrawn.

8. **Varnish used in printing of packaging material are classified under HSN 3208, attracts 18% GST**
Flint Group India (P.) Ltd., In re - *[2020] 120 taxmann.com 150 (AAR - GUJARAT)*

The applicant has sought an advance ruling to determine the correct HSN code for Technical Varnish and Medium being used in printing industry.

The applicant has submitted that their product, Technical varnish and Medium should not be treated anything other than printing ink and should be classified under heading 3215.

The Authority for Advance Rulings ('AAR') as per the submissions of applicant found that the term 'technical varnish' is used by the applicant when it is used captively as an intermediary product for manufacture of Printing ink. Technical Varnish/Medium are liquid used in printing ink. Technical Varnish/Medium and printing ink are having separate identity and, hence, both are distinct products.

It is observed that heading 3208 includes paints and varnishes based on synthetic polymers or chemically modified natural polymers. Further, the Explanatory Notes for heading 3208 includes 'Varnishes' but excludes 'Printing inks' which though have a similar qualitative composition to paint, but are not suitable for painting applications being classified under heading 3215. Also, heading 3215 covers all goods, including printing ink, writing or drawing ink and other inks. However, varnishes are different from printing ink and are specifically covered under heading 3208, the same do not fall under Heading 3215.

Therefore, Technical Varnishes/Medium manufactured as an intermediate product and supplied by the applicant are classifiable under heading 3208, attracting 18% GST.

9. **Trust not liable to GST registration for carrying 'charitable activities' which are exempt from GST: Guj. AAR**
All India Disaster Mitigation Institute, In re - *[2020] 120 taxmann.com 165 (AAR - GUJARAT)*

The applicant is registered as a charitable trust under section 12AA of the Income-tax Act, 1961 ('the Income-tax Act') as well as under section 80G of the Income-tax Act. The entire income of the applicant is exempt from income tax and the donations made to the applicant are admissible deductions for the donors under Section 80G of the Income-tax Act. The applicant is engaged in training/research relating to disaster prevention, mitigation and management. The applicant has sought an advance ruling to determine its applicability for GST registration in respect of charitable activities undertaken by it.

The Authority for Advance Rulings ('AAR') observed that the services provided by an entity registered under Section 12AA of the Income-tax Act by way of charitable activities have been exempt from GST. 'Charitable activities' includes activities relating to preservation of environment. Activities carried out by the applicant for disaster prevention, mitigation and management are relating to preservation of environment. Thus, the activities of the applicant are considered as charitable activities which are exempt from GST.

Further, as per Section 23 of the Central Goods and Services Tax Act, 2017 ('CGST Act'), any person engaged exclusively in the business of supplying goods or services or both that are not liable to tax or wholly exempt from tax shall not be liable to obtain registration under GST. Hence, the applicant is not liable to obtain GST registration in respect of charitable activities relating to preservation of environment which are exempted from GST.

10. **Membership subscription & fees spent towards meeting & admn. expenses by club is not a service, not liable to GST**
Rotary Club of Mumbai Nariman Point, In re - *[2020] 120 taxmann.com 51 (AAAR-MAHARASHTRA)*

The applicant is a club and collects amount towards subscription and fee from members to meet meeting and administrative expenses. The applicant has sought an advance ruling to determine whether such contribution received from members amounts to supply under GST?

The Authority for Advance Ruling ('AAR') held that amount collected from members expended towards meetings and other administrative expense qualifies as a supply under GST. The applicant filed an appeal before the Appellate Authority for Advance Ruling ('AAAR').

The AAAR observed that as per Section 2(17) of the Central Goods and Services Tax Act, 2017 ('CGST Act') the term 'business' includes provision by a club, association, society or any such body (for a subscription or any other consideration) of the facilities or benefits to its members.

In the present case, the applicant is not providing any specific facility or benefits to its members against the membership subscription charged by it. Since the entire subscription amount is spent towards meeting and administrative expenses only, thus the applicant is not doing any business in terms of Section 2(17) of the CGST Act. Further, collection of membership fee and subscription is in the nature of reimbursement for meeting and administrative expenses incurred by the applicant and hence, would not be considered as a supply.

The AAAR set aside the ruling of AAR and held that collection of amount from members for meeting & administrative expenses by club is not a supply of service and hence, not liable to GST.

11. KN HC sets aside penalty order passed by relying on documents without bringing to the notice of the petitioner

Thoppil Agencies v. Assistant Commissioner of Commercial Taxes - *[2020] 120 taxmann.com 18 (Karnataka)*

The writ petition has been filed challenging the penalty order passed by the Assistant Commissioner.

The petitioner contended that perusal of the show cause notice indicates that only certain documents have been referred to by the Assistant Commissioner which has been duly replied by the petitioner. However, without giving any sufficient and reasonable opportunity to the petitioner, the Assistant Commissioner proceeded to pass the penalty order by placing reliance upon several documents which were never brought to the notice of the petitioner prior to passing of the said order. Thus, the penalty order has been passed in contravention of the principles of natural justice.

The Hon'ble High Court observed that several documents and circumstances which were neither referred to nor enumerated in the show cause notice have been relied upon by the Assistant Commissioner in the penalty order. Further, such documents were neither brought to the notice of the petitioner nor was permitted to cross-examine the witnesses with reference to the said documents. Also, no opportunity was given to the petitioner to produce additional documents.

Therefore, in the absence of sufficient and reasonable opportunity being granted in favour of the petitioner, the said penalty order is passed in violation of the principles of natural justice and hence, set aside.

Income Tax

Latest Updates, News and Judgments

1. CBDT amends Tax Audit Report & ITR-6; incorporates disclosures relating to concessional tax regimes

Notification No. G.S.R. 610(E), dated 01-10-2020

The Taxation Laws (Amendment) Act, 2019, introduced two new sections, i.e., section 115BAA and section 115BAB to provide that an assessee, being a company, can opt for concessional tax rate regime subject to fulfillment of various conditions. On the similar lines, the Finance Act, 2020, has inserted two more sections i.e. section 115BAC and section 115BAD to provide that an assessee, being an Individual, HUF and Co-operative society, can opt for concessional tax rate regime subject to fulfillment of various conditions.

Section 115BAA, Section 115BAC and Section 115BAD provide that if an assessee has opted for concessional tax rate and there is a depreciation allowance, in respect of a block of the asset, from any earlier assessment year or allowance of unabsorbed depreciation deemed so under section 72A, which is attributable to section 32(1)(iia) i.e. additional depreciation, same shall be deemed to have been given full effect to and no further deduction for such loss or depreciation shall be allowed for any subsequent year. Sections further provide that such loss or depreciation shall be adjusted to the WDV of the respective block of the asset in the prescribed manner.

a. Adjustment of depreciation allowance or unabsorbed depreciation

Now, the CBDT has amended Rule 5 to provide that opening WDV of the respective block of the asset shall be increased by such depreciation or allowance if assessee has exercised an option under section 115BAA for a previous year relevant to the assessment year beginning on the 1st day of April 2020 or under section 115BAC or Section 115BAD for a previous year relevant to the assessment year beginning on the 1st day of April 2021.

b. Manner of exercising option under section 115BAC and 115BAD

Further, the CBDT has introduced Rule 21AF and 21AH to provide that option under section 115BAC shall be exercised by furnishing Form No. 10-IE and option under section 115BAD shall be exercised by furnishing Form No. 10-IF. Both the forms are required to be furnished electronically either under digital signature or Electronic Verification Code.

c. Amendment in Form ITR-6 and Form 3CD

Since the CBDT has notified adjustment of depreciation or allowance for unabsorbed depreciation, Form ITR-6 and Form 3CD have also been amended to furnish relevant information regarding such adjustments.

d. Amendment in Form 3CEB

Section 115BAB provides that if the Assessing Officer (AO) is satisfied that due to close connection between the company and any other person, the course of business is so arranged that the company produces more than the ordinary profits then he shall compute reasonable profits and gains of such company. For this purpose, AO may invoke the provisions of Section 92BA pertaining to the specified domestic transaction.

The Form 3CEB has been amended to provide details in respect of these transactions.

2. AO cannot change valuation method adopted by assessee while determining FMV of share u/s 56

I-Exceed Technology Solutions (P.) Ltd. v. ITO - [2020] 119 taxmann.com 378 (Bangalore - Trib.)

Assessing Officer (AO) noticed that assessee issued equity shares at premium to 6 persons. He proceeded to examine the collection of share premium in terms of section 56(2)(viib). Assessee furnished a valuation certificate obtained from a Chartered Accountant (CA) in support of the price at which shares were issued. AO noticed that CA has adopted Discounted Cash Flow (DCF) method for valuation of shares.

AO noticed that under DCF method the valuation arrived on the basis of projected figures. Further, it was noticed that the details of projected results were furnished by the management only and the basis of projections was also not given. Accordingly, AO rejected DCF method of valuation. AO took the view that share valuation to arrive based on book value, i.e., Net Asset Value (NAV) Method. Accordingly, AO worked out the value of shares and made additions to assessee's income. The CIT(A) upheld the order passed by AO.

On further appeal, ITAT held that Bombay HC in case of Vodafone M-Pesa Ltd. v. PCIT - [2018] 92 taxmann.com 73 held that AO can scrutinize the valuation report and determine a fresh valuation either by himself or by calling a determination from an independent valuer to confront the assessee but the basis has to be DCF method. He couldn't change the method of valuation which was opted by the assessee. Relying on said judgement, ITAT remanded the matter to AO to decide the value of shares afresh.

3. **FinMin denies ET report that LTC voucher scheme isn't attractive for Govt. employees**
Press Release, dated 13-10-2020

A report has appeared in the Economic Times Markets (ETMarkets.com) which has given an impression that the LTC voucher scheme announced for Government employees may not be attractive.

The Ministry of Finance has denied the report and clarified that it is based on the erroneous assumption that leave travel money can be retained by paying income tax without travelling.

It has been clarified that the Government LTC is quite different from Leave Travel Allowance in the corporate sector. A person claiming LTC is not eligible unless he actually travels. In case he fails to do so, the amount is deducted from his pay. He does not have the option of keeping the money and paying income tax.

Under the Government system, the employee had only two choices:

a. Travel and spend (and the incidentals like hotel, food, etc. are to be incurred by him) or

b. Forgo the entitlement if not claimed within the date.

Now a third option of "spend on something other than travel" has been given to the employees because travel carries serious perceived health risks during Covid environment.

Further, the assumption in the report that employees would otherwise not pay GST when they purchase something is surprising. Everybody pays GST on their consumption unless they choose to buy without bills in black. Hopeful the ET does not want to encourage such practice.

4. **Benefit of Sec. 54F exemption couldn't be denied while clubbing capital gains income of minor**
Hemant Shah v. ACIT - *[2020] 119 taxmann.com 381 (Mumbai - Trib.)*

Assessing Officer (AO) noted that income of 2 minor children was clubbed in the hands of assessee after claiming exemption under section 54F. AO issued show cause notice as to why the benefit of section 54F should not be denied in the hands of minor. Assessee stated that income of the minor was to be clubbed after computing the same in accordance with law. Further, capital gain was to be allowed as minors were entitled for the benefits of section 54F.

AO did not accept assessee's contention and disallowed section 54F exemption. The CIT(A) confirmed the action taken by the AO. Aggrieved-assessee filed the instant appeal before the Tribunal.

The Tribunal held that during the assessment the AO clubbed the capital gain of both the minors with the assessee without considering the facts that the minors' income was invested in capital gain accounts scheme (CGAS).

The coordinate bench of Kolkata Tribunal in Rajeev Goyal [2012] 22 taxmann.com 34 held that in case of clubbing of income of minors child, deduction under section 54EC is to be allowed on minors' income from LTCG separately and only net income is to be clubbed.

Further, In Madan Lal Bassi [2004] 88 ITD 557 (Chd.), the Chandigarh bench of Tribunal also held that under section 45(1), any profits or gains arising from the

transfer of a capital asset are chargeable to income-tax. Save as otherwise provided in various sections including section 54F.

In other words, if section 54F is applied, only the amount of capital gains found taxable after application of above provisions can be charged to income-tax. Therefore, to find out whether there is any profit or gain chargeable to tax under section 45(1), the provisions of both the sections are to be read together. Section 54F cannot be read in isolation. Considering the aforesaid decisions of the Tribunal, the AO/CIT(A) was not justified in denying the exemption of capital gain to the minors, which was invested in CGAS

5. **Property to be treated as residential house even if possession couldn't be taken due to poor construction**
Chandramohan Manohar Potdar v. ACIT - *[2020] 119 taxmann.com 280 (Mumbai - Trib.)*

During the course of assessment proceedings, Assessing Officer (AO) observed that assessee reflected long term capital gain from the sale of land in return filed by him. AO observed that assessee had claimed deduction under section 54F. AO noticed that assessee on the date of transfer was owning two residential properties. AO held that section 54F provides that no deduction shall be allowed to an assessee who owned more than one residential house, other than new asset, on the date of transfer.

Assessee contended that that though he had purchased a residential house for use for his weekly holidays, however, due to its poor quality of construction the possession of the same was not taken by him and the matter was sub-judice in the court.

On appeal, ITAT held that irrespective of the fact that the property was not occupied by him due to its poor quality of construction, the same continued to be a residential house which was owned by the assessee. Since assessee was an owner of more than one residential house on the date of transfer of original asset, he was ineligible to claim deduction under sec. 54F of the Act.

6. **CBDT extends time limit for compulsory selection of returns for complete scrutiny to 31-10-2020**
F.NO. 225/126/2020, dated 30-09-2020

Considering the difficulties faced due to COVID-19 pandemic and PAN migration-related issues, the CBDT has extended the date for selection of cases for compulsory scrutiny based on the parameters prescribed in the CBDT Circular No. 225/126/2020/ITA-II, dated 17-9-2020, from 30-09-2020 to 31-10-2020

It is also clarified that even though the new statutory time limit as per the Taxation and other laws (Relaxation and amendment of certain provisions) Act, 2020 for selection of cases for Compulsory Scrutiny based on prescribed parameters was extended to 31-03-2021, still for the purpose of timely allocation of cases to NeAC, the time limit of 31-10-2020 will have to be strictly adhered to.

7. **Lease rent received for letting out developed space in SEZ eligible for sec. 80-IAB deduction**
Cessna Garden Developers (P.) Ltd. v. ACIT - [2020] 119 taxmann.com 279 (Bangalore – T

Assessee was engaged in the development of Special Economic Zone (SEZ) and it was eligible for deduction under section 80-IAB. It derived lease/rental income from development of SEZ and it was declared under the head "Income from house property. Such income was claimed as deduction under section 80-IAB. Assessing Officer (AO) accepted assessee's claim while framing assessment under section 143(3).

After completion of assessment, AO initiated rectification proceedings under section 154 whereby deduction against said income was sought to be withdrawn on the ground that section 80-IAB deduction was admissible only in respect of profit and gains from SEZ business and not from the income taxable under the head "Income from house property". Accordingly, deduction claimed under section 80-IAB was disallowed.

Assessee claimed that lease rent from developed space in SEZ carries the trapping of business income, regardless of its wrong declaration under the head 'income

from house property' by the assessee. For advancing such proposition, a reference to the CBDT Circular No. 16/2017 dated 25-4-2017 squarely on the point was made.

On further appeal, ITAT held that the assessee was entitled to benefit of deduction notwithstanding wrong classification of income under the head 'income from house property'. The AO was under duty to examine the true nature and character of income while framing assessment regardless of error committed by the assessee in this regard. The claim of assessee under section 80-IAB thus deserves to be allowed.

8. **CIT(A) is empowered to deal with additional grounds which weren't raised before AO during original assessment**
Siva Equipment (P.) Ltd. v. ACIT - [2020] 119 taxmann.com 472 (Bombay)

Assessee filed return of income declaring total income of Nil. Assessing Officer (AO) made additions to total income of Rs. 70,80,040 and imposed tax liability of Rs. 27,62,035.

Assessee filed the rectification application under section 154 by contending that short-term capital gain was inadvertently considered business income and another amount was also incorrectly added to business income.

However, the rectification application was rejected by the AO by observing that the assessee failed to file the revised return within the prescribed period of limitation. Further, it also failed to make relevant claims during assessment proceedings, thus it was not entitled to seek any rectification under section 154.

On appeal, the CIT(A) dismissed assessee's request for section 154 rectification. However, it permitted it to raise two additional grounds and allowed the appeal by accepting such additional grounds.

The Tribunal held that the CIT (Appeals) exceeded its jurisdiction in entertaining the two additional grounds, which had never been raised by the appellant before the Assessing Officer in the course of the assessment proceeding.

On further appeal, the High Court held that the CIT (Appeals) had the jurisdiction to entertain the additional grounds raised by the assessee. The issue arising in case of assessee was highly debatable and requiring assessment of the material on record.

Thus, the matter will have to be remanded to the CIT (Appeals) for determining whether, in the facts and circumstances of the present case, discretion was required to be exercised in favour of the assessee. Further, whether on merits the assessee was entitled to the benefits as claimed by raising the aforesaid additional grounds.

Interest paid on acquisition of machinery allowable if purchase didn't amount to extension of existing business

9. **K. B. Mehta Construction (P.) Ltd. v. DCIT** - ***[2020] 119 taxmann.com 456 (Ahmedabad - Trib.)***

Assessee acquired a machine from the money borrowed from the bank. It didn't put to use the machinery till the end of the financial year. However, interest paid on money borrowed was claimed as deduction. Assessing Officer (AO) opined that the amount of interest expense on the money borrowed could not be allowed as deduction under section 36(1)(iii) until and unless the interest relates to the post put to use period. Accordingly, deduction claimed by assessee was disallowed.

Assessee contended that there was no extension of the existing business. Therefore, the condition specified under the proviso to section 36(1)(iii) does not apply. However, CIT(A) rejected the assessee's claim and upheld the order passed by AO.

On further appeal, ITAT held that the value of machine acquired was negligible to the total value of plant and machineries shown by the assessee in its balance sheet. Such small addition could not amount to the extension of existing business. There was no detail suggesting that there was some increase in the production/sales etc.

Thus, acquisition of such machinery out of the borrowed fund could not be treated as an extension of the existing business. Accordingly, interest expenses incurred by the assessee on the borrowed money utilized for the acquisition of the machineries was eligible for deduction as revenue expense.

Society constituted to promote handloom sector by organising exhibitions eligible for Sec. 11 exemption: ITAT

10. **ITO v. Association of Corporation & Apex Societies of Handlooms - [2020] 119 taxmann.com 376 (Delhi - Trib.)**

Assessee was registered under section 12A of the Income-tax Act. Its main objective was to promote the handloom sector. During assessment proceedings, assessee was asked to show cause how its activities were charitable and why the same should not be covered by the proviso to section 2(15).

Assessee submitted that it was a non-profit organisation managed and controlled by the Government of India. Its objectives were to coordinate and diffuse useful knowledge to the member units towards the marketing of handloom products. Its main objective was to promote the handloom sector by providing a marketing platform to the handloom primary societies, apex societies as well as Handloom Corporation. It further submitted that it procured orders from various department of Government of India for the supply of handloom items and distributes the orders to various members of the society for supply.

Assessing Officer (AO) held that the activities of the assessee did not fall in the category of relief of poor, education, medical relief, preservation of the environment (including watersheds, forests and wildlife) and preservation of monuments or places or objects of artistic or historic interest. AO discussed the amendment to the proviso to section 2(15) and CBDT Circular dated 19-12-2008 and completed the assessment by invoking the proviso to section 2(15).

On appeal, ITAT held that in case of ITPO [2015] 53 taxmann.com 404 (Delhi), the Delhi High Court held that where the institution is not driven by the motive to earn profit but to do charity through the advancement of objectives of general public utility, it will be regarded as established for charitable purposes. Further, in the case of ICAI [2013] 35 taxmann.com 140 (Delhi), it was held that even though fees were charged for such activities (coaching in that case), activities cannot be stated to be rendering of services in relation to any trade, commerce or business, as such activities are undertaken in furtherance of its main objects which is not trade, commerce or business. Thus, the purpose and the dominant objective for which an

institution carries on its activities is material to decide if the same is business or not for which existence of profit motive is a vital indicator.

In the instant case, the motive of the assessee was to provide a platform for handloom weavers of the country for marketing and displaying their products through exhibitions. The activities were not for any private gain. The receipts were used for activities of the society and the activities were monitored by the Ministry of Textiles, Government of India. Therefore, the assessee couldn't be said to be involved in carrying on any business, trade or commerce even though it has objects of general public utility.

11. Income-tax Dept. conducts search & seizure actions in Bihar & UP
Press Release, dated 07-10-2020

The Income-tax Dept. has conducted search and seizure actions on 06-10-2020 in Patna, Sasaram and Varanasi. The search was conducted on a person who is in the business of mining and hotel industry. The search was also conducted in the case of a Chairman of a large cooperative bank.

During the search, unaccounted cash and documents having details of substantial cash transactions were found and seized. These transactions are not reflected in the corresponding Returns of Income. Unexplained cash totalling up to Rs. 1.25 crore has been seized, while FDRs worth Rs. 6 crores have been placed under prohibitory orders.

12. Trust engaged in management of liquid and solid wastes in Industrial area is eligible for Sec. 11 relief
CIT (Exemptions) v. Naroda Enviro Projects Ltd. - [2020] 120 taxmann.com 126 (Gujarat)

Assessee-trust filed its return declaring nil income. During assessment proceedings Assessing Officer (AO) concluded that assessee was a company registered under section 25 of the Companies Act and was inter alia engaged in the activity of management of liquid and solid. AO concluded that assessee was engaged in the activities which were not in the nature of charity but were in the nature if business as per proviso to section 2(15). Thus, he denied sections 11 and 12 exemption.

Aggrieved by the order of AO, assessee preferred an appeal before the CIT(A). The CIT(A) held that the assessee was engaged in the preservation of environment and therefore, it was engaged in carrying out charitable activities and consequently additions made by the AO were deleted. On revenue's appeal, ITAT confirmed the order of the CIT(A).

On further appeal, the Gujrat HC held that in case of DIT (Exemption) v. Sabarmati Ashram Gaushala Trust - 362 ITR 539 (Guj), it was held that carrying on an 'activity in the nature of trade, commerce, or business' or rendering of any service in relation to trade etc. is sine qua non for taking away the character of charitable purpose.

An activity in the nature of trade, commerce or business is always carried on with the prior object of earning income. What is relevant is the intention of the person before undertaking such activity.

Consequently, HC held that as the dominant objects of the assessee were charitable in nature and dominant object was not only preservation of environment but one of general public utility and, therefore, the assessee was entitled to seek exemption under section 11.

13. OECD releases economic impact assessment of tax challenges arising from Digitalisation of economy
Report, dated 12-10-2020

The OECD has released a report analyzing the economic and tax revenue implications of the Pillar One and Pillar Two proposals currently being discussed by the OECD/G20 Inclusive Framework on BEPS (Inclusive Framework) as part of its work to address the tax challenges arising from the digitalization of the economy. These proposals are described in the Pillar One and Pillar Two Blueprint reports.

The assessment in this report relies on the best data available to the OECD Secretariat across a wide range of jurisdictions, combining firm-level and more aggregate data sources, including the newly published anonymised and aggregated Country-by-Country Report (CbCR) data.

14. **OECD releases pillar 1 & 2 blueprints of tax challenges arising from digitalisation**
Report, dated 12-10-2020

As part of the ongoing work to develop a solution to the tax challenges of the digitalization of the economy, the OECD/G20 Inclusive Framework on BEPS releases Reports on Pillar One and Pillar Two Blueprints. These Blueprints reflect the convergent views on many of the key policy features, principles and parameters of both Pillars. These also identify remaining technical and administrative issues as well as policy issues where divergent views among Inclusive Framework members remain to be bridged.

OECD also invites public comments on the released reports. Interested parties are invited to send their written comments no later than Monday, 14 December 2020, by email to cfa@oecd.org

15. **Proviso to section 50C inserted by FA, 2016 with effect from 1-4-2017 is applicable with retro effect**
CIT v. Vummudi Amarendran - *[2020] 120 taxmann.com 171 (Madras)*

Assessee entered into an agreement for the sale of a property. In terms of said agreement, assessee received advance consideration and same was effected by cheques payment. Assessing Officer (AO) found that on the date of execution and registration of sale deed, the guideline value of property fixed by state government was higher than the consideration received by assessee.

AO concluded that since the guideline value fixed by the state government was much higher than the agreed sale price, therefore said amount should be reckoned for all-purpose.

However, assessee contended that the Finance Act, 2016 inserted proviso to section 50C which provides that where date of agreement, fixing amount of consideration and date of registration for transfer of capital assets are not same, value adopted or assessed or assessable by stamp valuation authority on date of agreement may be taken for purpose of computing full value of consideration for such transfer.

Said proviso was inserted to mitigate the undue hardship face by assessee and thus it would have retrospective effect. AO did not agree with the statement of assessee on the ground that proviso applied only with effect from 01-04-2017 and same is prospective

On appeal, CIT(A) held that the new proviso should be given retrospective effect from the insertion on the ground that the proviso was added to remedy unintended consequences and supply an obvious omission.

The proviso ensured reasonable interpretation and retrospective effect would serve the object behind the enactment. Thus there was no hesitation to hold that the proviso to Section 50C(1) should be taken to be retrospective from the date when the proviso exists. On revenue's appeal, ITAT and HC upheld the order passed by CIT(A).

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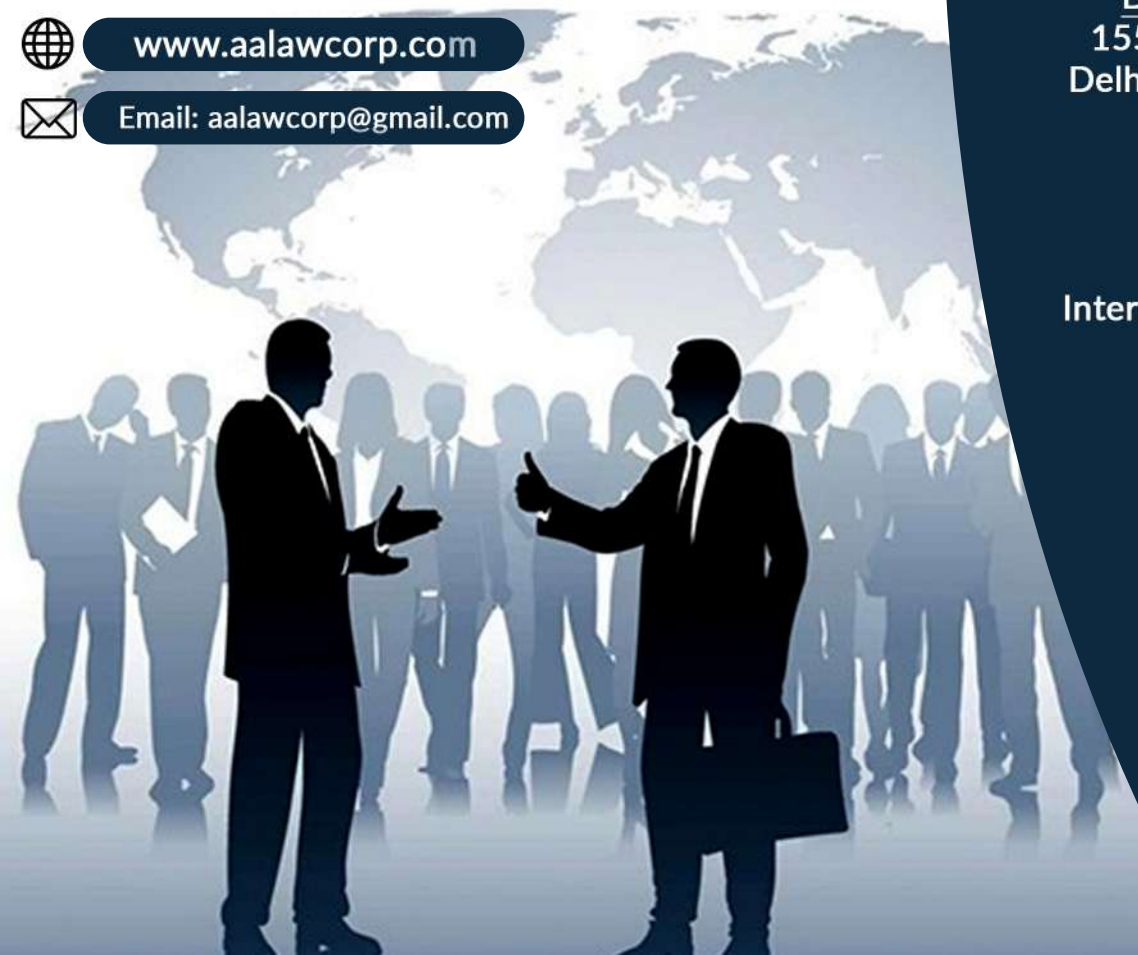

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