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NEWSLETTER

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Compiled By: CA. Sachin Singhal
CA. Vinit Aggarwal

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Corporate Laws

Latest update, New and Judgments

1. **Provisions of section 18 of SARFAESI are constitutionally valid Madras High Court**

   N.Madhavan v. Union of India - *[2020] 118 taxmann.com 277 (Madras)*

   The Petitioner was guarantor of his brother-in-law who had availed of credit facilities from the respondent bank. The petitioner had mortgaged an immovable property in respect of said loan facilities.

   On account of default committed by the principal debtor, legal proceedings were initiated. The District Magistrate passed an order under section 14 of the Code directing the petitioner to handover vacant possession of mortgaged property to lender bank. Thereafter, the petitioner challenged said order before DRP along with application to condone delay.

   However, the DRP rejected the assessee's application for condonation of delay. An appeal against said order was filed under section 18 before DRAT. The petitioner also filed an application to waive requirement of pre-deposit albeit the DRAT disposed of said application by holding that not less than 25 per cent of debt due should be pre-deposited.

   Against said order, the petitioner filed an instant petition contending that section 18(1) and second proviso thereto were unconstitutional in as much as pre-deposit was being insisted upon without differentiating between appeals against final order passed under section 17 and order in application to condone delay.

   Since pre-deposit provision, i.e., second and third proviso in section 18 is applicable only to borrowers as defined in Act and, moreover, DRAT is vested direction to reduce such pre-deposit to not less than 25 per cent of debt, said provision cannot be said to be arbitrary, onerous or unreasonable.

   Since, only statutory recourse available to the borrower is to appeal under section 18 which functions as an Appellate Forum and not as a Court of first instance. In

view of aforesaid, there was no reason to strike down section 18(1) and second proviso thereto. Consequently, instant petition was to be dismissed.

2. **No abuse of dominance by 'Whatsapp' on pre-installation of payment app: CCI**
News, Dated 20.08.202
The Competition Commission of India has rejected a complaint alleging abuse of dominant position by Whatsapp Inc. and Facebook Inc. with regard to digital payments market in India. The Informant alleged that Facebook backed WhatsApp abused its dominant position in internet-based instant messaging platform by bundling its message app with payments option 'Whatsapp Pay' to penetrate into UPI enabled digital payment app market.

Informant further alleged WhatsApp to be taking advantage of its vast user base to popularise its newly launched WhatsApp Pay App, the complainant alleged. As per the allegation, WhatsApp violated Section 4 of the Competition Act.

The CCI, however, observed that there was no violation of section 4 of the Competition Act. Mere existence of an App on the smartphone does not necessarily convert into transaction/usage. As highlighted by WhatsApp in its written submissions, to enable WhatsApp payment, the user has to separately register for it which necessarily requires the users to accept terms of the service agreement and privacy policy.

Lastly, the CCI also stated that the presence of various established players e.g. Google Pay, PayTM, Phone Pe, Amazon Pay etc. in the UPI market will automatically get a considerable market share only on the basis of its pre-installation seems implausible.

3. **Petition for reduction of share capital was to be allowed when all shareholders unanimously approve such reduction**
   Better World Technology (P.) Ltd., In re - *[2020] 118 taxmann.com 239 (NCLT - Mum.)*
   The Petitioner - company was engaged in business of software development and maintenance for employee benefits etc. The Petitioner stated that shareholders of the petitioner - company unanimously approved special resolution for reduction of share capital of the petitioner - company.

   This instant petition was filed for confirmation of said special resolution passed by shareholders of the petitioner - company for reduction of paid up equity share capital.

   The NCLT noted that Articles of Association of the petitioner - company empowered it to reduce its share capital in any manner for time being authorized by law, by passing a special resolution.

   No objector had come before instant Tribunal to oppose instant petition nor had any party controverted any averments made in petition. In view of facts that all shareholders had approved reduction including shareholders whose shares were being cancelled, instant petition for reduction of share capital was to be allowed.

4. **Insolvency plea filed by creditor admitted as debtor-real estate developer didn't pay its dues**
   Bijay Pratap Singh v. Unimax International - *[2020] 118 taxmann.com 414 (NCL-AT)*

   In this instant case, the operational creditor supplied Aluminum to the Corporate Debtor real estate developer. In spite of notice, the Corporate Debtor failed to make payments due to the Operational Creditor and an amount of Rs. 61.25 lakh was claimed to be due as on date of filing of Corporate Insolvency Resolution Process (CIRP) application before Adjudicating Authority.

The Corporate Debtor took plea that the Operational Creditor had accepted payments in respect of supplies and full and final payment was made. However, no tangible/substantial material/evidence was produced to prove such payment.

On the contrary, the Corporate Debtor issued three cheques in favour of the Operational Creditor which were again dishonoured. Although, the Corporate Debtor had taken a plea that these cheques were issued by the Corporate Debtor for some other project and not for project concerning subject matter in issue, same was not established by the Corporate Debtor to subjective satisfaction of Tribunal.

If the Corporate Debtor had paid full and final payment then there was no need or necessity for the Corporate Debtor to issue cheques in favour of Operational Creditor subsequently. Therefore, tribunal was justified in rejecting corporate debtor's plea that the Operational Creditor had accepted payments in respect of supplies and full and final payment was made. Thus, Adjudicating Authority was justified in holding that Corporate Debtor had committed default; Tribunal was justified in admitting CIRP application filed by the Operational Creditor.

5. **NCLAT directs AA to consider matter afresh to decide if related party initiated CIRP fraudulently by filing plea u/s 7**
Bank of India v. IRIS Electro Optics (P.) Ltd. - *[2020] 118 taxmann.com 312 (NCL-AT)*

In this instant case, the Adjudicating Authority by order declined to recall order of admission of Corporate Insolvency Resolution Process (CIRP) or replacing 'Resolution Professional' of respondent-corporate debtor by another person.

However, the Appellant bank submitted that it being a secured creditor did not trigger any CIRP against corporate debtor and it had brought to notice of Adjudicating Authority that initiation of CIRP was at instance of a 'related party' on date of filing of application as also on date of admission of such application with intent to defraud appellant being sole secured financial creditor of corporate debtor.

Further Adjudicating Authority had also recorded findings and made observations that provisions of 'I&B Code' had been blatantly infracted by 'Interim Resolution Professional' by excluding appellant from purview of 'Committee of Creditors'.

Thus, it was not prudent on part of Adjudicating Authority to defer consideration of pivotal issue having significant impact on CIRP initiated at instance of an alleged 'related party', jeopardizing legal interests of appellant, who happened to be sole secured financial creditor.

Even though Adjudicating Authority appears to have passed direction for fresh determination of voting share of financial creditors, however, such determination was to detriment of appellant in as much as voting share was directed to be assigned to alleged related party, thereby considerably reducing voting share of appellant.

Therefore, impugned order was to be set aside and Adjudicating Authority was to be directed to accord fresh consideration to issue of CIRP.

6. **RBI further extends due date of submission of return under section 31 of Banking Regulation Act**
   Circular No. DoR (PCB).BPD.Cir.No.2/12.05.001/2020-21 August 26, 2020
   The primary (urban) co-operative banks (UCBs) and also as UCBs may be facing difficulties in submission of the returns due to the ongoing COVID-19 pandemic, it is considered necessary to allow more time for submission of the aforesaid return for the financial year ended on March 31, 2020. In view of the problem, the Reserve Bank has extended the said period of three months for the furnishing of the returns under Section 31 of the Act for the financial year ended on March 31, 2020 by a further period of three months. Accordingly, all UCBs shall ensure submission of the aforesaid returns to Reserve Bank on or before September 30, 2020.

7. **Extract of annual return in Form MGT-9 need not be attached in board report: MCA**
Notification No. G.S.R. 538(E), Dated 28.08.2020
The Ministry of Corporate Affairs (MCA) has notified the Companies (Management and Administration) Amendment Rules, 2020 wherein it has clarified that the companies shall not be required to attach the extract of the annual return in form MGT-9 with board report in case the companies post the extract of annual return on their websites and disclose the web link of such return in the board's report as per 92 (3) of the Companies Act, 2013. The Notificaiton is effective from August 28, 2020.

8. **No objections were received in ROC's report; name of company was to be restored in register of companies**
Abraham Mathew v. Registrar of Companies, Kerala - [2020] 118 taxmann.com 357 (NCLT - Kochi)
The Appellant-company was engaged in plantation business and the Registrar of Companies (RoC) struck off the appellant-company's name from register of companies for not discharging their statutory duties in filing statutory returns within due date stipulated under Companies Act, 2013.

Thereafter, the Appellant stated that entire proceedings of strike-off were undertaken by the RoC behind the back of the appellant and other shareholders; and was thereby violative of principles of natural justice.

The NCLT stated that based on an award of Kerala State Legal Service Authority, the appellant-company in 2002 had illegally effected a sale of its plantation property. However, said the sale was challenged by one of the directors of company, and High Court had invalidated sale deed.

Thus, in view of fact that property had now been restored and in hands of appellant-company, present directors of appellant-company were keen to restart plantation business of the company and to undertake further commercial usage of said property. The Appellant also stated that unless the appellant-company was made active, the appellant and other shareholders would not be in a position to take

benefits of the order of High Court of Kerala in view of invalidation of the sale deed.

The Appellant also undertook to file all pending tax returns since 2017 and complete all pending compliances since 2017 once the company is restored and the appellant-company having shown that it was the owner of the property, when its name being struck off from Register of Companies and since no objection to restoration of name of the appellant-company had been raised in the report of ROC, name of the company was to be restored in the register of companies.

Goods and Service Tax (GST)

Latest Updates, News and Judgments

1. **Dept. can verify documents of place of business, instead of a visit, in case Aadhaar authentication for Registration is not done**
   Notification No. 62/2020–Central Tax, dated 20-08-2020

   The Central Goods and Service Tax Rules, 2017 has been amended to provide that w.e.f. 21-08-2020, where a person fails to undergo authentication of Aadhaar number or does not opt for authentication of Aadhaar number, then the registration shall be granted only after physical verification of the place of business in the presence of such person. Also, the proper officer may, in lieu of the physical verification of the place of business, carry out the verification of such documents which the officer deems fit.

   If the proper officer fails to take any action, within a period of 21 days from the date of submission of the application in case a person does not opt for authentication of Aadhaar number; then the registration application shall be deemed to have been approved.

2. **Levy of Entertainment Tax by municipality is constitutionally valid under GST regime: Madras HC**
   Balaji Theatre v. Chief Secretary - *[2020] 118 taxmann.com 160 (Madras)*

   The assessee runs Cinema theatre. It has challenged the order of Municipality directing to pay Entertainment Tax. The assessee submitted that after introduction of GST, admission to Cinema halls is treated as supply of service which is chargeable to GST under the GST legislation. Thus, a separate Entertainment Tax cannot be collected by the Municipality, particularly when the collection of tax by the Municipality stands annulled.

   The Hon'ble High Court observed that Puducherry Municipalities Act, 1973, is an enactment, which is still in force empowering the Municipal Council to impose a 'tax on entertainment'. The power so conferred on the Municipal Council to collect various taxes has not been totally taken away or subsumed under the Puducherry Goods and Services Tax Act, 2017 ('PGST Act'). Under Section 173 (1) of the

PGST Act, the Legislature have consciously retained the power of the Municipal Council to collect tax on various subjects including tax on entertainment.

It has further been provided that service tax and entertainment tax is under different enactment by different authorities. Admission into the Cinema theatre is treated as service on which GST is levied. On such admission, the viewer gets the entertainment on which tax is levied by the local authorities as 'Entertainment Tax'. Thus, the entertainment itself being a different content, will not fit into the act of service provided by the theatre owner viz., admission of the viewer into the cinema hall. Therefore, the question of subsuming the entertainment tax under the PGST Act, shall not arise in this case, so long as the Puducherry Municipalities Act, 1973, is in force and not repealed by the introduction of the PGST Act.

On the Constitutional aspect, the High Court has provided that Entry 62 of the State List of the Seventh Schedule of the Constitution of India, as amended by the Constitution (101 Amendment) Act, 2016, provides that the taxes on luxuries including the taxes on entertainment, amusements, betting and gambling are taxes authorized by law and the authorities empowered under the relevant provisions of law to collect the said taxes are justified in doing so. Therefore, going by the above constitutional provision the collection of the entertainment tax by the Municipality is within their power, competence and with authority of law.

In the above backdrop, it has been held that Municipal Council can collect Entertainment Tax even after introduction of the PGST Act.

3. **Assessment is not a pre-requisite for arrest under GST; Bombay HC rejected Pre-arrest bail**
   ABA-319-2020 Dated 18.8.2020 – Bombay High Court

The applicants were partners in a firm registered under GST. Form –GSTR-3B, a summary return of inward and outward supplies, filed by the applicants' firm revealed that the said firm had availed, Input Tax Credit (ITC) of Rs.53.50 crores. The department made an enquiry and found that ITC availed on basis of invoices from bogus firms and they had also failed to produce proof of movement of goods. On verification from E-Way Bill Portal, it was found that no e-way bill had been

generated. The investigation also revealed that they also passed on the ITC to six firms out of which five firms were closely held entities of their firm.

The applicant argued that prosecution cannot be launched without assessment and therefore there is no question of arrest. The department argued that the availment of ITC without actual receipt of goods in contravention of Section 132(1)(b) and (c) is a cognizable and non-bailable offence under Section 132(5) and punishable with imprisonment for a term which may extend to five years and with a fine.

The Honorable Bombay High court observed that though the officers under the CGST Act, cannot seek custody of the arrested persons for completing the investigation, but applicant's detention in custody is necessary to prevent him from causing the evidence of the offence to disappear or tampering such evidence. It was held that assessment is not a pre-requirement of arresting. The GST provisions contained in offences and penalties are not subject to 'assessment' as both are distinct and not subject to each other. Therefore, application for bail was rejected.

4. **Dept. is required to gather information to check impersonation & misuse of IE Code, case remitted back: Madras HC**
   Tvl. Naalvar Traders v. Commercial Tax Officer - *[2020] 118 taxmann.com 229 (Madras)*

The petitioner was asked to furnish documents and accounts of import of oil conducted by it. It had not disclosed same in returns filed for its Tamil Nadu Branch. Therefore, a demand notice was issued to petitioner based on information gathered from web portals of Chennai Customs. The petitioner stated that it was not engaged in any business activities from date of registration and it had not made any purchase or sale. Therefore, no accounts and books were maintained for purchase except for petty cash account.

The department issued the order stating that VAT audit was conducted and a statement was recorded by the enforcement wing officials. A copy of statement and other copy of inspection records were also handed over to the petitioner. The order provided that the petitioner had not discharged the burden of proof to distance from the tax liability. The petitioner challenged this order and filed writ petition.

The High Court observed that Tamil Nadu VAT Act gave ample powers to the authorities to summon documents and witnesses and to call for information from the other Departments. The Honorable High Court directed the department to investigate and gather information as to whether there was indeed import by the petitioner himself or whether there was impersonation and misuse of IE Code of the petitioner as is being now projected. This exercise can be carried out by the respondents in the exercise of statutory powers vested with them. Therefore, the impugned orders were set aside and the case was remitted back for further investigation and to pass a fresh order after completing investigation. Reimbursement received for equipments lost/damaged while providing oilfield services **is supply, liable to GST: AP AAR**

5. **Authority for Advance Rulings, Andhra Pradesh Halliburton Offshore Services Inc., in re -*[2020] 118 taxmann.com 137 (AAR - ANDHRA PRADESH)***

   The applicant, a global service provider, engaged in providing various oilfield services to Exploration and Production companies across the globe. In the course of supplying such services, the Applicant utilized its equipment and tools for performing the oilfield services.

   The applicant while performing the aforesaid services, received reimbursement from the customers on account of equipment/tools which were damaged due to uncontrollable or unforeseen down hole environmental situations in the oil and gas well. It filed an application for advance ruling to determine whether reimbursement received towards Lost in Hole/Damages beyond Repair equipment (LIH equipment) can be considered as a supply.

   The Authority for Advance Ruling observed that LIH event was entirely contingent and outside the normal stream of supplies under the Agreement. The contingency of 'reimbursement of LIH Equipment/Tools' is entirely different from liquidated damages/compensation for any breach of contract (including delay) as agreed upon between the parties. Therefore, it was clear that 'reimbursement of LIH Equipment/tools' cannot be collated with the activity of 'agreeing to the obligation to refrain from an act, or to tolerate an act or a situation, or to do an act'.

From the agreement, it was clear that the amount of reimbursement of equipment/tools which were damaged beyond repair or loss was at an agreed depreciated value of the original price of such equipment/tools. Therefore, it was held that reimbursement received towards LIH equipment to be classifiable as 'Supply of Goods'.

6. **Indian bank is not a service recipient of services provided by foreign bank for export remittance; No ST under RCM**
   State Bank of Bikaner & Jaipur v. Commissioner of Central Excise & Service Tax - *[2020] 118 taxmann.com 251 (New Delhi - CESTAT)*

The appellant bank was engaged in providing services, including the provision of services for importers and exporters in relation to the settlement of payments. For providing such services, it had to co-ordinate with the corresponding foreign bank of the foreign party. The exporters agreed to bear all the bank charges and the foreign bank charges were recovered from them by deducting the amount of charges from the export proceeds payable to the exporters. The department was of view that the Foreign Banks had provided services of transfer/ exchange of documents and transfer of money relating to exports to bank. Therefore, it issued show cause notice demanding service tax under reverse charge on such charges levied by Foreign Banks.

The Delhi Tribunal observed that the appellant had not paid any consideration to the Foreign Bank as clear from the factual position. In view of above, the appellant bank cannot be considered as recipient of service for the activities undertaken by Foreign Banks situated outside India because the charges for which were deducted at source on the export bill where the Indian exporter was liable to bear Foreign Bank charges. Therefore, it was clearly evident that the appellant bank had merely acted on behalf of the Indian exporter and facilitated the service. Hence, the appellant would not be liable to pay service tax under the reverse charge mechanism.

Income Tax

Latest Updates, News and Judgments

1. **NR holding 'working holiday visa' in liable to tax on income earned in Australia: Federal Court of Australia**
   Addy v. Commissioner of Taxation - ***[2020] 118 taxmann.com 267 (FC-Australia)***
   Taxpayer was a citizen of the United Kingdom and holder of a working holiday visa and earned 'working holiday taxable income' in Australia. On 1-1-2017, rates of tax prescribed by Pt. III Sch. 7 of Rates Act applicable to holders of working holiday visas came into effect (Backpacker's tax). Accordingly, she was assessed to tax under Pt. III Sch. 7 of Rates Act at rate of 15 per cent for year ended 30-6-2017 and not under Pt. I of Sch. 7 dealing with residents.

   Taxpayer claimed that the Double Taxation Agreement applied in her circumstances and that she ought not to be treated differently to any other Australian tax resident with consequence that tax-free threshold ought to apply in respect of her income.

   The Federal Court of Australia held that it was not taxpayer's nationality that caused her to be taxed in accordance with Pt. III of Sch. 7 of Rates Act, but rather her derivation of working holiday taxable income.

   The only reason Ms Addy was not given tax concessional was that she was a "working holiday maker" as defined for Australian tax law purposes, and what made her a "working holiday maker" for Australian tax purposes was her foreign nationality and visa status.

   Taxpayer could not seek any relief under Article 25(1) of Double Taxation Agreement because Article 25(1) calls for a comparison to be made between taxation of taxpayer and taxation of a hypothetical Australian national who is in same circumstances of taxpayer. A person with permanent residency in Australia is not eligible for grant of 'working holiday visa', hence, comparison could not take

place. Therefore, taxpayer had been rightly assessed to tax in accordance with rates set out in Pt. III of Sch. 7 of Rates Act.

2. **Surrendering right over claiming Sec. 10(34) deduction can't be a reason for not invoking provisions of Sec. 14A**
BBR Projects (P.) Ltd. v. ITO - *[2020] 118 taxmann.com 133 (Hyderabad - Trib.)*

Assessee filed return of income declaring losses. Initially, return was processed under section 143(1) and subsequently, his case was selected for scrutiny. During the course of scrutiny assessment, Assessing Officer (AO) observed that assessee had made investments in equity shares. It was further observed that assessee had incurred expenditure towards interest and finance charges. Therefore, AO opined that provisions of section 14A would be applicable because assessee had incurred expenditure towards earning exempt income.

Assessee submitted that it had not claimed exemption under section 10 towards dividend income earned from investment in shares. However, AO invoked rule 8D read with section 14A and made disallowances of expenditure incurred by assessee. CIT(A) upheld the order passed by AO.

On appeal, ITAT held that provisions of section 10 mandate that any income falling in any of the clause mentioned under section 10 shall not be included in computing total income of the previous year. Therefore, assessee couldn't insist for including such income while computing total income when the Income-tax Act itself provides otherwise. It is pertinent to mention that tax cannot be imposed or collected from assessee unless it is charged or specified by the provisions of the Act. Therefore, assessee couldn't claim any relief based on the aforesaid argument that provision of section 14A couldn't be invoked because the assessee had surrendered its right over claiming exemption under section 10(34).

3. **ICAI releases revised Guidance Note on 'Transfer Pricing' Report, dated 20-08-2020**

The Institute of Chartered Accountants of India (ICAI) through its Committee on International Taxation has been issuing guidance note for members to equip them to deal with complexities involved in the laws of transfer pricing which will enable them to effectively discharge their responsibilities towards reporting requirements under section 92E of the Income-tax Act, 1961.

In light of the Covid pandemic, the reporting and disclosure requirement towards international transactions is certainly challenging for the members of ICAI. The Committee has brought out the eighth edition of Guidance Note on Transfer Pricing in which all the amendments made up to Finance Act, 2020 have been incorporated.

4. **Sec. 41(1) cannot be invoked merely because liability remains outstanding for more than 3 years**
PCIT v. Adani Agro (P.) Ltd. - [2020] 118 taxmann.com 307 (Gujarat)

The Assessing Officer (AO) observed that assessee had shown balance in account of a party for 3 years and as debt had become time-barred, such amount was added under section 41(1).

Assessee contended that it had been making payment of professional charges to said party every year. Bill received from said party was credited in his account every year and payment was made in subsequent year. As bill for same amount was raised for all the 3 years, outstanding balance remained same every year. Thus, the liability outstanding at on 31-03-2012 was out of current and year and not out of earlier years. Hence, such an amount could not be added under section 41(1). Further, said amount was not written back in profit and loss account, hence even on that ground additions could not be made.

CIT(A) reversed the order of AO by relying on the decision of CIT v. Nitin S. Garg 208 taxman 16 (Gujarat). Under the said judgment, Gujarat HC held that

once assessee had continued to show admitted amounts as liabilities in its balance sheet, the same could not be treated as a case of cessation of liabilities merely because liabilities were outstanding for last many years, it could not be inferred that such liabilities had ceased to exist. ITAT upheld the order of CIT(A).

On appeal, Gujarat HC held that as per provisions of section 41(1), there has to be remission or cessation of trading liability. Merely because liability has remained outstanding for more than 3 years and same is not written back in profit and loss account, application of section 41(1) could not be made to consider such liability as income of the assessee without there being any remission or cessation of liability.

5. **Factual issue cannot be raised first time before ITAT if it never raised before AO during assessment**
   CIT v. Tarachanthini Services (P.) Ltd. - [2020] 118 taxmann.com 252 (Madras)

Assessee filed return of income declaring losses and same was processed under section 143(1). Assessment was reopened under section 147 and notice was issued and served on assessee. Subsequently, a notice under section 142(1) was issued along with questionnaire. After issuing summons to certain persons, assessment was completed. Assessee being aggrieved by such order filed an appeal before CIT(A). Such appeal was dismissed.

Assessee preferred an appeal before ITAT. Assessee for the first time raised a new ground before ITAT stating that since the name of assessee was struck off from the register of companies even before the assessment order was passed, the assessment itself was bad in law and nullity. ITAT remanded the matter to AO to investigate as to whether assessee was in existence at relevant time.

On revenue's appeal, the Madras HC held that assessee filed return of income for assessment year 2000-01 and assessment for same was reopened. Assessee fully participated in reassessment proceedings and thereafter assessment order had been passed. Therefore, reassessment order would take effect and to be effective for the

said assessment year. The striking off the name of company from the register of companies could not impact the said assessment. Further, where assessee had failed to raise the factual issue before AO at the first instance and consciously participated in the proceedings, it could not have been permitted to canvass such issue for the first time before ITAT.

6. **CBDT carried out search and seizure operation at various location in Bhopal Press Release, dated 21-08-2020**

The Income Tax Department has carried out a search and seizure operation at various locations in Bhopal on 20.08.2020. Documents pertaining to about 100 properties in the nature of plots, flats and agricultural lands having market value of about Rs. 105 crore was found. Most of the properties found during the search are benami properties. Cash and jewellery worth Rs. 1.8 crore have also been seized.

Further, documentary evidence gathered during the search operation indicates partnership/association with some retired government servants and holding of their benami properties. The CBDT has said that investigations are still in progress.

7. **Form 35A filed with scanned sign of director to meet deadline for filing objections before DRP is valid: ITAT**
Rivendell PE, LLD v. Assistant Commissioner of Income Tax (IT) - *[2020] 118 taxmann.com 204 (Mumbai - Trib.)*

Assessee was resident of Mauritius. It filed return of income claiming short-term and long-term capital loss. Upon scrutiny, AO issued the draft assessment order under section 143(3) r.w.s. 144C considering capital gain losses as non-genuine and not allowable to be carried forwarded.

Assessee preferred an objection along with Form No. 35A before the Dispute Resolution Panel (DRP). Said Form 35A wasn't verified as per the procedure laid down since the signature of the person on verification page in the said form was a copy of the original signature. DRP rejected said form and held that verification form submitted with the scanned copy of the signature of the director. It was as

good as submitting of unsigned paper since the scanned copy of the signature has no legal sanctity.
The Mumbai Tribunal held that during relevant point of time, Mauritius was hit by a cyclone leading to heavy rainfall. This caused devastating damage in the country and the Directors present in Mauritius were not available for signing the Form.

The assessee with bona fide intention got the said form signed by the other Director of the company available in United States of America and filed the scanned document thereon in due date. Even it was a defect in the eyes of law, it was procedural defects and curable in nature, since procedures are handmade of justice. Thus, DRP was to be directed to proceed with matter in accordance with law.

8. **Identity of payee Co. can't be proved just by submitting affidavit signed by its directors to justify expenses**
Jaee Vishwas Joshi v. ACIT - *[2020] 118 taxmann.com 291 (Mumbai - Trib.)*

Assessee's case was selected for scrutiny and notice was issued under section 142(1) calling assessee to file necessary evidence including details of income earned from its proprietary business and expenses incurred against said income. In response to notice, assessee filed various details. During the course of assessment proceedings, AO held that expenditure incurred under the head counseling charges were not genuine expenditure which was booked to reduce profit for the year. Assessing Officer (AO) held that in the detailed investigation done by investigation wing it was found that the entities to whom payment was made were shell entities and transactions with them were not genuine. AO observed that assessee made bogus payment to said entities and debited these payments under the head business counseling charges.

Assessee challenged additions made by AO towards disallowances of business counselling charges paid along with affidavit from the director of companies to whom payment was made and argued that business counselling charges were paid to those two companies for referring assessee to M/s Altius Finserve (P.) Ltd. and

also, for doing necessary work in connection with services rendered to M/s Altius Finserve (P.) Ltd.

On appeal, ITAT held that it was a well-settled that merely paper formalities were not sufficient proof particularly where the companies to whom payments were made were not found traceable and their existence, their presence, their infrastructure, the services rendered by them or not proved at all. Further, enquiries and spot verification is done by the Investigation wing revealed that said companies had never been operated and also presently not operating from any of the addresses. No details were provided as to what services had been provided by the entities to the assessee, documentary evidence in support of services rendered and any correspondence between these two entities and the assessee. Further, notice issued under section 133(6) to said entities were unserved and returned by the postal authorities. Thus, ITAT upheld the disallowance of said expenditure.

9. **Capital gain chargeable in year of receipt of compensation in case of compulsory acquisition of land: SC**
Raj Pal Singh v. CIT - [2020] 118 taxmann.com 508 (SC)

A land, which became property after its original owner migrated to Pakistan, was allotted to assessee's father, who migrated to India, in lieu of a property left in Pakistan. A substantial part of said land had been given by the original owner on a lease for 20 years to a government college. Later on, the college moved the government for compulsory acquisition of said land. A notification was issued by the government on 15-05-1968 seeking to acquire said land for a public purpose. This was followed by a declaration dated 13-08-1969. Ultimately, the land acquisition collector proceeded to make the award on 29-09-1970.

Assessee contended that at the time of issuance of notification land was already in the possession of the college even after expiry of the lease. He contended that transfer took place on the date of preliminary notification. However, revenue contended that transfer reached its completion only on the date of award.

The Supreme Court held that publication of preliminary notification of compulsory acquisition did not vest the property in the Government as it only informed about the intention of the Government to acquire the land for a public purpose.

After the notification, the Land Acquisition Collector is required to examine the objection if any to the proposed acquisition. Thereafter Government issues declaration signifying its satisfaction that the land was indeed required for public purpose Thereafter, the Collector is to make his award, and after making the award, takes possession of the land under acquisition. Thereupon, the land vested in the Government free from all encumbrances.

Thus, the land vested in the Government on the date of making of the award and not on the date of publication of notification. The right to receive compensation arises the moment Government takes possession of the property acquired.

In the matters relating to compulsory acquisition of land under of the Land Acquisition Act, 1894, completion of transfer with the vesting of land in the Government correlates with taking over of possession of the land under acquisition by the Government.

It couldn't be said that immediately upon issuance of preliminary notification for compulsory acquisition of land, the possession of land transfer to Government. Thus, capital gains would have accrued upon taking over of possession after making of the award. Accordingly, capital gains to the assessee-appellant for the acquisition in question could not have accrued before the date of award, i.e., 29.09.1970.

10. **Scheme of business arrangement to acquire shares of another Co. can't be termed as business of dealing in securities**
Quippo Telecom Infrastructure (P.) Ltd. v. ACIT - *[2020] 118 taxmann.com 345 (Delhi - Trib.)*

Assessee-company was engaged in business of providing passive infrastructure and automated teller machine sites to telecom and banking industry. It claimed expenditure in respect of professional charges paid for investment advisory services and interest expenditure paid in respect of capital borrowed.

Assessing Officer held that assessee did not earn any income from business during the year except for rental income, therefore, professional fees paid by assessee was not allowable under section 37(1). Assessee contended that it was engaged in business of dealing in securities.

The Mumbai ITAT held that assessee acquired stake in WTTIL in which the telecom business of the assessee was demerged. This was the only transaction of purchase of shares during the year. Subsequent sale of those shares to other entities to the shareholders of the assessee only couldn't by any stretch of imagination considered as the fact that assessee was carrying on any business of purchase and sale of securities.

The acquisition of the shares of WTTIL was merely a strategic arrangement of business reorganization. It was not a transaction of purchase and sale of securities which could result in carrying on of the activities of purchase, and sale of securities as a business.

Since assessee was not carrying on any business during the year, professional fees paid by the assessee as well as interest expenditure incurred was rightly disallowed.

11. **Only profit element embedded in bogus purchases made from hawala dealers to be treated as income of assessee**
PCIT v. Jakharia Fabric (P.) Ltd. - *[2020] 118 taxmann.com 406 (Bombay)*

Assessee was engaged in the business of trading in job work of dying of fabrics. Assessing Officer (AO) received information from the Investigation wing of Income-tax department that assessee had obtained bogus purchase bills from hawala operators. Following the same, AO issued a notice under section 142(1) in response to which assessee submitted reply denying the allegations. AO passed the order under section 143(3) by treating the said purchases as bogus and made additions to assessee's income.

Aggrieved by the order of AO, assessee preferred an appeal before CIT(A). CIT(A) held that assessee was not in position to prove the existence of suppliers. The suppliers were found to be engaged in providing bogus bills without actual

delivery of goods. Moreover few of the suppliers were not regular parties and they were found to have supplied only during the year and there were no supply either in the earlier year or in the subsequent year from such parties. This circumstantial evidence also prove the bogus nature of the transaction.

By relying on the judgment of Gujarat HC in case of CIT v. Simit P. Sheth 356 ITR 451 (Guj.), it was held that without purchase of materials, it was not possible for the assessee to complete the job work of dying. It could be believed that assessee had made cash purchases from other parties which were not recorded in the books. It took only bills from these parties as accommodation to explain the purchases. Therefore the entire purchase could not be added as bogus and only profit element embedded in such transaction could be taxed. Thus, the estimation of 17.5% of profit would meet the ends of justice and issued directions to the Assessing Officer.

12. **Reassessment notice can't be challenged by filing writ petition if order has been already passed: HC**
Kasautii v. CIT - [2020] 118 taxmann.com 407 (Jharkhand)

In writ petition, assessee sought that notice issued under section 148 was to be quashed with a declaration that the assumption of jurisdiction under section 147 was ab initio void.

Revenue submitted that since notice under section 148 had culminated into an order of assessment, it could be assailed before the appellate authority only. Thus, the writ petition may not be entertained because once the order of assessment was passed in terms of the notice under section 148/143(3)/147, the factual aspect was to be determined which would properly be appreciated by the appellate authority.

So far as the jurisdiction of High Court under Article 226 of the Constitution of India was concerned, the same couldn't be exercised by appreciating the factual aspect, moreover, since the forum of appeals were available. Therefore, these writ petitions under Article 226 of the Constitution of India were not maintainable.

Assessee submitted that even if order of assessment has been passed after issuance of notice under section 148, said notices can be looked into by High court under

Article 226 of the Constitution of India, since the said notices are not in terms of instructions as contained in the judgment referred in case of GKN Driveshafts (India) Ltd. v. Income-tax Officer & Ors. [2003] 1 SCC 72.

On writ, High Court held that assessee approached court without availing the alternative remedy available under the Act. Assessee had not been able to put forth any cogent and satisfactory reason to persuade us to exercise our extraordinary jurisdiction under Article 226 of the Constitution of India. Thus, when alternative remedy of appeal was available under the statute, it wasn't appropriate and proper to exercise extraordinary jurisdiction conferred to High Court.

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KEY TEAM

Adv. Vivek Aggarwal
(Senior Partner)

CS. Kumkum Gupta
(Senior Partner)

Adv. Ritika Sharma
(Senior Associate)

Adv. Amar Phogat
(Senior Associate)

CA. Mukesh Aggarwal
(Senior Advisor)

Adv. Lata Goswami
(Advisor)

CA. Sachin Singhal
(Advisor)

Vinay Gupta
(Advisor)

CA Anjavi Pandya
(Advisor)

CA. Divya Madan
(Advisor)

CA. Vinit Agarwal
(Advisor)

CA. Arun Bhargav
(Advisor)

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KSMC & ASSOCIATES
Chartered Accountants

www.ksmc.in

Acropolis Advisory Pvt. Ltd.
www.acroadvisory.in

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www.aalawcorp.com

Email: aalawcorp@gmail.com

CONTACT US

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

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

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

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