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A Passion to Perform

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The best articles published in this Journal in the categories of 'Direct Taxes', 'Company Law and Auditing' and 'Allied Laws and Others' will be awarded the Trophies/ Certificates of Appreciation after being vetted by experts in the profession.

Articles and reading literatures are invited from members as well as from other professional colleagues.

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Mananam

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Let go the Self-Importance

Om Shanti! I consider myself blessed for having been invited to contribute to 'Mananam'.

Human beings often don't realize that root of many problems is the importance given to 'Self' i.e. one's self. These problems arise both in family life as well as in our relations with the outer world. Hardly anyone would claim that he/she has never given importance to 'self'.

What is 'self importance'?

As the words 'self importance' suggest, the mind is always in such a state that it signals the feeling of superiority over other living creatures in the Universe. Some may call this phenomenon as 'ego'. In some cases it may be self inferiority also.

We have been brought up in such a surrounding that we may have become an inadvertent practitioner of self importance. As we grow up, 'self importance' as a phenomenon would have crept in from the unguarded windows of our existence.

Talking spiritually, 'self' is a concept. You may compare self with a dot on a blank paper. So long as the dot is all alone, a single mark on a blank paper, there is nothing to compare it with. There is no possibility of distinction of that dot since it is all alone. However once other dots are put surrounding the single dot, many dots would emerge creating a mass of dots. We are like these dots in this Universe. The creator of the Universe has never seen these dots as distinct from each other. However we do so. It is only we who get trapped in the false belief of being distinct, superior or inferior, from all the dots surrounding us. When we get trapped into this belief, we wear a false crown on our head, trying to push our false belief of either being superior or inferior to those around us.

We are trapped into this false belief due to our being unaware that when we take birth as a human being, there is no such false belief embedded in us. When we are born, in our initial years we do not know and we do not bother also to know whether we are male or female. As we grow up we are made to be aware of such a difference.

As time passes we become aware of our biological self and then psychological self. On this journey, we may not realize that we are giving importance to self. This may be done not only to express usually one's feeling of superiority but at times it may work in a negative way of expressing inferiority.

This sense of self importance brings a lot of silent harm to us.

We may tend to spend more time in the 'start to end process' of relishing the futile exercise of self importance.

We may seek to attract the attention of others for recognition of whatever we may have done or not done.

We may start believing that I am, let us say, more knowledgeable and superior than others.

We may become less flexible in accepting the views of others, let aside accept, we may even fail to consider the others' views.

We may become habitual of constantly seeking attention and in our failure to get it, we may remain agitated.

We may become reactive and prone to anger.

In the long run it may lead to the failure of intelligence and may affect our relationships with others which in turn may bring us more misery than the outer joy we would want to relish by practicing the phenomenon of self importance.

Therefore: 'Let go the self importance'.

For this we will have to reverse the process. We should try to become 'aware' of the real self. To be aware means to look inwards towards yourself. It all starts with changing our thoughts. Since we are the creator of our thoughts, we can definitely control them. However I would refrain at this stage to take you through the topic of self awareness. For this you may take help of any of the organisations engaged in imparting techniques on this aspect.

Remember:

"The mind is everything. What you think you become," Buddha.

Editorial

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Mera Desh Badal Raha Hai!

At times when global economies are passing through a rough phase, the narrative of India is remarkably changing with a target growth of more than 7.5%. Ever since the BJP led NDA government has taken over in 2014 there have been some positive vibes and indicators pumping in the much needed pro-active measures to take the nation and its citizens forward. Make in India, Skill India, Digital India, Swachh Bharat are a few of various initiatives taken by this government clearing the intent of good governance keeping aside all other agendas.

All those who are on social media would be regularly reading the messages of how Ministry of External Affairs led by Ms. Sushma Swaraj is helping Indian nationals residing abroad. There have been numerable cases where a direct help has reached to the needy because my government today is now even accessible on social media. Many doubt whether a government or a system in India can be so sensitive to the issues affecting its subjects that it goes out of the way to fulfil its duties even on a call on twitter? This is true! Let me quote some direct instances with firsthand experience which demonstrates that this government has made a system in place that addresses the grievances of the countrymen. Various issues arise in our day to day professional practise, legal or procedural that are required to be addressed. All these areas need immediate attention for smooth functioning. I may tell you that this government listens when the grievance is genuine.

Dr. Hasmukh Adhia is the Revenue Secretary in the Ministry of Finance of Government of India. Some instances were brought before him on a social media, twitter, that required immediate clarification and change in procedure in filing certain forms online. In one case an immediate circular was issued clarifying the position of law. In second instance the complete registration process is changed so as to enable a proper online mechanism to file certain forms. This is the approach that lacked since ages but now visible in the system where public grievances are being addresses by the government machinery.

Another positive and a welcome measure that has been visible in last twelve to fifteen months is that this government has come up with various clarificatory circulars to settle unwanted litigation and clear the dust, in the interest of assessees. Circulars like allowability of Bad-debts in the year it is written off, printing and publishing activity eligible for grant of additional depreciation, allowability of employer's contribution u/s 43(B) are few of the instances showing the purpose and the attitude of the executive.

If we look with a broader vision we find that things around us are changing but to have a glimpse of that change, we need to first change. The important question is, are we making any effort to be a part of this change. There would be many unwanted controversies that still need to be addressed but are we efficiently trying to come from the mode of criticism and present it before the authorities concerned in our own possible way. The day when each and every member who is part of this great profession assumes the responsibility of trying to find solutions to smallest of things, either in the profession or outside, offering it as a service to the nation, I am sure the day may not be far when everyone will witness and say, *mera desh badal raha hai!*

Pranams,
CA. Ashok Kataria

From the President

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Respected seniors and dear professional colleagues,

President Pranab Mukherjee signed the government's flagship Goods and Services Tax Bill, which will do away with a host of Central and state taxes and usher in one tax regime for the entire country. With this, GST will be a reality.

The Union Cabinet in its meeting held on 12th September, 2016 approved setting-up of GST Council and setting-up of its Secretariat. The Council will make recommendations to the Union and the States on important issues related to GST, like the goods and services that may be subjected or exempted from GST, model GST Laws, principles that govern Place of Supply, threshold limits, GST rates including the floor rates with bands, special rates for raising additional resources during natural calamities/disasters, special provisions for certain States, etc. So, the FM is working very hard for implementation of GST on time.

A big surprise came to all when the due date for filing return & TAR for assessee (being Company, firms and others required to get accounts audited under income tax act or other law and working partners of such firm) is extended to 17th October 2016 from 30th September. CBDT said that extension is granted as last date for making declarations under the Income Declaration Scheme 2016 is also 30th September, 2016, in order to remove inconvenience and to facilitate ease of compliance.

Government is very keen to make the IDS (Income declaration Scheme) a success. The perception is that at 45% tax the scheme may not lure many but Government wants to achieve its target and therefore we are witnessing out of the way measures from the department including surveys / searches in full swing to sell the scheme. This however is not at all a healthy sign of governance.

Success is not a matter of chance, but the product of hard work. The associations programs during the last month continued to draw excellent participation. With the changes in form 3CD during last year, the Income Tax department has left us open for many challenges in the profession. To simplify the ambiguities and to make our audit work smooth during the season, a study circle meeting was held on Practical Issues on Tax Audit lead by CA Palak Pavagadhi. 2nd Brain Trust cum workshop meeting on "Business Income vis-à-vis current challenges" on 06.08.2016 led by very learned and experienced faculty CA. N.C. Hegde, CCM, Mumbai, was well received and attended by members.

Again a very successful entertainment programme, yes; "The Talent Evening"! After a gap of 3 years we re-introduced the talent evening with a different shade. The huge gathering at the show speaks about the popularity of the program. The committee worked very hard including the participants who performed to make a talent evening a memorable evening. I am sure all will cherish the memories of the program for long-long time. Information Technology committee arranged "Unavailing Statutory power of Release 5.4 of Tally.ERP9" which helps generating Statutory Tax Returns through Tally directly.

It's really a matter of great pride that we could arrange a Joint Seminar with Bombay Chartered Accountants Society, (BCAS) on "Internal Financial Control and CARO Reporting under Companies Act, 2013" which was very well attended by members. BCAS Publication "Reporting under CARO – A Compilation" – by CA. Viren Shah and CA. Jeyur Shah was also released at the program by worthy hands of CA. Sunil Talati, Past President of ICAI. Moreover the association is also working out another joint program with BCAS at Mumbai on 21st and 22nd October 2016. Details of the same will be finalised and informed to the members soon.

The team is poised to start the International Study tour during the first week of January 2017 and very soon it will be announced with detailed programme for the registration. I can only ask members to wait for making your international tour plans.

Managing change effectively is one of the greatest challenges today. To convert change into opportunity is an even a bigger challenge. A whole new way of looking at the world is required. As GST is now a reality, we as Chartered Accountants need to update ourselves and accordingly we are planning to have a series of educative programmes on GST. We have planned a Brain trust meeting on GST on 8th Octobher, 2016 and further working on a full day seminar on the subject in the coming days.

I would like to conclude with the thought, " The wind may blow from any direction, but the direction in which you go depends on how you set the sails."

Looking forward to your support and participation in future activities of the Association.

With best regards,

CA. Raju Shah
President

Analysis of Section 44ADA

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The concept of presumptive taxation was introduced by Finance Act, 1994 w.e.f. A.Y. 1994-95 in which sec 44AD was introduced for the first time in the history of Indian taxation.

As per the provisions of section 44AD, the scheme was applicable to an "eligible assessee" engaged in any business (except the business of plying, hiring or leasing goods carriages referred to in section 44AE and except by the assesses who are engaged in any profession prescribed under section 44AA or is carrying on agency business or is earning income in the nature of commission or brokerage)

Definition of Eligible assessee for the purpose of this section is given in the act as follows:

Explanation.—For the purposes of this section,—

*"eligible assessee" means- an individual, Hindu undivided family or a partnership firm, who is a resident, **but not a limited liability partnership firm** as defined under clause (n) of sub-section (1) of section 2 of the Limited Liability Partnership Act, 2008 (6 of 2009); and.....*

Hence the section has specifically excluded LLP from application of this section, which means 44AD does not apply to LLP.

Finance Act 2016 has made a provision for professionals specified in sec 44AA for presumptive tax, the provisions are as under:

Sec 44ADA as inserted in the act vide Finance Act 2016 provides as under:

'44ADA.(1) Notwithstanding anything contained in sections 28 to 43C, in the case of an assessee, being a resident in India, who is engaged in a profession referred to in sub-section (1) of section 44AA and whose total gross receipts do not exceed fifty lakh rupees in a previous year, a sum equal to fifty per cent. of the total gross receipts of the assessee in the previous year on account of such profession or, as the case may be, a sum higher than the aforesaid sum claimed to have been earned by the assessee, shall be deemed to be the profits and gains of such profession chargeable to tax under the head "Profits and gains of business or profession".

(2) Any deduction allowable under the provisions of sections 30 to 38 shall, for the purposes of sub-section (1), be deemed to have been already given full effect to and no further deduction under those sections shall be allowed.

(3) The written down value of any asset used for the purposes of profession shall be deemed to have been calculated as if the assessee had claimed and had been actually allowed the deduction in respect of the depreciation for each of the relevant assessment years.

(4) Notwithstanding anything contained in the foregoing provisions of this section, an assessee who claims that his profits and gains from the profession are lower than the profits and gains specified in sub-section (1) and whose total income exceeds the maximum amount which is not chargeable to income-tax, shall be required to keep and maintain such books of account and other documents as required under sub-section (1) of section 44AA and get them audited and furnish a report of such audit as required under section 44AB.'

Assessee for the purpose of sec 44ADA is not defined (it is defined for the purpose of sec 44AD only)

Interpretation of section 44ADA:

Going through the provision of the section 44ADA, the section does not specify eligible assessee unlike in section 44AD.

That means the section 44ADA applies to every assessee as provided in section 44ADA(1). Hence it applies to Individuals, HUF, AOP, Trust, BOI, Company, Partnership firm, LLP etc.

However explanatory notes to Finance Bill 2016 exclude application of provision of Section 44ADA to LLP.

Explanatory notes to relevant provision of Finance Bill 2016 read as below:

In this regard, new section 44ADA is proposed to be inserted in the Act to provide for estimating the income of an assessee who is engaged in any profession referred to in sub-section (1) of section 44AA such as legal, medical, engineering or architectural profession or the profession of accountancy or technical consultancy or interior decoration or any other profession as is notified by the Board in the Official Gazette and whose total gross receipts does not exceed fifty lakh rupees in a previous year, at a sum equal to fifty per cent of the total gross receipts, or, as the case may be , a sum higher than the aforesaid sum earned by the assessee. The scheme will apply to such resident assessee who is an individual, Hindu undivided family or partnership firm but **not Limited Liability partnership firm.**

Whether section 44ADA applies to LLP?

Newly inserted section 44ADA (1) applies to an assessee being a resident in India, who is engaged in a profession referred to in sub-section (1) of section 44AA. A question arises whether the provision of sec 44ADA applies to Limited Liability Partnership?

However explanatory notes to the Finance Bill 2016 specifically excludes the application of Section to LLP. Whether Explanation notes to the Finance Act 2016 shall override the provision of section 44ADA?

Interpretation of statue:

On this subject, Honorable Supreme Court in the case of **Shashikant Kale v UOI 185 ITR 104, 115 has held that memorandum is usually "not an accurate guide of the Final Act"**

It was held that memorandum explaining the provision of bill is not usually accurate guide of final Act, but may be used for the limited purpose to find out the intention of legislature and to interpret and determine true scope of the provision but only when the provision is ambiguous.

Hence when Legislature did not provide definition of the assessee for the purpose of sec 44ADA, it means that LLP is not excluded from the application of provision of section 44ADA

Treatment of Interest and remuneration under section 40(b):

Position in 44AD:

Sub section (2) of Section 44AD provides that any deduction allowable under provisions of sections 30 to 38 shall, for the purpose of sub-section (1), be deemed to have been already given full effect to and no further deduction under those sections shall be allowed:

Provided *that where eligible assessee is a firm, the salary and interest paid to its partner shall be deducted from the income computed under sub-section (1) subject to conditions and limits specified in clause (b) of Section 40.*

Hence eligible assessee was entitled to deduct the salary and interest paid, in computing the income chargeable under the head profit and gains of business or profession from the presumptive profits specified in section 44AD, in case of partnership firm.

However the provision to subsection (2) is omitted by Finance Act 2016.

The omission of the proviso will have effect from assessment year 2017-18, would imply and mean that salary and interest paid would be deemed to have been allowed while computing the profits

contd. to page 320

Equalisation Levy

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Background:

The Digital Space has grown rapidly in the past few years and is expected to grow substantially in next few years. The biggest beneficiaries of this rapid growth in the Digital Space are companies earning through Digital Ads like Google, Facebook, Twitter, Linkedin, Yahoo etc.These Internet Companies are generating massive revenues from India. However, as they don't have a Permanent Establishment (PE) in India, they are not liable to pay to any income tax in India.

Introduction:

The **Budget 2016** has put an end to the free run for such internet companies and has proposed in para 151 of Budget speech by introducing an **"Equalisation Levy" @ 6%** on specified services. A new chapter **"Chapter VIII"** is introduced in Income Tax Act, 1961 (hereinafter to referred as 'Act') to provide the provisions of Equalisation levy.This tax is also called **Google Tax**, since companies like Google & Facebook are most likely to get affected by this levy.The concept of this levy **is similar to TDS**. It will apply **to only B2B transactions.**

Applicability of Equalisation Levy:

Sr. No.	Particulars	Provisions
1	Extent of Equalisation levy	Applicable to **whole of India except Jammu & Kashmir** [Sub-clause (1) of clause 160].
2	Date of Commencement of Equalisation levy	Equalisation levycame into force from **1st June, 2016** as notified by **Notification No. 38/2016 dated May 27, 2016.**
3	What is Equalisation levy?	Equalisation levy means the tax leviable on consideration received or receivable for any **specified service** under the provisions of this chapter. [Sub-clause (d) of clause 161].
4	What is Specified Service?	Specified Service includes: (a) Online Advertisement (b) Any provision of digital advertising space or any service for the purpose of online advertisement. (c) Any other service as may be notified under specified services by C.G.
5	Rate of Equalisation levy	Equalization Levy shall be charged @ 6%on consideration received or receivable for any **specified service.**
6	Threshold limit of chargeability	Equalization Levy will be charged only if the aggregate amount of consideration received or receivable for specified service **exceeds Rs. 1 lakh in a previous year.**
7	Who can be the **recipient** of such specified services?	(a) A person resident in India and carrying on business or profession. (b) A Non Resident having a Permanent Establishment (PE) in India.
8	Who can be the **provider** of such specified services?	A Non Resident provider of specified services not having a Permanent Establishment (PE) in India.
9	Exemption	The following will not be subject to Equalisation Levy:

		(a) Non-resident providing specified services having Permanent Establishment (PE) in India and specified service is effectively connected with such Permanent Establishment (PE).
		(b) Aggregate amount of consideration for specified services received or receivable does not exceed Rs. 1 lakh.
		(c) Where payment for specified services is not for the purpose of carrying out business and profession. i.e It is exempted to B2C transactions.
		(d) The recipient of specified service is an organization which is registered in Jammu & Kashmir.

Brief about Equalisation Levy:

Sr. No.	Particulars	Provisions	
1	Chargeability	**Section 165** is the Charging section for equalisation levy. It is payable on revere charge basis or withholding tax. i.e. it is deducted by the recipient of service. Moreover, to avoid double taxation of income arising from specified services subject to Equalisation Levy, **exemption U/s.10(50)**of the Actfrom computation in Total income has been granted.	
2	Payment to Central Government	The tax so deducted has to be deposited to the credit of the Central Government **on or before 7thof the month** immediately following the calendar month in which such levy was so deducted. The assessee will be liable to deposit such levy even if assessee fails to deduct such levy.	
3	Furnishing of Statement / Return	**(a) Furnishing of return:**Assessee is required to file **yearly statement** U/s 167(1) of the Act in **Form No. 1** electronically under digital signature; or electronically through electronic verification code **on or before the 30thJune**immediately following the financial year.	
		(b) Belated Return and Rectified Return: Assessee who has not filed the statement/ return with the prescribed time, or who has filed the return but thereafter, notice any omission or wrong particulars therein may furnish the said/rectified statement, any time **before the expiry of 2 years from the end of financial year** in which the specified service was provided.	
4	Processing of Statement / Return	**(a) Processing of Return:** The intimation for any demand payable or refund due to assessee is required to be granted to the assessee **within 1 year from the end of financial year** in which the statement is furnished in **Form No. 2**.	
		(b) Rectification of mistake in the intimation: A.O. has power to rectify the mistake apparent from the record in the intimation issued by him **within 1 year** from the end of the financial year either suo motto or on application by the assessee. In case, such rectification leads to increased liability or reduced refund, then such rectification cannot be done without giving the assessee reasonable opportunity of being heard. If the amount of refund is reduced or payable is enhanced, then A.O. is required to make an order specifying the amount payable by the assessee.	
5	Interest and Penalties	**Particulars**	**Interest & Penalty**
		Interest on delayed payment	Interest at rate of 1% p.m. or part thereof
		Fail to deduct Equalisation Levy	Penalty equal to amount of Equalisation Levy
		Fail to pay Equalisation Levy	Penalty of Rs. 1000/- per day of failure to pay (but the amount of penalty cannot exceed the amount of Equalisation Levy)
		Non- Furnishing of Return	Rs. 100/- per day during which failure continues
		The assessee officer will intimated any demand in Form No. 2 as prescribed by the Central Government.	

		No penalty can be imposed on the assessee unless, given reasonable opportunity of being heard. Moreover, no penalty shall be imposed under section 168 or 169, if the assessee can prove reasonable cause.	
		If the assessee fails to deduct the Equalisation Levy or after such deduction fails to pay the same on or before the due date of filing the income tax return, then the assessee will not be allowed deduction of such expense **U/s.40(a)(ib)** of the Act. However, the assessee will be allowed as deduction in computing the income of such previous year in which such levy is actually paid.	
6	Appeals	**Appeal to commissioner of Income Tax (Appeals):**	**Appeal to Appellate Tribunal (ITAT):**
		Every aggrieved assessee can file an appeal to commissioner of Income Tax (Appeals) in **Form No. 3** as prescribed by the Central Government **within 30 days from date of receipt of notice with a fee of Rs. 1000/-**	Every assessee aggrieved by the orderof the Commissioner (Appeals) can file an appeal to ITAT in **Form No. 4** as prescribed by the Central Government **within 60 days from the date of receipt of order sought with fee of Rs. 1000/-**
7	Prosecution & Punishment	In order to ensure effective compliance, the assessee can be prosecuted under Clause 173 and 174 if he makes a false statement, which he either knows or believes to be false or does not believe to be true, with sanction of Chief Commissioner of Income Tax. If the assessee is found guilty then, maximum punishment could be awarded **upto 3 years in addition to fine**.	

Implications of Equalisation levy:

- It is an additional tax over and above all other taxes that are already in place, and that such additional tax burden may further affect ease of doing business in India.
- The Finance Minister has put the burden of deduction and deposit of the equalization levy with the Indian Government (without grossing up) on the remitter / Indian residents receiving specified services from non-residents. The non-residents rendering these specified services are presently under no obligation to file their tax returns in India or pay any equalisation levy in India. If the concerned Indian residents do not deduct the equalisation levy before paying the concerned non-residents, such non-residents cannot be called upon to pay such equalisation levy.
- This levy is a pious effort of the Indian government which seems to be influenced by the recommendations under Action Plan 1 of the OECD–G20 BEPS project.
- This tax is on amount of payment for Specified Services and not on Income. Hence Tax Treaties are not applicable; it has been imposed under domestic laws.There will be no foreign tax credit available to the taxpayer in lieu of Equalization Levy, which would amount to double taxation of their income. If it is to be imposed, it should be under the tax treaties so that there is no double taxation.

Conclusion:

This is the first significant step taken by India to tax digital economy transactions. Online marketing is very important for startups, because of its comparatively lower cost and targeted customer reach. Google and Facebook ads are the most popular and effective platforms as of now and this levy will eventually impact the small local players more severely than the giant-sized Facebook and Google of the world. However,in order to ensure smooth implementation, it requires clarification from the governing authorities with respect to the format of the challan and payment gateway and corresponding changes to be made to Form 15CA/ 15CB for disclosing the payment of the levy at the time of remittance of the same; otherwise this would result in undue hardship to various assessee(s) to tax digital economy transactions.

❊❊❊

Glimpses of Supreme Court Rulings

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7 'Reputation' : - Concept and meaning :

The concept of 'defamation' has been extensively dealt with in a various definitions, descriptions and analytical perceptions regard being had to its ingredients and expanse which clearly show the solemnity of 'fame' and its sapient characteristics. 'Defamation', according to *Chambers Twentieth century dictionary,* means to take away or destroy the good fame or reputation.

'Reputation' has its innate universal value. It is a cherished constituent of life and is not limited or restricted by time. Recognition of individual honour and the gentleness of behaviour on the part of each one are needed.

In a democracy it is not necessary that everyone should sing the same song; freedom of expression is the rule, and it is generally taken for granted.

Liberty to have discordant note does not confer a right to defame the others. The dignity of an individual is extremely important.

Respect for the dignity of another is a constitutional norm. It would not amount to an overstatement if it is said that constitutional fraternity and the intrinsic value inhered in the fundamental duty proclaim the constitutional assurance of mutual respect and concern for each other's dignity.

Right to say what may displease or annoy others cannot be throttled or garroted. There can never be any cavil over the fact that the right to freedom of speech and expression is a right that has to get at ascendance in the democratic body polity, but, at the same time the limit has to be proportionate and not unlimited.

[Subramanian Swami vs.UOI (2016)(7 SCC 221)]

8 Business income or income from house property

The finding of the lower authorities was that the assessee had discontinued all other business activities and only carried on leasing of property and earning rent therefrom. The business of the company was to lease its property and earn rent and therefore, the income so earned was to be taxed as its business income following the case of Chennai Properties & Investments Ltd. (**373 ITR 673)**.

[Rayala Corporation Pvt. Ltd. vs. ACIT (386 ITR 500)]

9 Depreciation – Charitable Trust

SLP granted against High Court's ruling that section 11(6) inserted by Finance (No. 2) Act, 2014 denying depreciation while computing income of charitable trust, is prospective in nature and operates with effect from 1-4-2015.

[DCIT vs. AI-Ameen Charitable Trust [2016] 72 taxmann.com 350]

10 Limitation – proceedings u/s 269SS & 269T:

Penalty proceedings for contravention of Sections 269SS & 269T are not related to the assessment proceeding but are independent of it. Therefore, the completion of appellate proceedings arising out of the assessment proceedings has no relevance. Consequently, the limitation prescribed by section 275(1)(a) does not apply. The limitation period prescribed in s. 275(1)(c) applies to such penalty proceedings.

[CIT vs. Hissaria Brothers (Civil Appeal No.5254 of 2008) (Dtd. 22.08.2016)]

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From the Courts

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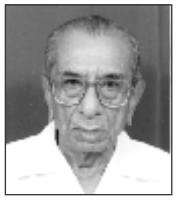

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32 Re-opening beyond 4 years : Validity : Shree Chalthan Vibhag Khand Udyog Mandli Ltd. v/s. Dy. CIT (2015) 281 CTR 389 (Guj) : 376 ITR 0419 (Guj)

Issue :

Whether reopening of assessment beyond four year is valid when assessee has disclosed all the facts?

Held :

So far as the reopening of the assessment beyond the period of 4 years is concerned, at the outset it is required to be noted that the assessment can be reopened beyond the period of 4 years, if and only if the income chargeable to tax has escaped assessment by reason of failure on the part of assessee to disclose fully and truly all material facts necessary for its assessment for that assessment year, even if the AO is authorized to make reassessment in the event of his having reasonable belief that any income chargeable to tax has escaped assessment for any assessment year. As per the first proviso to s. 147, assessment can be reopened under s. 147 after expiry of 4 years only if the assessee had failed to make a return under s. 139 or in response to the notice issued under s. 142(1) or s. 148, or he failed to disclose truly and fully all material facts necessary for the assessment. Once all the primary facts were before the Assessing Authority, no further assistance is required by way of disclosure. Once the case of the assessee is covered by the first proviso to s. 147, the reassessment proceedings beyond the period of 4 years from the end of the relevant year would be without any jurisdiction and bad in law, if all material facts were furnished and there remained no omission or failure on the part of the assessee to disclose truly and fully all material facts.

33 Meaning of Transfer under Sec. 2(47) of Income Tax Act CIT v/s. Dinesh D. Ranka (2016) 380 ITR 440 (Karn)

Issue :

What is the meaning of the word "Transfer" as defined by section 2(47) of the Income Tax Act.

Held :

Under Section 2(47) of the Income Tax Act, 1961, the term "transfer" in relation to a "capital asset" has been defined to include the sale, exchange or relinquishment of rights in a capital asset. A "capital asset" means property of any kind held by an assessee whether or not connected with his business or profession but does not include what is defined under sub-clauses (i) and (ii) of section 2(14), namely, the definition clause of capital asset. The words employed in sub-clause (i) are "sale", "exchange", or "relinquishment" and under sub-clause (ii) the words employed are "extinguishment of any rights therein". The definition is an inclusive definition. The expression must be read widely and not narrowly. It denotes extension and cannot be treated as restricted. A transaction where under the right to exclusive possession and enjoyment stood transferred, even subject to right of reversion in favour of the transferor, would be covered by this section.

34 Cash Credit and Section 68 CIT v/s. Five Vision Promoters Pvt. Ltd. (2016) 380 ITR 289 (Delhi)

Issue :

When and how the provisions of Sec. 68 would become applicable ?

Held:

Under section 68 of the Income Tax Act, 1961, the Assessing Officer has jurisdiction to undertake

enquiries with regard to the amount credited in the books of account of an assessee. This could be any sum whether in the form of sale proceeds or receipt of share capital money. First, the Assessing Officer is to enquire whether the alleged shareholders in fact exist or not. The truthfulness of the assertion by the assessee regarding the nature and the source of the credits in its books of account can be examined by the Assessing Officer. Where the identity of the shareholders stands established and it is shown that they had in fact invested money in the purchase of the assessee's shares, then the amount received would be regarded as capital. Where the assessee offers no explanation at all or the explanation offered is unsatisfactory, the provision of section 68 can be invoked, and not otherwise.

35 Professional or Employee CIT v/s. Ivy Health Life Sciences P. Ltd. (2016) 380 ITR 242 (P & H)

Issue :

Whether consultant doctors attached to hospital are professionals or salaried employees?

Held :

The professional doctors were not entitled to leave travel concession, concession in medical treatment of relatives, provident fund, leave encashment and retirement benefits like gratuity. They were required to follow defined procedure to maintain uniformity in action and administrative discipline but this did not mean that they became employees of the hospital. Further, the Department had not taxed the payments received by any of the doctors from the hospital under the head "Income From Salary". The Tribunal held that there did not exist employer-employee relationship between the hospital and the persons providing professional services. The Tribunal, after considering the agreement in its entirety, concluded that it was not a case of employer-employee relationship between the hospital and the doctors. Therefore, the income of the doctors was not salary but professional charges and taxable accordingly.

36 Sec. 54F : Purchase of Property and amount spent for renovation is allowable Mrs. Rahana Siraj v/s. CIT (2015) 232 Taxman 327 (Karnataka)

Issue :

Whether amounts spent on new asset purchased, for renovation etc. is allowable u/s 54F?

Held :

It is not in dispute that the property purchased by the assessee was habitable but had lacked certain amenities. The assessee has spent nearly about Rs. 18 lakhs towards removal of mosaic flooring and laying of marble flooring, alternation of the kitchen, putting up compound wall, protecting the property with grill work and attending to other repairs Section 54F of the Act provides that if the cost of the new asset, which is to be taken into consideration while determining the capital gain, the words used is 'cost of new asset' and not 'the consideration for acquisition of the new asset". In law, it is permissible for an assessee to acquire a vacant site and put up a construction thereon and the cost of the new asset would be cost of land plus (+) cost of construction. On the same analogy, even though he purchased a new asset, which is habitable but which requires additions, alternations, modifications and improvements and if money is spent on those aspects, it becomes the cost of the new asset and therefore, he would be entitled to the benefit of deduction in determining the capital gains. The approach of the authorities that once a habitable asset is acquired, any additions or improvements made on that habitable asset is not eligible for deduction, is contrary to the statutory provisions.

37 Stock Exchange is a Charitable Institution for Income Tax Act : CIT v/s. Jaipur Stock Exchange Ltd. (2015) 377 ITR 469 (Raj)

Issue :

Whether Stock Exchange is a Charitable Institution and as such its income is entitled to exemption under I.T. Act?

Held :

The Jaipur Stock Exchange Ltd. was a company registered as Charitable Trust under section 12A

of the Income Tax Act, 1961. The object of the stock exchange was not only to further the interests both of the brokers and dealers but also the public interested in securities, to assist, regulate and control the trade or business in securities, to maintain high standards of commercial honour and integrity, to promote and inculcate honourable practices, and just and equitable principles of trade and business, to discourage and to suppress malpractices, to settle disputes, and to decide all questions of usage, custom or courtesy in the conduct of trade and business. The memorandum of association did not permit the profits to be distributed between the members. The profits were to be utilised for services of the public utility. It would thus clearly qualify for exemption under section 11.

38 Revisional Powers of CIT to direct to initiate penalty proceedings. CIT v/s. Rakesh Nain Trivedi (2016) 282 CTR 205 (P & H)

Issue :

Whether CIT has power to direct AO to initiate penalty proceedings as per the powers u/s 263?

Held :

Where the CIT finds that the AO had not initiated penalty proceedings under s. 271(1)(C) in the assessment order, he cannot direct the AO to initiate penalty proceedings under s. 271(1)(C) in exercise of revisional power under s. 263.

39 Charitable Trust : Violation of Section 13(1)(d) : Whether entire income loses exemption? DIT of Income Tax v/s. Working Women's Forum (2015) 235 Taxman 516 (SC)

Issue :

When there is violation of sec. 13(1)(d) whether the Trust loses exemption of entire income?

Held :

Supreme Court rejected the SLP of department in the case when High Court held that only such part of income which is violation of sec. 13(1)(d) can be brought to tax at maximum marginal rate and entirety of income cannot be denied exemption u/s 11 of the I.T. Act.

40 Amount introduced by partners into the firm and Sec. 68 CIT v/s. Anurag Rice Mills (2016) 282 CTR 200 (Patna)

Issue :

Whether capital introduced by partners in the firm can be added u/s 68 in the firm's case?

Held :

Partners have brought in the amounts to be included as capital to the firm. Evidently, it is for the partner to explain the source of the said funds and it was not open to the AO to have treated the said amounts as income of the firm as there was no business of the firm to carry forward such income, and it was not in dispute that the amounts had been brought in by the partners into the firm. Tribunal has rightly held that if at all the assessments had to be made, they may be of the partners of the firm and not the firm itself and such amounts could not have been treated as income of the firm relying upon s. 68.

41 Addition u/s 43B Jet Lite (India) Ltd. v/s. CIT (2016) 282 CTR 113 (Delhi) : 379 ITR 0185

Issue :

Whether disallowance u/s 43-B can be made when there is no charge of any amount of tax etc. in P & L A/c ?

Held :

The Tribunal followed its order dt. 8th Aug, 2008 in ITA No. 294/Luck/2000 which held that s. 43B is only attracted when the assessee claims deduction for any sum payable by way of tax or duty under any law for the time being in force, and, whereas in the case of the assessee, no charge is claimed or made to the P & L A/c. There was no question of disallowing the amount taken to the balance sheet on the liabilities side or of "additing back" and deleted the addition.

Consequently, the Court up held the order of the Tribunal which affirmed the order by the CIT(A) deleting the above addition. The issue was decided in favour of the assessee and against the Revenue.

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Tribunal News

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25 S.R Thorat Milk Products (P.) Ltd. Vs. ACIT [2016] 70 taxmann.com 261/ 159 ITD 255 (Pune)

Assessment Years: 2004-05, 2005-06, 2007-08 to 2009-10
Order Dated: 20 May, 2016

Basic Facts

The assessee is a closely held company engaged in the business of processing of milk and manufacturing of milk products. It claimed interest expenses on account of interest paid on share application money received from existing shareholders pending allotment. The AO observed that share capital is never borrowed but is subscribed and also the share application money has been solely obtained for increasing the capital based of the assessee company as the object of such receipt was to allot the share and thus to increase its share capital. Relying on the decision of Hon'ble Supreme Court in the case of Punjab State Industrial Development Corporation Ltd. and Brooke Bond India Ltd., the AO held that the expenditure on account of interest paid on share application money is not of a revenue in nature but a capital expenditure in nature and therefore isnot allowable under section 37(1) of the Act. As regards the allowability of the interest expenditure under section 36(1)(iii), the AO observed that in the absence of any act of borrowing by the assessee *per se* conditions laid down under section 36(1)(iii) are not fulfilled. He accordingly disallowed the interest.The CIT(A) also endorsed the findings of the AO. Aggrieved by the order of the CIT(A), the assessee is in appeal for all the five assessment years.

Issue

Whether interest paid on share application money is revenue or capital expenditure?

Held

The Hon'ble ITAT relying on the Co-ordinate Bench decision in the case of Rohit Exhaust Systems Pvt. Ltd held that the share application money *per se* cannot be characterized and equated with share capital. The obligation to return the money is always implicit in the event of non-allotment of shares in lieu of the share application money received. Moreover receipt by way of share application money is not receipt held towards share capital before its conversion. Therefore, payment of interest of share application money cannot be treated differently in the Income-tax Act. Once the contention of the assessee that money has been utilized for the purpose of business remains un-controverted according to Tribunal there was no justification to hold the issue against the assessee. Accordingly, the claim of interest expenditure on share application money as revenue expenditure was allowed and the AO was directed to delete the addition on merits.

26 Urvi Chirag Sheth. Vs. ITO [2016] 179 TTJ 245 (Ahmedabad)

Assessment Year: 2012-13 Order Dated: 31 May, 2016

Basic Facts

The assessee is an unfortunate victim of a motor accident. On 18th May 1990, she was travelling in a car, which met a serious accident, leaving her permanently disabled, at ninety percent level. She claimed a compensation of Rs 15,00,000 for this tragic loss of her physical abilities and it was finally on 26th April 2011 that her claim was upheld. The stand of the AO is that interest component on compensation awarded by Hon'ble Supreme Court is taxable as it is covered under section 145A(b) r.w.s. 56(viii) of the Act. In appeal, learned CIT(A) has confirmed this stand.

Issue

Whether interest awarded by the court on account of delay in payment of motor accident compensation is taxable?

Held

The Tribunal held that payment made to the assessee is in the nature of compensation for the loss of her mobility and physical damages. Such receipt in principle is a capital receipt and beyond the ambit of taxability of income since only such capital receipts can be brought to tax as are specifically taxable under section 45. Accident compensation is thus not taxable as income of the assessee. What is termed as interest also is of the same character and it seeks to compensate the time value of money on account of delay in payment. When the principal transaction i.e. accident compensation for the delayed payment of which the interest is awarded, itself is outside the ambit of taxation, similar fate must follow for the subsidiary transaction i.e. interest for delay in payment of compensation. Further the memorandum explaining the provision of Finance Bill 2009 makes it clear that what is not taxable is not made taxable under section 145A(b) but what is taxable under the mercantile method of accounting, is made taxable on cash basis of accounting. As for the provisions of Section 56(2)(viii), it is only an enabling provision to bring interest income to tax in the year of receipt rather than in the year of accrual. Since the interest received by the assessee was not in the nature of income, the tribunal held that the provisions of section 56(2)(viii) were not applicable. The ITAT vacated the action of the AO, and disapproved the CIT (A)'s action of confirming the same.

The Tribunal in such matters have made a suggestion to CBDT to take a conscious call on issuing appropriate administrative instructions to ensure that the measures brought in statute to grant relief should not be used by the field officers as source of taxation which could help in ensuring that hardship of the accident victim are not further compounded.

27 ITO Vs. Susanto Purnamo [2016] ITA No. 254/Ahd/2015 (Ahmedabad) Assessment Year: 2011-12 Order Dated: 04 August 2016

Basic Facts

The assessee is an individual fiscally domiciled in, and carrying on business in the name of his sole proprietorship concern 'Transforme', in the USA. During the relevant previous year, the assessee has provided certain services to FMPL, a business entity based in India. The services provided by Transforme were software development service to design, build and maintain a complete video streaming website and all of its administrative applications. The assessee did not pay any taxes in India in respect of the services rendered to FMPL. In the scrutiny proceeding, the assessee claimed that as per provisions of the India-USA DTAA, the services by the assessee to the Indian entity are in the nature of 'independent personal services' which, under article 15, cannot be brought to tax in India, unless the assessee has a fixed base regularly available to him in India. It was also claimed that the income was in nature of business income taxable under Article 7 of the treaty, which, in the absence of a Permanent Establishment in India, cannot be brought to tax in India. The assessee further contended that even if income of the assessee is to be construed as 'fees for included services' , the same shall not be taxable under article 12 of Indo US tax treaty, since the services so rendered do not satisfy the 'make available' condition as is sine qua non for invoking taxability in the source country.The AO accepted the applicability of DTAA but according to him, the assessee was not protected by Article 15 in as much as the services rendered by the assessee were "not in the nature of independent services" and that the make available condition was fulfilled on "the mere fact that such a service has enabled the user of the service in applying the technology (not owning it) is sufficient to demonstrate that the technical knowledge has been made available". The AO thus concluded that the income of the assessee is taxable in India, though on gross basis under section 115A of the Act.

Aggrieved, assessee carried the matter in appeal before the CIT(A). The CIT(A) held that the provisions of article 12(6) specifically state that in case the services provided by an individual which are in the nature as dealt with in article 15, then the provisions of Article 15 would prevail over Article 12. He thus reversed finding of the AO in this regard, and held that since article 15 applies on the facts of this case and since the conditions of article 15, with regard to availability of fixed base in India or stay in India for a period of more than 90 days in the relevant previous year, are not satisfied on the facts of this case, the income cannot be brought to tax in India under Article 15. He further held the assessee's contentions with respect to 'make available' clause not being satisfied on the facts of the to be infructuous.

Issue

Whether software development services provided by the Taxpayer are covered under the Independent Personal Services (IPS) Article or Fees for Included Services (FIS) Article of the India-US double taxation avoidance agreement (DTAA)?

Held

The Tribunal upheld the applicability of DTAA to the assessee's case. According to the tribunal the definition of "professional services" termed as "independent personal services", as held by the Kolkata Tribunal in the case of Graphite India Ltd Vs DCIT, would depend on the definition of profession which can broadly be understood as any vocation carried on by an individual, or group of individuals, requiring predominantly intellectual skills, dependent on individual characteristics of the person(s) pursing that vocation, requiring specialized and advanced education or expertise. Viewed in the light, software development service rendered by an individual, which essentially requires predominantly intellectual skill, dependent on individual characteristics of the person pursuing software development, and based on specialized and advanced education and expertise, is also a professional service. While dealing with the scope of services which are covered by Article 15, there could indeed be overlapping effect of the scope of services covered by the other articles but as long as the services are rendered by an individual or group of individuals, generally rendition of such services is covered by Article 15. The applicability of article 15, therefore, is also substantially influenced by the status of the recipient- i.e. whether he is an individual or whether he is a corporate entity. In the light of all these discussions, the services rendered by the assessee are in the nature of professional services but then since the conditions set out in article 15(1) are admittedly not satisfied on the facts of this case, the taxability under article 15 does not arise. The order of the CIT(A) was upheld.

28 ITO Vs. B.A. Research India (P.) LTD. [2016] 70 taxmann.com 325 (Ahmedabad)
Assessment Year: 2010-11 Order Dated: 30 November 2015

Basic Facts

During the year, non-resident companies located in USA and Canada rendered bio-analytical services on samples provided by assessee. The non-resident companies had no PE in India. These services were undisputedly provided outside India, but were utilized for earning income from source in India which is manufacturing of drugs in India and subsequent sales.The AO passed order u/s.201(1) & 201(1A) r.w.s 195 of the Act, on the basis that the assessee had made payments to non-resident parties in Canada and USA on which he has not deducted tax. He held the payments made were taxable both as per provision of the Income Tax Act, and the tax treaty between India-USA and India-Canada. The assessee before the AO submitted that the payments were not subjected to tax, therefore the assessee was not liable to deduct tax on such payments. The assessee being aggrieved by the order, preferred an appeal before the ld. CIT (A). The Ld. CIT (A), placing reliance on the decision of the AAR, Delhi in the case of Anapharm Inc., held that the services provided to the assessee

by the non-resident parties of USA and Canada did not fall within the purview of 'included services' under Article 12(4)(b) and, hence, there was no liability on the assessee to deduct TDS u/s. 195 of the Act, while making payment for such bio-analytical services rendered to it.

Issue

Whether since there was nothing on record to suggest that services rendered to assessee were made available to it and assessee was able to apply same on its own, in absence of same, such services would not fall within ambit of 'included service'?

Held

The services are definitely of the nature of technical services and as the services are utilized for earning income from source in India, these are not exempted u/s.9(2)(vii)(b). Therefore, the payments made to the non-residents are income deemed to accrue or arise in India under the provisions of section 9(2)(vii) as being 'fees for technical services'.The service, which is technical in nature can be said to be "fees for included services" only when it "make available" technical knowledge or skills to the recipient of services i.e. only when recipient of services can apply the same on his own. In the present case, the applicant renders Bio-analytical services which, no doubt, are very sophisticated in nature, but the applicant does not reveal to its clients as to how it conducts those tests or the inputs that have gone into it, so as to enable them to carry out those tests themselves in future. Therefore, the services provided to the appellant by the non-resident parties of USA and Canada do not fall within the purview of 'included services' under Article 12(4)(b) and hence there is no liability on the appellant to deduct TDS u/s. 195 of the Act, while making payment for such bio-analytical services rendered to it. Further, since in the given case, the remittance made is not chargeable to tax in Indiaprovisions of Section 195 are also not applicable. The order of the CIT(A) is upheld.

29 Merch Ltd. Vs. DCIT [2016] 69 Taxmann.com 45 (Mumbai)
Assessment Year: 2009-10 and 2010-11
Order Dated: 31 March 2016

Basic Facts

The assesse company, a pharmaceutical company in India imported Bisoprolol Fumerate, an active pharmaceutical ingredient (API) used in manufacturing of finished dosage form (FDF) of medicine from its foreign associated enterprise. The imported product is inherently superior, as it is manufactured in a German plant where quality control requirements are much more stringent than in India, and the quality of the product is said to be physically superior, as evidenced by the independent laboratory test by Bee Pharma Lab. The DRP directed to make appropriate adjustment for the quality difference between imported ingredient and comparable ingredient.

Issue

Whether it was appropriate to adopt quality adjustment at rate of 10 per cent when the imported product was of superior quality?

Held

Under rule 10B(1)(a)(ii), the price of the comparable uncontrolled transaction is adjusted to account for differences, if any … which could materially affect the price in the open market. It is thus not even necessary that the differences in the product involved in comparable uncontrolled transaction are very significant or even real, because as long as these differences, whether having intrinsic value or merely in perceptions, could 'materially affect the price in the open market', these differences are required to be taken into account. Even though the generic product may be the same, the same generic product manufactured in a plant, with higher and more stringent quality control requirements, command a premium in the market and greater acceptability with the end consumers of the resultant end product. It is also to be noted that the TPO himself has allowed a quality adjustment at the rate

of 10 per cent in subsequent assessment year. The tribunal further felt that it will be too detached from the ground realities to be oblivious of the inherent edge that the same products, as manufactured in India, manufactured in a location like Germany, which is bound to have or is perceived to have, much more stringent regulatory framework and quality control. That apart, in the case of a more trusted global corporation, where much more in the international reputation is at stake, the quality of product is perceived to be much more reliable. In any event, it is an undisputed position that on two significant features, namely particle size (sieve analysis) and bulk density test, the product imported by the assessee is demonstrably superior to the locally manufactured drug. The fairness which has dawned on the TPO in subsequent year is thus certainly in the right direction. The only issue is quantification of this adjustment. In the absence of any assistance to arrive at a fair rate of adjustment, the tribunal held that it was appropriate to adopt the quality adjustment at the rate of 10 per cent, as granted by the TPO in subsequent assessment year, in instant assessment years as well. Accordingly, the ALP computed by the AO, in the light of the CUP inputs, is to be adjusted by 10 per cent for the quality difference as the product is manufactured by a globally reputed company and an industry pioneer in its own facilities in Germany. To this extent, the manner is modified in which the ALP adjustment is to be recomputed. This also take account of the assessee's claim that the product manufactured with this API, being more reliable than comparable product with the locally sourced API, commands higher price in the market. As 10 per cent quality adjustment had been allowed in the absence of any cogent material to demonstrate product superiority and only on the basis of what the TPO himself has allowed in the subsequent year, it was open to the assessee to raise issue regarding higher quantification of the quality difference, as and when he can gather and produce evidence in support of the same, in any subsequent assessment year. To that extent, the issue was open.

30 ZTE Corporation. VS. DCIT [2016] 70 Taxmann.com 1/179 TTJ 424 (Delhi) Assessment Year: 2004-05 to 2009-10 Order Dated: 30 May 2016

Basic Facts

The assessee , a tax resident of Republic of China is engaged in the business of supply of telecom equipment's to Indian Telecom operators as well as supply of mobile hand set to various customers in India. The assessee did not file its return of income as per the provisions of section 139 on the ground that it had no PE in India under the provisions of article 5 of the Indo-China DTAA.Subsequent to survey & issue of notice under section 148, the assessee filed return of income with NIL income on the ground that it did not have a PE in India. The AO concluded that the assessee was carrying on business in India through fixed base for sufficiently long period and, therefore, these fixed places had become permanent in nature. He thus finally concluded that assessee had fixed place PE, installation PE, dependent agency PE in India and, therefore, the revenues from the supply of telecom equipment and mobile hand sets were to be taxed in India as business profits. He, therefore, proceeded to determine the profits attributable to the assessee's PE in India.Since assessee did not maintain separate books of account, therefore, AO had invoked rule 10(ii) and attributed 20 per cent of net global profits arising out of revenues realized from India.The Commissioner (Appeals) held that 2.5 per cent of total sales made by foreign company in India was to be attributed as business profits of PE.

Issue

Whether the profit attributed by the CIT(A) to the PE in India was excessive and unreasonable given the activities performed in India.

Held

The Tribunal held that each case has to be considered on its own merits, depending upon the level of operations carried out by PE in India.. The CIT(A) has pointed out that ZTE India is doing preparatory work, negotiating the contract and price

and answering specified queries of the customers on behalf of the assessee. These are all vital functions which are revenue generating. Out of the total global income of assessee relatable to the supplies made to India more income is to be attributed to the assessee as accruing in China and from sale activity, it is not to that extent. The overall operations carried out by PE in India are to be considered. Mere involvement of expatriates in the activities of PE for assisting the Indian team cannot substantially affect the revenue generating capacity of PE Thus, the level of operations carried out by assessee through its PE in India are considerable enough to conclude that almost entire sales functions including marketing, banking and after sales were carried out by PE in India and, therefore, it was was opined that it would meet the ends of justice if 35 per cent of net global profits as per published accounts out of transactions of assessee with India are attributed to PE in India in respect of both hardware and software supplied by assessee to Indian customers. As regards the assessee's submission that since for assessment years 2006-07, 2007-08 and for assessment year 2008-09, the assessee had paid marketing support services, therefore, no attribution should be made. This plea of the assessee was held unacceptable because it is only after the survey operations were carried out that extensive involvement of PE came to light. The revenue had very rightly pointed out that all the sums paid for market support service are for pre sale activities and, therefore, for post sale activities performed by ZTE India, which surfaced on account of survey operations, profits have to be attributed. The AO in his findings for assessment year 2009-10, very rightly pointed out that the functions performed in respect of transactions on account of supply of equipments and handsets with customers in India were not the subject matter of TP analysis before the TPO. Since all the functions were not the part of TP study, the assessee's contention that if a correct arm's length is applied then nothing further will be left to be taxed in the hands of foreign enterprisecannot be accepted because if the TP analysis does not adequately respect the functions performed and risk assumed by the enterprise then in such a case there would be need to attribute profit to the PE for those functions/ risks that have not been considered.

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contd. from page 307

under section 44AD and shall not be further allowed as was previously allowed till A.Y. 2016-17.

Position in 44ADA:

Sub section (2) of Section 44ADA provides any deduction allowable under the provisions of sections 30 to 38 shall, for the purposes of sub-section (1), be deemed to have been already given full effect to and no further deduction under those sections shall be allowed.

However there is no such proviso regarding salary and interest in section 44ADA as it was in section 44AD.

Hence salary and interest paid would be deemed to have been allowed while computing the profits under section 44ADA.

TAIL PIECE:

Following two questions require deliberations

1) Can a corporate entity offer professional services?
2) In view of the following facts whether a corporate entity is covered under provision of Section 44ADA?

For the purpose of section 44AD eligible assessee is defined. As per the definition company is excluded from application of provisions of section 44AD.

Section 44ADA applies to **all resident professional assessees** whose total gross professional receipts do not exceed rupees fifty lakh rupees. The **assessee is defined in section 2(7)** provides that assessee means a person by whom any tax payable. The same is also an inclusive definition. Hence company is included in the definition of assessee

In the view of the above provision whether section 44ADA applies to all Company assessees is a big question!

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Unreported Judgements

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In this issue we are giving gist of an important decision of Hon'ble Gujarat High Court, wherein the Hon'ble High Court confirmed the order of Hon'ble ITAT deleting penalty u/s 271(1)(c) of the Act when during the course of survey there was a disclosure of an amount of Rs.5.86 crores and the same was part of return of income filed subsequently u/s 139 (1) of the Act. The department relied on the decision of Hon'ble Supreme Court in the case of MAK Data Pvt. Ltd. v/s CIT 358 ITR 593 and also Gujarat High Court decision in the case of Deepak Construction Co. v/s CIT 293 ITR 285. However, the same were distinguished by the Hon'ble Gujarat High Court and ultimately they upheld the order of Tribunal deleting the penalty u/s 271(1)(c).

We hope the readers would find the same useful.

In the High Court of Gujarat at Ahmedabad
Tax Appeal No. 549 of 2016

Principal Commissioner of Income Tax-3 ……. [Appellant(s)]
v/s
R Umedbhai Jewellers Pvt. Ltd.…… [Opponent(s)]

Appearance :
Mr. Nitin K. Mehta, Advocate for the Appellant(s) No. 1
Mr. RK Patel, Advocate for the Opponent(s) No. 1

Coram : Honourable Mr. Justice Akil Kureshi and
Honourable Mr. Justice A.J. Shastri
Date : 22/08/2016

Gist only

Question before Hon'ble High Court

"(a) Whether the Hon'ble ITAT is right in law and on facts of the case in allowing the appeal of the assessee and thereby deleting the penalty levied by the AO u/s 271(1)(c) of the IT Act of Rs.1,99,35,135/- ?

(b) Whether the Hon'ble ITAT is right in law and on facts of the case by not following the decision of the Hon'ble Apex Court in the case of MAK Data (P) Ltd. v/s CIT (38 Taxmann.com 448) and the decision of the Madras High Court in the case of CIT v/s Dr. A. Mohd. Abdul Khadir (260 ITR 650)?

Facts of the case

The respondent – assessee is a company engaged in the business of trading in gold, silver and diamond jewellery. A survey u/s 133A was conducted incase of the assesseeon 1.7.2010. During the course of survey,the company made a disclosure of Rs.5.86 crores on the ground of introduction of bogus share capitalduring the financial year 2009-10. On 31.8.2010, the assessee – company filed a return of income for the Assessment Year 2010-11 declaring total income of Rs.6.29 crores, which included the above-mentioned disclosure of Rs.5.86 crores made during the survey. No further additions were made by the AO during the assessment proceedings. However, he initiated penalty proceedings for the sum of Rs.5.86 crores on the ground that assessee had sought to evade tax on the same. By a penalty order dated 30.8.2013 he imposed penalty of Rs.1.99 crores @ 100 per cent of the tax sought to be evaded.

The assessee carried the matter in appeal. The CIT (Appeals) by an order dated 9.10.2015 dismissed the appeal, inter-alia, on the ground that had a survey not been conducted in case of the assessee, such amount of Rs.5.86 crores would not have been brought to tax. Assessee's filing of the return and offering such income to tax was only on account of survey operation and thus, not voluntary.

The assessee carried the matter in further appeal before the Tribunal. The Tribunal, by the impugned judgment, reversed the decisions of the revenue authorities and allowed the assessee's appeal holding that in such a case no penalty can be imposed. Hence, the present Tax Appeal by the revenue.

Contentions of the Department

Department challenged order of Hon'ble Tribunal on following grounds :

1. It was only after the survey that the assessee filed a return in which he offered the disclosure of having received bogus share application money. The material on record clearly suggests that but for the survey the assessee would never have offered such income to tax.

2. The finding of AO as well as CIT(A) to this effect were not reversed by the Hon'ble Tribunal.

3. Based on the ratio of Hon'ble Supreme Court in the case of MAK Data Pvt. Ltd. v/s CIT 358 ITR 593, Deepak Construction Co. v/s CIT 293 ITR 285 and CIT v/s Dr. A. Mohd. Abdul Khadir 260 ITR 650, penalty in such case is leviable.

Contentions of the Respondent – Asseessee

1. Penalty cannot be levied as the return was filed within due date. Merely because it was preceded by survey action would not permit AO to levy penalty u/s 271(1)(c).

2. There is no addition made to the returned income by AO.

Held by the Hon'ble High Court

The Hon'ble Gujarat High Court after considering the rival submissions and after distinguishing the case relied on by the department held as under :

"7. As noted, the revenue desired to bring in the element of the assessee having furnished inaccurate particulars of its income. The fact that the assessee did make a disclosure of such income in the return filed and the Assessing Officer was not dissatisfied by such disclosure is not in dispute. The assessee having filed the return by the due date for filing return, in which such income was also offered to tax, the question of assessee having furnished inaccurate particulars of the income would not arise.

8. It may be that the assessee was subjected to searchoperation before filing of the return and it may also be thatthe revenue has sufficient material at its command to arguethat but for the survey operation the assessee would not havedisclosed such income. However, these are not the groundson which the penalty under Section 271(1)(c) of the Act canbe imposed. The grounds are specific, namely, of the assesseehaving concealed particulars of the income or havingfurnished inaccurate particulars of such income. Whenneither of these two conditions apply, penalty cannot belevied under the said provision.

9. Attempt on the part of counsel for the revenue to rely upon explanation (1) to Section 271(1) of the Act would also be futile. Said explanation provides that if a person fails to offer an explanation or offers explanation which is found by the Assessing Officer to be false or offers an explanation which he is not able to substantiate or fails to prove that such explanation is bonafide, the amount added or disallowed in computing total income of such person, as a result thereof for the purpose of clause (c) of sub-section (1) be deemed to represent the income in respect of which

particulars have been concealed. This explanation would, thus, apply at the stage of assessment since it refers to in respect of any facts material to the computation of total income. At such a stage. If the assessee fails to offer an explanation or offers an explanation which is found to be false, the explanation would apply and by deeming fiction, the assessee would be for the purpose of clause (c) of sub-section (1) of Section 271 of the Act be deemed to have concealed the particulars of the amount added or disallowed in computing total income of the assessee.

10. *The decision of the Supreme Court in case of MAK Data(P) Ltd. (supra) was based on different set of facts. It was acase where the assessee had filed a return of income for theAssessment Year 2004-04 declaring total income of Rs.16.17lacs. During the course of assessment proceedings, theAssessing Officer confronted the assessee with certainmaterials collected during the course of survey operationearlier conducted in case of assessee's sister concern. Theassessee thereupon offered a further sum of Rs.40.74 lacs toavoid litigation and buy peace. The Assessing Officer acceptedsuch further disclosure and brought the said sum of Rs.40.74lacs to tax as income from other source and also initiatedpenalty proceedings with respect to such sum. When theassessee pressed the clause of making a declaration to buypeace, the matter ultimately reached the High Court which accepted the revenue's plea that the assessee had not offered any explanation about concealment of the income. The High Court thus applied explanation (1) to Section 271(1)(c) of the Act and upheld the penalty.*

11. *The vital difference in the aforesaid case, thus, was that the assessee had already filed a return disclosing an amount of Rs.16.17 lacs. It was only during the assessment proceedings that the assessee agreed to surrender further sum of Rs.40.74 lacs by way of income. It was on account of the material collected by the revenue during survey operation carried out in case of assessee's sister concern. In our case, the assessee had neither made additional disclosure nor revised the return after filing the return within the time provided under the Statute.*

12. *The decision of this Court in case of Deepak Construction Co. (Supra) also was rendered in different fact situation. It was a case where for the Assessment Year 1983-84, the assessee had filed the return of income which was taken in scrutiny. During the scrutiny assessment, the Assessing Officer issued a show cause notice confronting the assessee with certain squared up cash credits. Upon receipt of the notice, the assessee filed a revised return offering such sum by way of additional income. The revised return was accepted by the Assessing Officer. He, however, instituted penalty proceedings for the additional income surrendered by the assessee. In such background, the question arose whether after the assessee having filed the revised return, could the revenue have imposed penalty without making any additions to the income so returned. The High Court in the said judgment held that since the revised return was filed after detection of concealment of income, penalty under Section 271(1)(c) of the Act would be levied. Likewise, in case of Dr. A. Mohd. Abdul Khadir (Supra) also, the Madras High Court was concerned with the similar situation where the assessee revised his return pursuant to the search operation during which he had admitted to have concealed the income. The Court held that such revised return could not be treated as voluntary return and penalty under Section 271(1)(a) of the Act would be leviable."*

In the result, the departmental appeal was dismissed.

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Controversies

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Sales Tax collected but not paid credited to separate Account in the Balance sheet, whether Section 43B applies?

Issue:

M/s. XYZ collected Sales Tax and credited to a separate account as Sales Tax Payable Account which appears as liability in the balance sheet. The sales tax so collected is not credited to Sales Account and when Sales Tax is paid the same is not debited to P & L Account. The assessee claims that since Sales Tax is credited to Sales Tax Payable Account even if Sales Tax is not paid even before the last date for filing the return of income the provisions of Section 43B is not applicable as no deduction of Sales Tax is claimed.

Proposition:

Let me refer to the provisions of Section 43B of the Income tax Act "Not with standing anything contained in any other provision of this Act, a deduction otherwise allowable under this Act in respect of

(a) Any sum payable by the assessee by way of tax, duty, cess or fee, by whatever name called, under any law for the tome being in force, or

(b) Any sum payable by the assessee as an employer by way of contribution to any provident fund or superannuation fund or gratuity fund or any other fund for the welfare of employees, or

(c) Any sum referred to in clause (ii) of sub-section (1) of section 36, or

(d) Any sum payable by the assessee as interest on any loan or borrowing from any public financial institution (or a state financial corporation or a state industrial investment corporation) in accordance with the terms and conditions of the agreement governing such loan or borrowing, or

(e) Any sum payable by the assessee as interest on any (loan or advances) from a scheduled bank in accordance with the terms and conditions of the agreement governing such loan (or advances), or

(f) Any sum payable by the assessee as an employer in lieu of any leave at the credit of his employee, or

Following clause (g) shall be inserted after clause (f) of Section 43B by the Finance Act, 2016, w.e.f. 01/04/2017.

(g) Any sum payable by the assessee to the Indian Railways for the use of railway assets.

It is proposed where the assessee has neither claimed a deduction nor any charge was made to the P & L Account, no disallowance could be made by taking recourse to the balance sheet of the assessee for taxing the sales tax collection by applying Section 43 B. On the ground of non-payment of Sales Tax.

View against the Proposition:

It is submitted that the Sales Tax collected is always a part of trading receipt irrespective of method of accounting employed by the assessee. Thus, whether assessee credits Sales Tax collected to Sales Account or to Sales Tax Payable Account is not relevant as Sales Tax collected is always a part of trading receipt. This principle is based on the decision of Chowringhee Sales Bureau P. Ltd. v. CIT (1973) 87 ITR 542 (SC). Their lordships of Supreme Court in this case decided that the Sales Tax collection has to be taken as trading receipt chargeable to tax as income by applying the rational

that Sales Tax collected is always a part of trading receipt.

I also refer to the decision of Supreme Court in the case of CIT v. T. Neggi Reddy reported in 202 ITR 253 as well as decision of the same court in the case of Jonnalia Narashimharao and Co. v. CIT (1993) 200 ITR 588 (SC).The decision of Supreme Court is short one but interesting. It was held that Sales Tax collected by the assessee is includible in the income of the assessee as the assessee follows mercantile system of accounting so when Sales Tax is collected but not paid to Government as there was dispute regarding Sales Tax Liability which was pending before Supreme Court and stay has been granted is includible in the income of the assessee.

It is important to refer to the decision of their lordships of Calcutta High Court in the case of Associated Pigments Ltd. vs. CIT 71 Taxman 244, (Cal.). Similarly, their lordships of Madhyapradesh High Court in the case of Dhariwal Sales Enterprises vs. CIT 171 ITR 212 (MP) held Mandi tax collected credited to balance sheet is held to be income.

Let me now refer to the decision of CIT vs. Ideal Sheet Metal Stampings & Pressing (P.) Ltd. reported in 290 ITR 295(Guj.) Their lordships of Gujarat High Court held as under "Whether where assessee collected excise duty and instead of paying same to Government, it kept separately in excise deposit account in books of account on ground that in dispute between assessee and Government, High Court had stayed its payment, provisions of section 43B were attracted held,yes."

View in favour of the Proposition:

It is submitted that Section 43B can only be invoked when assessee claims deduction of any sum payable by way of tax or duty, under any law for time being in force, and, as such, where neither such deduction is claimed nor charge is made to profit and loss account, there is no question of disallowing Sales Tax.

It is submitted that a reading of Section 43B makes it clear that if tax having become payable is not paid by the assessee then alone Section 43B comes into operation. Section 43B was inserted with effect from 01/04/1984, to discourage taxpayers who did not discharge their statutory liability of payment of sale tax, excise duty, employer's contribution to provident fund, etc. for long periods of time, but claimed deduction in that regard from their income on the ground that the liability to pay these amounts had been incurred by them in relevant previous year. After the insertion of section 43B, even if the assessee had regularly adopted the mercantile system of accounting, the amount of tax payable by the assessee could be deducted only in the year in which the sum was actually paid and not in the year in which the assessee incurred the liability to pay that tax.

Let me refer to the decision of their lordships of Madras High Court CIT vs. Everest Litho Press 285 ITR 297, It was decided in this case that assessee collected certain amount towards sales tax and kept it as contingent deposit. The AO took the view that the sales tax collected as a part of trading receipt hence, when no payment is made disallowance is required to be made u/s. 43B of the I.T. Act 1961. Tribunal however, held that assessee did not claim the amount in question as deduction and hence, Section 43B has no application. The High Court agreed with the ITAT and held that no addition can be made u/s. 43B. It is interesting to note that their lordships of Madras High Court did consider the following decisions:

1. Chowrangee Sales Bureau (P.) Ltd. v. CIT (1973) 87 ITR 542 (SC)
2. Sinclair Murray & Co. (P.) Ltd. v. CIT (1974) 97 ITR 615 (SC)
3. Jonnalla Narashimharao & Co. v. CIT (1993) 200 ITR 588(SC)

The important principle decided is that as per the above referred judgments sales tax collected may be treated as income but disallowance u/s. 43B is applicable only if sales tax is claimed as expenditure

or it is charged to P & L Account but actual payment is not made.

Summation:

It appears that the law regarding addition u/s. 43B in respect of sales tax collected but not paid which is credited to a separate account and disclosed in the balance sheet as liability cannot be disallowed u/s. 43B.

The Gauhati High Court in the case of India Carbon Ltd. v. IAC (1993) 200 ITR 759 held as under:

"Section 43B declares that taxes and duties shall not be allowed as deduction from the income unless they are actually paid. It removes the doubt as to the meaning of the word "paid" according to the method of accounting regularly employed by an assessee, insofar as deduction claimed in respect of any sum payable by way of tax or duty. The declaration does not, however, place any restriction on the business activities and on the system of accounting. Therefore, section 43B shall only be attracted when the assessee claims deduction for any sum payable by way of tax or duty under any law for the time being in force, and, as such, where no such deduction is claimed nor charge made to the profit or loss account. There was no question of disallowing the amount taken to the balance sheet on the liabilities side as well as of "add back".

Ahmedabad, Bangalore, Cochin, Cuttack, Poona Benches of this Tribunal in different cases wherein section 43B were invoked in respect of unpaid sales tax liability have taken a similar view that if sales tax is not debited to profit and loss account and no deduction or allowances is made in arriving at the taxable profit/income, then, the provisions of section 43B are not attracted and no addition can be made by the Assessing Officer in respect of such unpaid sales tax liability. The citation of the cases in which different Benches of the Tribunal as mentioned above have taken such a view are as under:

(1) ITO v. Thakersi Babubhai & Co. (1986) 18 ITD 593 (Ahd.)

(2) S. Govindaraja Reddiar v. ITO (1986) 19 ITD 177 (Cochin)

(3) Kapoor Motor Engg. (P.) Ltd. v. ITO (1987) 21 ITD 4 (Cuttack)

(4) Hindustan Commercial Corp. v. 2nd ITO (1999) 32 ITD 295 (Pune)

(5) Fourth ITO v. Sanjay Sales Syndicate (1987) 30 Taxman 100 (Bang.) (Mag.)

(6) ACIT vs. Laxmi Vishnu Silk Mills (1994) 51 ITD 207 (Ahmedabad)

(7) CIT vs. Modi Spg. & Wvg. Mills Co. Ltd. (2002) 123 Taxman 1005 (Delhi)

(8) Dynavision Ltd. vs. ACIT, Central Circle-II(1) (2009) 121 ITD 461 (Chennai)(TM)

Finally, let me refer to the decision of their lordships of Madras High Court in Everest Litho Press once again. Very important analysis is given by their lordships which is reproduced here "In the case on hand, the amount collected as sales tax was never claimed as deduction by the assessee. Section 43B of the Act is not attracted at all when the assessee has not claimed any deduction of the amount collected by it. The Gauhati High Court, in the case of India Carbon Ltd. v. Inspecting Assistant CIT (1993) 200 ITR 759, considered a similar issue and held as follows(headnote)"

The amount of sales tax appeared on the liabilities side of the balance sheet of the petitioner company. The petitioner did not claim the added amount as deduction nor did he charge it to the profit and loss account. The amount of sales tax could not be added back to the income of the assessee u/s. 43B.

Finally, it is submitted that the Sales Tax collected may be treated as a part of Trading Receipt, but if it is credited to a separate account i.e. Sales Tax payable Account and not debited to P & L Account nor it is claimed as deductible expense then Section 43B has no application.

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FEMA Updates

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22 Master Directions on Relief/Savings Bonds

The rules and regulations applicable to Relief/Savings Bonds have been updated with instructions issued up to June 30, 2016 in the Master Directions on Relief/Savings Bonds. The directions facilitate availability of all the current operative instructions on the above subject at one place and will be updated suitably and simultaneously whenever there is a change in the rules/regulations or there is a change in the policy. These Directions have been placed on RBI website https://rbi.org.in. Master directions include Appointment / Delisting of brokers, Payments and rates of brokerage for savings bonds, and Nomination facility for relief / savings bonds.

Cir. no.: RBI/IDMD/2016-17/30 dated July 1, 2016

For full text please refer:https://www.rbi.org.in/scripts/BS_ViewMasDirections.aspx?id=10479

23 Master Direction - Lending to Micro, Small & Medium Enterprises (MSME) Sector

The Reserve Bank of India has, from time to time, issued a number of guidelines / instructions / circulars / directives to banks in the matters relating to lending to Micro, Small & Medium Enterprises Sector. The Master Direction incorporates the updated guidelines / instructions / circulars on the subject. The list of circulars consolidated in this Master Direction is indicated in the Appendix. The Direction will be updated from time to time as and when fresh instructions are issued.

Cir. no.: RBI/FIDD/2016-17/37 dated July 21, 2016

For full text please refer: https://www.rbi.org.in/scripts/BS_ViewMasDirections.aspx?id=10523

24 Master Direction on Money Market Instruments: Call/Notice Money Market, Commercial Paper, Certificates of Deposit and Non-Convertible Debentures (original maturity up to one year)

The Reserve Bank of India has, from time to time, issued a number of guidelines/instructions/directives to the eligible market participants in regard to call/notice money market, Commercial Paper (CP), Certificates of Deposit (CD) and Non-Convertible Debentures (NCDs) of original or initial maturity up to one year.

To enable market participants to have current instructions at one place, a Master Direction incorporating all the existing guidelines/instructions/directives on the subject has been prepared for reference of the market participants and others concerned.Definitions of certain terms used in the Directions are provided in Annex I thereto.

Cir.no.: RBI/FMRD/2016-17/32 dated July 7, 2016

For full text please refer: https://www.rbi.org.in/scripts/BS_ViewMasDirections.aspx?id=10495

25 Master Direction - Non-Banking Financial Companies Acceptance of Public Deposits (Reserve Bank) Directions, 2016.

The Reserve Bank of India (the Bank), having considered it necessary in the public interest and being satisfied that for the purpose of enabling the Bank to regulate the credit system to the advantage of the country, it is necessary to give the directions set out below, hereby, in exercise of the powers conferred by sections 45J, 45JA, 45K, 45L and 45MA of the Reserve Bank of India Act, 1934 (Act 2 of 1934) (the RBI Act) and of all the powers enabling it in this behalf, and in supersession of the earlier directions contained in Notification No.DFC.118/DG (SPT)-98 dated January 31, 1998 issues the following Non-Banking Financial Companies Acceptance of Public Deposits (Reserve Bank) Directions, 2016 (the Directions) applicable to every non-banking financial company hereinafter specified.

Cir.no.:RBI/DNBR/2016-17/38 dated Aug.25, 2016

For full text please refer: https://www.rbi.org.in/scripts/BS_ViewMasDirections.aspx?id=10563

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Service Tax Decoded

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Service by Government and Local Authority – Part II
(continued from July, 2016 issue)

16. M/s. Litigant Private Limited has paid Rs. 1500 as application fee to a court and Rs. 10 of court fee is also paid by way of adhesive court stamp pasted on the application. They have also paid copy charges to court to obtain copies of some documents. Is M/s. Litigant Private Limited is required to pay service tax under Reverse Charge Mechanism on such fees?
    - First of all, "Court" or a "Tribunal" is not a Government or Local Authority and hence, services provided by them, even if it is taxable, is not subject to reverse charge mechanism. In terms of the provisions of the Constitution of India, the Government and courts are different bodies.
    - Further, fees taken in any Court or tribunal established under any law for the time being in force is specifically excluded from the definition of "service" as provided under Section 65B(44) of the Finance Act, 1994 and such services are not subject to service tax at all.
17. "Department of Revenue" is working under a Ministry of Finance of the Central Government and has obtained some services from "Legislative Department" of Ministry of Law & Justice of the Central Government. Is Department of Revenue is required to pay service ax under Reverse Charge Mechanism for services received from the "Legislative Department"?
    - In terms of the Section 65B(37)(viii) of the Act, person includes "Government".
    - In terms of the Section 65B(44), an activity provided by a person to another is a service and hence, service provided to the self is not subject to service tax.
    - In terms of the Section 65B(26A) of the Act, the Government means the Departments of the Central Government, a State Government and its Departments and a Union territory and its Departments.
    - Now, as a department of the Government is not a separate person. It doesn't have a separate identity for the purpose of service tax and both departments are part of the same person i.e. Central Government. Hence, a service, provided by a department of the government to another department of the same government will not subject to service tax as it is service provided to self.
18. In the above example, will it make any difference, if service is provided by law department of a Government of Gujarat?
    - In terms of the provisions of the Constitution of India, Central Government and State Government are two different person. Hence, services provided by a government to another government are subject to service tax.
    - However, to avoid such situation, exemption is provided through Entry No. 54 of the Notification No. 25/2012-ST. In terms of this entry Services provided by Government or a local authority to another Government or local authority is exempt from tax.
    - However, this exemption is not available for (i) services by department of post, (ii) services in relation to aircraft or vessel and (iii) services of transportation of goods or passengers. It is worth noting that reverse charge mechanism is applicable only if government service is received by a business entity. As, generally, a government is not a business entity, liability to pay service tax, if any, on such three types of

services would be of a government which has provided the service and not of the government which is receiving the service.

19. M/s. Inflammable Pvt. Ltd. has paid Rs. 8000/- for NOC charges and Inspection Charges to Fire Department of the Ahmedabad Municipal Corporation (AMC) for their factory. Is M/s. Inflammable Pvt. Ltd. required to pay service tax on reverse charge mechanism on such fees paid to Local Authority (i.e. AMC)?
    - Services are provided by the Local Authority and received by the business entity and hence subject to service tax. However, in terms of Entry No. 39 of the Notification No. 25/2012-ST, services by Government, a local authority or a governmental authority by way of any activity in relation to any function entrusted to a municipality under article 243W of the Constitution is exempt from tax.
    - In terms of the Article 243W of the Constitution, a State may endow the Municipalities with powers and authority in respect to the matters listed in the Twelfth Schedule of the Constitution of India. Entry 7 of the Twelfth Schedule comprises "Fire Services". Thus, fire service is one of the functions entrusted to Ahmedabad Municipal Corporation under Article 243W read with the entry 7 of the Twelfth Schedule of the Constitution. Hence, NOC and Inspection charges for fire safety are in relation to a function entrusted to municipality and exempt from service tax vide entry no. 39 of the Notification No. 25/2012-ST.
    - Entry No. 39 of the Notification No. 25/2012-ST has great importance. It covers many services provided by a municipality or Government. Some other important items that are listed in Twelfth Schedule to the Constitution are Urban Planning, construction of building, planning for economic and social development, roads and bridges, water supply (industrial and commercial purpose also), public health, sanitation conservancy and solid waste management, street lighting, parking lots etc. For detailed list, refer Twelfth Schedule to the Constitution.
    - Similarly, in terms of Entry No. 60 to the Notification No. 25/2012-ST, services by Government, a local authority or a governmental authority by way of any activity in relation to any function entrusted to a Panchayat, under Article 243G of the Constitution are also exempt from payment of service tax. In terms of the Article 243G of the Constitution, various functions are listed in Eleventh Schedule to the Constitution. For example, agricultural, fisheries, small scale industries, rural housing, drinking water, technical training and vocational education etc. are listed therein. Services provided by the Government, a local authority or a governmental authority, in relation to such functions, are exempt under Entry No. 60 to the Notification No. 25/2012-ST. For detailed list refer Eleventh Schedule to the Constitution.

20. M/s. CASHTRANS Pvt. Ltd. is started on 1st March, 2016 and for the financial year 2015-16 their turnover is Rs. 7 lacks only. During the August, 2016 they need to pay some fees of Rs. 15000 to government which is subject to service tax and reverse charge mechanism. Is M/s. CASHTRANS Pvt. Ltd. required to pay service tax thereon?
    - In terms of Entry No. 48 to the Notification No. 25/2012-ST, services provided by Government or a local authority to a business entity with a turnover up to rupees ten lakh in the preceding financial year is exempt from the tax.
    - As turnover of M/s. CASHTRANS Pvt. Ltd. is less than Rs. 10 Lakh in the year 2015-16, exemption as provided under Entry No. 48 to the Notification No. 25/2012-ST is available and they are not required to pay service tax on such service.
    - This exemption is provided to keep small business entities out of tax net. It is worth noting that word "turnover" is not defined

in the Notification and hence its meaning as prevailing in the general parlance shall be adopted for interpretation. Hence, not only the turnover of service, but turnover of goods shall also form part of the turnover for calculating the limit of Rs. 10 lakh. Further, entry No. 48 doesn't restrict term turnover to taxable turnover. Hence, value of exempt or non-taxable services shall also form part of limit of Rs. 10 lakh.

21. In above example, will it make any difference if turnover of M/s. CASHTRANS Pvt. Ltd. is Rs. 100 crore during the period April, 2016 to July, 2016?
    - It can be seen from the Entry No. 48, as stated above, that eligibility of the exemption depends on the turnover of the preceding year and not on the turnover of the current year. Hence, such exemption is available irrespective of turnover in the current year and CASHTRANS Pvt. Ltd. is not required to pay service tax on such service received from the Government or Local Authority during the year 2016-17.
22. M/s. RuleBound Pvt. Ltd. has paid Rs. 10 to the Government for the services which are chargeable to service tax. They are not liable to pay any other service tax. Is M/s. RuleBound required to obtain registration, to pay service tax and file periodical return for such small amount?
    - In terms of Entry No. 56 of the Notification No. 25/2012-ST, services provided by Government or a local authority, where the gross amount charged for such services does not exceed Rs. 5000/- are exempt from the service tax. Hence, M/s. RuleBound Pvt. Ltd. is not required to pay service tax.
23. In above example, suppose service received from the Government is continues in nature and charge is required to be paid on each month. For each month amount of service is Rs. 425 (below Rs. 5000) and total for entire year is Rs. 5100 (above Rs. 5000). Is M/s. RuleBound Pvt. Ltd. required to pay service tax on such service?
    - In terms of second proviso to the Entry No 56 of the Notification No. 25/2012-ST, in case where continuous supply of service, as defined in clause (c) of rule 2 of the Point of Taxation Rules, 2011, is provided by the Government or a local authority, the exemption shall apply only where the gross amount charged for such service does not exceed Rs. 5000/- in a financial year.
    - Hence, this exemption shall not be available to M/s. RuleBound Pvt. Ltd. and they are required to pay service tax on such service.
24. M/s. LawBound Pvt. Ltd. has received two different services, Service 1 and Service 2, from the government for which they have paid charges of Rs. 1000 and Rs.4100 respectively. Is M/s. LawBound Pvt. Ltd. required to pay service tax on above services as total of the both services is greater than Rs. 5000?
    - For better clarification, Entry No. 56 of the Notification No. 25/2012-ST is reproduced below.

      "56. Services provided by Government or a local authority where the gross amount charged for such services does not exceed Rs. 5000/- :

      Provided that nothing contained in this entry shall apply to services specified in sub-clauses (i), (ii) and (iii) of clause (a) of section 66D of the Finance Act, 1994 :

      Provided further that in case where continuous supply of service, as defined in clause (c) of rule 2 of the Point of Taxation Rules, 2011, is provided by the Government or a local authority, the exemption shall apply only where the gross ***amount charged for such service*** *does not exceed Rs. 5000/- in a financial year".*
    - From the main part of the Entry 56, there may be a doubt that whether the limit of Rs. 5000 is qua service and qua transaction or for all services combined together. However, second proviso to the entry is quite clear. It states that "amount charged for such service. Thus, it seems that

intention of the Government is to provide exemption to the each service where amount charged does not exceed Rs. 5000/-. In my opinion, limit of Rs. 5000 is per service, per transaction. However, to avoid undue litigation which may be faced by commerce and industry, some clarification from the Central Board of Excise & Custom will be helpful.

25. M/s. TAJSTAR Hotels Ltd. has paid Rs. 50000 as registration fees to the government for their registration of restaurant which is required under the law. Are they required to pay service tax thereon?
    - In terms of Entry No. 58(a) of the Notification No. 25/2012-ST, services provided by the Government or Local Authority by way of registration required under any law for the time being in force are exempt from service tax. Hence, they are not required to pay service tax on registration which is required under any law for the time being in force.
26. M/s. Sing-fishers Pvt. Ltd. has paid Passport Fees for their director Mr. Mal Liya for their official visit to London. Is M/s. Sing-fishers Pvt. Ltd. required to pay service tax thereon under Reverse Charge Mechanism?
    - In terms of Entry No. 55 of the Notification No. 25/2012-ST, services provided by the Government or a local authority by way of issuance of passport, visa, driving licence, birth certificate or death certificate are exempt from service tax.
    - It is worth noting that this entry also covers services by way of birth certificate or death certificates. However, such services are also covered under Entry No. 16 to the Twelfth Schedule to the Constitution of India read with Article 243W of the Constitution and thus already exempt vide Entry No. 39 of the Notification No. 25/2012-ST and there was no need to include such item in Entry 55 of the said notification again.
27. M/s. Hazardous Chemicals Ltd. has imported chemical and requires testing of its product from a government laboratory and has paid Rs. 20000 as testing fees. Is M/s. Hazardous Chemical Ltd. required to pay service tax thereon?
    - In terms of Entry 58(b) of the Notification No. 25/2012-ST, services provided by the Government or a local authority by way of testing, calibration, safety check or certification **relating to protection or safety of workers, consumers or public at large**, required under any law for the time being in force, are exempt from tax.
    - Thus, if such testing is required for protection or safety of the workers, consumer or public at large, no need to pay service tax thereon. However, if such testing is not for safety or protection, but for any other reason, for example on demand from customer, it is not covered under this entry of exemption.
28. M/s. Aayat Niryat Pvt. Ltd. has paid Merchant Overtime Charges to the Customs Department for stuffing and inspection of their export goods. Are they liable to pay service tax on such charges?
    - Under Customs law, if assessee requires, officers are made available even after office hours or on holidays for inspection or container stuffing etc. on payment of some charges. Such charges are known as Merchant Overtime Charges (MOT). In terms of Entry No. 63 of the Notification No. 25/2012-ST services provided by Government by way of deputing officers after office hours or on holidays for inspection or container stuffing or such other duties in relation to import export cargo on payment of Merchant Overtime charges (MOT). Hence, M/s. Aayat Niryat Pvt. Ltd. is not required to pay service tax on such charges.

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Service Tax - Recent Judgements

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21 Carlsberg India (P.) Ltd.*v.*Union of India [2016] 72 taxmann.com 157 (Delhi)

Facts:-

Assessee was manufacturing alcohol on job-work basis for UBL under brand name 'Kingfisher' owned by UBL. Department demanded service tax thereon under Business Auxiliary Services (pre-negative list era) and under section 66B, after amendment in sections 65B(40) and 66D(f) vide Finance Act, 2015 from 1-6-2015.Assessee filed writ arguing that service tax on manufacture of alcohol on job-work basis falls in exclusive domain of State Legislatures under Entry 51 of State List of Schedule VII of Constitution and, therefore, levy of service tax is unconstitutional. Department argued that service tax is levied only on service aspect and hence, valid.

Held:-

It was held that entry 51 of List II envisages manufacture of alcoholic liquor for consumption; it does not contemplate manufacture thereof by one person or entity for another and hence, manufacture for another is, in pith and substance, a service by one for another and cannot fall within ambit of Entry 51 of List II. Even applying aspect doctrine, only 'service aspect' involved in job work of manufacturing alcohol for others, is chargeable to service tax; and not activity of manufacture for and by oneself. Hence, levy of service tax on 'manufacture of alcohol on job-work basis' can be traced to Entry 97 of List I and same is within competence of Parliament. Issue 'whether service rendered by assessee could be validly taxed as per service tax law' was left to be urged in adjudication proceedings.

22 Quippo Energy Ltd.*v.*Union of India[2016] 72 taxmann.com 219 (Gujarat)

Facts:-

Assessee filed writ against service tax demand on lease charges. Department argued that assessee should file appeal before CESTAT. Assessee argued that it had already paid VAT on lease charges and hence, Service Tax Department does not have jurisdiction to levy service tax and since issue involves interpretation of Constitution, therefore, writ is maintainable. (Sec.65(105)(zzzzj) of the Finance Act, 1994)

Held:-

It was held that remedy may be ignored only if : (a) remedy is not efficacious/speedy, or (b) authority has not acted as per provisions of enactment and principles of judicial procedure, or (c) repealed provisions have been invoked, or (d) order has been passed in violation of principles of natural justice. Mere fact that assessee has an arguable case cannot be a ground to ignore statutory appellate remedy. Even if assessee argues that VAT is leviable and not service tax, service tax authorities may examine and entertain such a contention and action of authorities cannot be said to be wholly without jurisdiction. Mere payment of VAT does not mean that service tax, if otherwise payable, cannot be recovered. Hence, issues were left open to be considered in statutory appeal.

23 D.P. Jain & Company Infrastructure (P.) Ltd. *v.* Union of India [2016] 72 taxmann.com 81 (Bombay)

Facts:-

Assessee argued that since 'repair, alteration, renovation or restoration' of 'roads' is excluded from 'commercial or industrial construction service', same cannot be taxed under Management, Maintenance or Repair Service.

Held:-

It was held that maintenance or repair is a service and maintenance, etc. of immovable property can be brought within it, then, Court cannot hold that 'exclusion from one service would imply exclusion

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VAT - From the Courts

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9 Whether lease agreement entered into after goods imported can be treated as Sale in course of Import or not?

Hewlett Packard Financial Services India Private Limited V. State of Karnataka and another reported 92 VST 223 (Karn).

Background of the case:

The petitioner-dealer entered into master lease agreements with its customers under which it leased goods procured from vendors within the State of Karnataka. After the master lease agreements were entered into between the dealer and the customers, the purchase order was placed by the customers directly on the foreign vendors. The goods were to be shipped to the customers, but the invoice was raised in the name of the dealer. The shipping authorization letter was issued by the dealer to the vendors. After the goods were sold to the dealer, but shipped to the customers, the invoice was raised by the vendors on the dealers, but the bill of entry had to be filed by the customers clearing the goods from customs authorities and the goods were taken thereafter to the customer's location. After the goods were verified and accepted by the customers, the acceptance certificate was issued by the customers. When the goods had been delivered to them and the customers had unconditionally accepted the goods leased to them as per the "master lease agreements ", novation notice was issued by the customers, confirming that the purchased documents would remain with the dealer. Thereafter, the lease schedule was signed by the parties specifying the goods under lease as per the terms and conditions of master rental and finance agreement.

The dealer claimed that the transactions of import were exempted under section 5(2) of the Central Sales Tax Act, 1956. The assessing authority held that the dealer had leased the equipment after the import thereof from outside India and therefore, the transaction was not in the course of import and levied value added tax thereon. The Joint Commissioner dismissed the dealer's appeals and confirmed the assessment orders, as did the Tribunal. On revision petitions:

Held that, dismissing the petitions, (i) that the Tribunal found that the requirement for getting exemption under section 5(2) of the Act was dependent upon inextricable link to the import from the foreign vendor and the customer and further with the end customer and the dealer and that the link was not established or proved by the dealer. The scope of judicial scrutiny has to be limited to questions of law and cannot extend to questions of fact. The Tribunal upon re-appreciation of the evidence, namely, of various documents produced on behalf of the dealer and after having taken note of the fact that certain relevant document were not produced, had found that the link between the two. i.e., the import and the transactions entered into by the dealer with its customer, the questions of facts examined and concluded by the Tribunal could not be gone into in the petitions before the court.

(ii) The finding recorded by the Tribunal for division of the link and non-satisfying of both the conditions was the only view possible. The Tribunal was right in holding that the dealer was not entitled to exemption under section 5(2) of the Central Sales Tax Act, 1956.

10 Judicial Precedent: High Court cannot question the correctness of the decision of the Supreme Court.

AB Sugar Ltd. v/s State of Punjab and Another, reported in 92 VST 434 (P & H).

Background of the case:

The dealer is liable to pay tax on the purchase of sugarcane under the provisions of the Punjab General Sales Tax Act,1948.

Held that:
The High court cannot question the correctness of the decision of the Supreme Court even though the point raised before the High Court was not considered by the Supreme Court. The decision in a judgment of the Supreme Court cannot be assailed on the ground that certain aspects were not considered by or that relevant provisions were not brought to the notice of the Supreme Court.

11 Construction of Taxing Statutes: Residuary entry can be resorted when specific entry can cover the goods in question?

Commissioner of Sales Tax, Maharashtra State, Mumbai v Neulife Nutrition System, reported in 93 VST 132 (Bom)

Background of the case:
The products of the respondent-dealer, i.e. various types of powders from which *"non alcoholic"* drinks are prepared for the purpose of consumption by mixing the said powders with liquids like water, juice, etc.

Held that: there is no warrant for restricting the meaning of term *"beverages"* in the schedule, which is clear and unambiguous. The entry is clear and unambiguous and stood in the ordinary meaning. Merely because a drink has more nutritive value in the form of proteins and meant for a certain class of consumers, it would not cease to be a *"beverage"*. Even if the potable drink made from the said powders are perceived as health drink, it does not fall out of the purview of the entry. In view of specific Schedule entry to the statute, it would override the general entry. Even assuming that the principle of common parlance was to apply the drink prepared from the said powders cannot be excluded from the term "beverages". Therefore the products of the respondent dealer are classifiable under specific Schedule entry liable at that rate and not under the residuary entry for the relevant period. It is well settled that, the entry in schedule is to be construed as it stands and when the entry is clear and equivocal, it does not demand any outside interpretation.

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from service tax itself. It is legislative wisdom to define particular service and one definition cannot be interpreted in a manner to curtail scope of another definition. Hence, even if repair of roads is excluded from construction service, it was specifically covered under maintenance or repair service. In any case, since repair of roads was exempted by Central Government by exemption notification as well as by Parliament vide section 97, it means therefore, that said service was taxable but for exemption.

24 Sujala Pipes Pvt Ltd vs. CCE (2015) STR 606 (Tri. Bangalore)

Facts:-
Appellant received certain amounts for hiring out pipes manufactured by them for use by farmers in agricultural operations resulting in transfer of possession and effective control to such farmers and on which amounts it had paid VAT.

Held :-
It was held by Hon'bl Tribunal that demand of service tax on the said amounts under the category of supply of tangible goods is not permissible.

25 Kakinada Seaports Ltd vs. CCE., ST & Cus.(2015) 40 STR 509 (Tri. Bang)

Facts:-

Appellant received services from Government of Andhra Pradesh. Service tax was not paid on the payments made to the Government of Andhra Pradesh under reverse charge mechanism but Government of Andhra Pradesh had paid the tax.

Held:-

It was held by the Hon'bl Tribunal that service tax cannot be recovered again from the appellant but penalty for contravention of provision was applicable. But no penalty was levied since in absence of any provision for imposition of penalty for contravention of specific provision in not making payment under reverse charge mechanism and having regard to the fact that it was only initial period of introduction of new provisions of law, a lenient view was taken.

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VAT - Judgements and Updates

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Statute Updates
Value Added Tax (VAT)

[I] **Important Circular/Notification:**

Refund on Salt Purchase:

In exercise of the powers conferred by sub-section (1) of 40 of the Gujarat Value Added Tax Act, 2003 (Guj.1 of 2005), the Government of Gujarat hereby authorizes the Commissioner to grant refund to the dealers manufacturing edible salt of amount of tax paid by them and separately charged by any registered dealer from whom they have purchased the salt, subject to the following conditions, namely –

[i] Refund to the dealers manufacturing edible salt shall be allowed for the purchases of those salt which has been used in manufacture of edible salt in Gujarat State for the period on and from 1st April to 26th May, 2016.

[ii] The dealers manufacturing edible salt furnish details of the purchases of the salt for which refund is claimed.

[iii] The dealers manufacturing edible salt shall make an application for refund of tax paid along with its return to the concerned Commercial Tax Officer and such officer shall, as far as possible, grant refund in accordance with the provisions of section-37 and rule there under after the receipt of the application for refund.

[iv] The dealers manufacturing edible salt shall not be entitled to claim tax credit on the purchases of salt for which the refund is claimed.

[v] The amount of refund to such dealer of tax on any purchase of salt used in manufacture of edible salt shall not exceed the amount of tax in respect of the same goods, actually paid, under the Gujarat Value Added Tax Act, 2003 in to the Government Treasury.

[II] **Important Judgment:**

One important judgment delivered by the Hon. Gujarat High Court in case of Safal Developers v. State of Gujarat [SCA No. 1338 of 2016 dated 27.04.2016) in Amnesty Scheme for Builders – Applicable also to dealers who paid tax prior to scheme [Gujarat Value Added Tax Act, 2003]

Facts of the case:

The assessee is a dealer registered under the Act. The assessee is a developer engaged in business of building construction. The assessee paid purchase tax and also output tax on sales of scrap and debris. The assessee was under bonafide impression that since the correctness of the decision of the Supreme Court in case of K. Raheja Development Corporation v. State of Karnataka, 141 STC 298 (SC) was doubted and referred to larger bench, he was not liable to pay tax in respect of goods used in construction of building which is sold to customers.

The assessing authority passed provisional assessment order holding that the assessee was works contractor and liable to pay tax for the goods used in execution of works contract. The amount of tax and interest was also recovered from the assessee. The first appeal against the order was dismissed and hence the assessee filed second appeal before the Tribunal.

During pendency of the second appeal before the Tribunal, an amnesty scheme came to be declared by the State Government on 14.10.2014 for the developers/builders who failed to pay tax payable by them under the

Act. As provided under the Act, the penalty was to be waived on payment of full amount of tax with interest. The benefit of the scheme was available to the cases pending in appeals also.

The assessee, in order to avail benefit of the Amnesty Scheme withdrew the second appeal which was pending before the Tribunal and made an application to the concerned authority for availing benefit of the Amnesty Scheme. The said application came to be rejected by the concerned authority on the ground that the benefit of the scheme is available to the dealers who paid tax during operative period of the scheme and not to the dealers who paid prior to coming into force of Amnesty Scheme. Being aggrieved, the assessee filed present writ petition before the Gujarat High Court.

Submission of the assessee before the Gujarat High Court:

The learned counsel for the assessee submitted before the court that the assessee was admittedly paid tax and interest even prior to passing of the provisional assessment orders in the year 2012-13. The application under the Amnesty Scheme has been filed within the stipulated time limit. Thus, all the conditions for being eligible to avail the benefit of the Amnesty Scheme are satisfied and the assessee is entitled to get waiver of the penalty imposed on them.

It was submitted that the contention of the revenue that the benefit of Amnesty Scheme cannot be granted to the assessee since the payment of tax was made prior to the date of the Amnesty Scheme is based upon a gross misinterpretation of the Scheme in as much as paragraph 7 of the Amnesty Scheme only provides that full payment of tax is required to be made before the expiry of the Scheme and cannot be interpreted to imply that benefit of the Amnesty Scheme would not be granted to dealers who made payment of tax even prior to the date of the scheme.

The learned counsel contended that such interpretation would lead to an incongruous situation whereby the dealers who had aid tax earlier in point of time would be denied the benefit of the Amnesty Scheme while dealers making payment at a later point of time would be granted the benefit. The attention of the court was invited to paragraphs 10 and 13 of the Scheme to point out that the same clearly envisages application of the scheme in cases where appeals are pending before the Appellate Authority. In support of the submissions, the learned counsel relied upon the decision of the Karnataka High Court in case of State of Karnataka & Ors v.Jayalakshmi Wine Land and Another [2007] 7 VST 596 (Karn) and Manjushree Extrusions Ltd. v. Assistant Commissioner of Commercial Taxes, Bangalore [2007] 8 VST 511 (Karn).

Submission of the Revenue before the Gujarat High Court:

The learned counsel for the revenue submitted before the Gujarat High Court that the Amnesty Scheme was declared on 14.10.2014 and it was prospective in nature. Therefore, the dealers who paid tax during the operative period of the scheme were eligible for the benefit under the scheme and the scheme do not apply to the dealers who paid tax prior to the operation of the scheme.

Decision of the Gujarat High Court:

The Gujarat High Court held that on a reading of the Preamble and the Memorandum of the Amnesty Scheme, it is clear that the benefit of the Scheme is to be given in respect of transactions commencing from 1st April 2016. The contention of the revenue that the scheme is prospective in effect and, therefore, the assessee is not entitled to the benefit thereof, therefore, is clearly based upon a misconception of the provisions of the Scheme which clearly provide for granting benefit thereof with effect from 1st April 2006 and hence, the scheme by

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Mergers and Acquisition Corner

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1. Aditya Birla to merge Grasim and AB Nuvo[1]

The Aditya Birla Group is merging two of its main companies, Aditya Birla Nuvo Ltd (Nuvo) and Grasim Industries Ltd, both of which also serve as holding companies, in an attempt to create a stronger entity, and unlock shareholder value by spinning off and listing one of Nuvo's subsidiaries, Aditya Birla Financial Services Ltd. The merger will create an entity with yearly revenue of Rs.59,766 crore, net profit of Rs.4,245 crore and earnings before interest, tax, depreciation and amortization, a measure of operating profitability, of Rs.12,000 crore. The mergerwill also mean the end of Nuvo's existence. Aditya Birla Nuvo emerged in 2005 after the Aditya Birla Group decided to rename Indian Rayon and Industries Ltd (a company founded in 1956) and make it a vehicle to hold its businesses in the areas of finance, apparel and fashion, telecom and information technology (IT). Today, around 80% of Nuvo's revenue comes from three businesses: financial services, telecom, and fashion and apparel. It has exited the IT business, although it retains some of its older businesses such as linen, urea, viscose, and insulators. Interestingly, it has spun off and listed its telecom business (Idea Cellular Ltd), and fashion. Now, it plans to do the same with its financial business. If there is a pattern there, it is by design. Aditya Birla Nuvo was always seen as a vehicle for the larger group's new businesses. The idea was to spin off and list those that succeeded, and sell those that didn't look like they could become or challenge the No. 1 or No. 2 in their respective businesses (IT, for instance, was one business that Nuvo and the Aditya Birla Group exited).

The merger will make Grasim "one of India's largest, well-diversified companies with a healthy mix of businesses with a steady cash flow and long-term growth opportunities," said Kumar Mangalam Birla, chairman of the Aditya Birla Group. He added that it also simplifies cross-holdings. Although the Birlas hold their stakes in the group's companies through a clutch of investment and holding companies, larger companies within the group, such as Grasim, Hindalco Industries Ltd and Aditya Birla Nuvo, also hold stakes in each other and in other group companies. Birla added that with "diverse businesses spanning manufacturing and services, the combined entity provides a play on India's growth story". Shareholders didn't agree. With news of the merger making the rounds for at least a few days ahead of the announcement, shares of Grasim took a beating. They ended at Rs.4,538.95 on the BSE, down 6.44%, on a day the benchmark Sensex rose 0.31%.

Raj Balakrishnan, managing director, head, investment banking, at DSP Merrill Lynch Ltd, which was financial advisor to Grasim, said the deal enables the Aditya Birla Group to have three strong, growing businesses—cement, financial services and telecommunications. He said the financial services business has reached critical mass, adding that "it is the right time to reward shareholders". A senior consultant, requesting anonymity, said the Aditya Birla Group has actually nullified cross-holding through this composite scheme of arrangement. The transaction is likely to be completed by the fourth quarter of FY2017 or the first quarter of FY2018. Kumar Mangalam Birla said Aditya Birla Nuvo had the size and scale for a demerger and the time was opportune to monetize the existing businesses so as to grow

other businesses. The big story of the merger is the emergence of Aditya Birla Financial Services as an important and diversified finance company and its future trajectory.

The group wanted a banking licence and ended up with a payments bank one. Ajay Srinivasan, chief executive officer of Aditya Birla Financial Services, said there is no plan to spin off the insurance business. "The demerger will enable us to scout for newer growth opportunities," he said. The listed financial services company will be 57% owned by Grasim after the merger. Grasim's shareholders will own the rest. Each shareholder of Nuvo will receive three new equity shares in Grasim for every 10 held. And each shareholder of Grasim (post merger) will receive seven shares in Aditya Birla Financial Services for each share held. The merger plan outlined is subject to requisite approval from shareholders, creditors, courts and regulatory authorities. DSP Merrill Lynch served as financial advisor to Grasim; Price Waterhouse and Co Llp&Bansi S. Mehta and Co. were the independent valuers; JM Financial Institutional Securities Limited provided an independent fairness opinion to Grasim and Kotak Mahindra Capital.

2. Tata Chemicals exists urea biz for Rs. 2670 crore[2]

Tata Chemicals announced the sale of its urea business to Norway's fertiliser and chemicals major Yarafor about Rs 2,670 crore as a part of valueunlocking by the company. As part of the deal, Tata Chemicals will transfer its Babrala urea plant in Uttar Pradesh and related assets and employees to Yara's Indian BSE NSE subsidiary Yara Fertilisers India. Tata Chemicals said it would continue to own the brands Paras, TKS and Daksha, and the deal does not include speciality products and complex fertilisers. R Mukundan, managing director, Tata Chemicals, said, "The sale was part of our strategy to cap the capital exposure in the fertiliser business." Mukundansaid this marks a decisive move forward on the company's strategy to build the consumer business, while maintaining leadership in the inorganic chemicals business and focusing on the farm business through its subsidiaries Rallis and Metahelix. As of March 2016, the capital employed in the fertiliser business was Rs. 3,187 crore or 22.7 per cent of the total capital employed.

The Babrala plant generated revenue of Rs 2,244.50 crore and earnings before interest, taxation, depreciation and ammortisation (Ebitda) of about Rs 230 crore in financial year 2015-16 (FY16).For the same period, the company reported total net sales of Rs 17,708 crore and Ebitda of Rs 2,165 crore.The urea plant has an annual production capacity of 0.7 million tonnes (mt) of ammonia and 1.2 mt of urea. "The talks for this asset started some time ago. Given the level of complexity of the deal it does take time. It is a high quality asset, which had interest from other parties too, in addition to Yara," Pankaj Kalra, senior executive director, Kotak Investment Banking, said of the deal. Tata Chemicals operates two different product lines under its fertilizer business, urea and phosphatic (complex). On the complex fertilizer business, Mukundan said the focus was to keep capital investment capped. He added that if a good partner were to come, the company was open to evaluating options. "We plan to reinvest the proceeds from the sale in the consumer and inorganic chemical business," Mukundan said. The company's consumer portfolio includes its marquee brand Tata Salt and branded pulses and spices.

The overall fertiliser business contributed 38.34 per cent to the company's total revenue in FY16. Revenue contribution from the inorganic chemical business stood at 47.85 per cent in the same period. The urea business contributed 12 per cent of revenues in the period. As of March, Tata Chemicals had a consolidated debt of Rs 8,694.25 crore and a debt-equity ratio of 1.38 times. The sale would be completed on a debt and cashfree basis. The deal is expected

to be closed in 9 to 12 months, pending regulatory approvals. Norway's Yara has a presence in 150 countries with 13,000 employees. It has been selling its products in India for the past two decades, but this would be its first investment in the world's second largest fertilizer market. "The company has a strong balance sheet and the deal would be financed internally. The acquisition gives us access to distribution. We can use this as a vehicle to grow our premium products," said TerjeKnutsen, senior vice-president and head of crop nutrition, Yara Fertilisers. The company's shares closed at Rs 503.60 per share on BSE, posting a gain of 8.77 per cent.

3. China's Fosun to buy KKR backed Gland Pharma for $1.4 billion[3]

In what would be the first instance of large FDI from China in Indian manufacturing, Shanghai Fosun Pharmaceutical (Group) Co will sign a definitive agreement to acquire a controlling stake in Hyderabad based Gland Pharmain a $1.4 billion transaction, paving the way for the Chinese firm to expand its research and manufacturing capacity in India. Fosun has agreed to acquire 96 percent stake, which includes shares held by founders of Gland Pharma Ravi Penmetsa and family and private equity giant, KKR & Co LP. However another source said Gland will initially buy 86% of the company while Penmetsa may retain a 10% stake. The deal may need FIPB approval. "We will be signing the deal later today at Hong Kong and an official announcement will be made to the Chinese exchanges later," said a source, with direct knowledge of the matter.

The transaction will be the first billion dollar takeover of an Indian company by a Chinese one, with the few big deals confined to tech and ecommerce. The deal will have to get regulatory approvals from Indian authorities. As this will be a controlling acquisition by a Chinese player, the deal will undergo strict regulatory scrutiny. However, both KKR and Gland promoters do not expect any regulatory headwinds, one of the sources said. Shanghai Fosun Pharmaceutical (Group) Co, is part of Fosun International group, the flagship company of billionaire GuoGuangchang, one of China's bestknown entrepreneurs.

Shanghai Fosun Pharmaceutical ended 2015 with revenue of $1.9 billion. Its market value was $8.3 billion as of 31 December 2015. With 17 deals worth $1.6 billion since 2010, Shanghaibased FosunPharma has grown rapidly through acquisitions. The company has a wide presence across business segments in the healthcare chain — drug manufacturing, distribution and retail to high-end diagnostics and medical devices. Fosun's portfolio covers liver diseases, diabetes, tuberculosis and diagnostic products, and it's also the leading provider of antimalarial medicines globally. Founded in 1978, Gland is a leading contract manufacturer of injectables, supplying to companies in India and the US such as Dr Reddy's and Mylan. In November 2013, KKR bought an undisclosed stake in Gland from Evolvence India Life Sciences Fund for about $191 million, valuing the company at $600-650 million at the time.

4. Myntra buys Jabong for $ 70 mn[4]

India's biggest online retailer Flipkart is buying a smaller rival Jabong for $70 million (Rs.470 crore) in cash, according to Jabong's parent company Global Fashion Group (GFG). The acquisition will help Flipkart to compete with its bigger rivals Amazon and Snapdeal, according to analysts. GFG which is backed by Germany's highest profile startup investor Rocket Internet SE and Sweden based investment AB Kinnevik said the transaction is a decisive step in GFG's strategy to refocus its business on core markets and further accelerate its path to profitability. Fashion retailing Flipkart's unit Myntra, an online fashion retailer which is buying Jabong said it

aims to create India's biggest online fashion retailing business. "We see significant synergies between the two companies especially on brand relationships and consumer experience," said Ananth Narayanan, chief executive of Myntra in a statement. Flipkart would combine Jabong's business with Myntra, creating a firm with a base of 15 million monthly active users and offering luxury brands such as The North Face, Swarovski, Timberland and Lacoste. Binny Bansal, chief executive and cofounder of Flipkart said fashion and lifestyle is one of the biggest drivers of ecommerce growth in India. "This acquisition is a continuation of the group's journey to transform commerce in India," he said in a statement. Flipkart had acquired Myntra in 2014 in a deal estimated to be worth $370 million to compete against online retail giant Amazon which entered the Indian market in 2013.

Amazon battle

The acquisition of fashion platforms is a move for Flipkart to not only further penetrate into the red hot category but also maintain its leadership position in the market and keep Amazon at bay, according to Sandy Shen, research director with the ecommerce team at research firm Gartner. "We expect major players to keep acquiring niche and smaller players," said Ms.Shen. According to Pragya Singh, vice president at retail consulting firm Technopak, with this acquisition, Flipkart has strengthened its position in the Indian fashion segment and at the same time deprived its competitors of strengthening their fashion offering.

"This has come at a time when Amazon has emerged as a serious competitor in the space," said Ms. Singh. "This move strengthens Flipkart's position in the high margin fashion category as compared to Amazon and Snapdeal." Ms. Singh said this deal is in continuation of the trend in the Indian etailing space — with consolidation continuing. She said this is now moving to big ticket consolidation with unsustainable businesses and investors looking for exits looking at alternate options.

Investor interest

In the last one year, Technopak has increasingly seen business model sustainability and profitability coming into focus as compared to just scalability. "Startups in the space will need to be differentiated and sustainable to attract investor interest," said Ms.Singh. Jabong was cofounded by IIM Calcutta alumni Praveen Sinha and Manu Kumar Jain along with Arun Chandra Mohan and Lakshmi Potluri in 2012. Mr.Jain and Ms.Potluri left in the early years while as Mr.Sinha and Mr.Mohan who were leading the firm also quit last year. The GFG Board concluded that Jabong's position as India's leading fashion ecommerce destination would be best served through a business combination with a local player. Having reviewed multiple options over a period of several months, the GFG Board resolved to sell Jabong to Flipkart Group. With net revenues of 126 million euros and adjusted earnings before interest, taxes, depreciation and amortisation of 56 million euros for the 12 months ended March 31, 2016, Jabong represented 13 per cent of GFG's net revenue.

1. http://www.livemint.com/Companies/KqUw2zxrg54E8vBZRUHD7N/Aditya-Birla-Nuvo-Grasim-boards-clear-merger-plan.html
2. http://www.business-standard.com/article/companies/tata-chemicals-exits-urea-biz-for-rs-2-670-cr-116081100006_1.html
3. http://economictimes.indiatimes.com/industry/healthcare/biotech/pharmaceuticals/chinas-fosun-to-buy-kkr-backed-gland-pharma-for-1-4-billion/articleshow/53409503.cms
4. http://www.thehindu.com/business/Industry/myntra-buys-jabong-for-70-mn/article8902590.ece

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Corporate Law Update

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MCA Updates:

1. Special courts under section 435 of the Companies Act, 2013.

The Central Govt. designates the following Court as Special Court for the purposes of providing speedy trial of offences punishable under the Companies Act, 2013 with imprisonment of two years or more under the Companies Act, 2013, namely:-

Sl. No. (1)	Existing Court (2)	Jurisdiction as Special Court (3)
1	Court of Additional Sessions Judge-03, South-West District, Dwarka	National Capital Territory of Delhi

[F. No. 01/12/2009-CL-I (Vol. IV) dated 27th July, 2016]

2. Companies (Accounts) Amendment Rules, 2016.

Following changes have been effected under the Companies (Accounts) Amendment Rules, 2016:

Clause	Companies (Accounts) Rules, 2014	Companies (Accounts) Amendment Rules, 2016	Change
Second Proviso to Rule 6	Provided that in case of a company covered under sub-section (3) of section 129 which is not required to prepare consolidated financial statements under the Accounting Standards, it shall be sufficient if the company complies with provisions on consolidated financial statements provided in Schedule III of the Act.	"Provided further that nothing in this rule shall apply in respect of preparation of consolidated financial statements by a company if it meets the following conditions:- (i) it is a wholly-owned subsidiary, or is a partially-owned subsidiary of another company and all its other members, including those not otherwise entitled to vote, having been intimated in writing and for which the proof of delivery of such intimation is available with the company, do not object to the company	Substituted

		not presenting consolidated financial statements; (ii) it is a company whose securities are not listed or are not in the process of listing on any stock exchange, whether in India or outside India; and (iii) its ultimate or any intermediate holding company files consolidated financial statements with the Registrar which are in compliance with the applicable Accounting Standards."	
Rule 8(1)	The Board's Report shall be prepared based on the stand alone financial statements of the company **and the report shall contain a separate section wherein a report on the performance and financial position of each of the subsidiaries, associates and joint venture companies included in the consolidated financial statement is presented.**	The Board's Report shall be prepared based on the stand alone financial statements of the company **and shall report on the highlights of performance of subsidiaries, associates and joint venture companies and their contribution to the overall performance of the company during the period under report.**	Substituted
Rule 13(1)	The following class of companies shall be required to appoint an internal auditor **or a firm of internal auditors**, namely:-	The following class of companies shall be required to appoint an internal auditor "**which may be either an individual or a partnership firm or a body corporate**, namely:-	Substituted
Explanation for item (ii) of Rule 13	the term "Chartered Accountant" shall mean a Chartered Accountant whether engaged in practice or not	the term "Chartered Accountant" **or "Cost Accountant'** shall mean a "Chartered Accountant" **or a "Cost Accountant",** as the case may be, whether engaged in practice or not'.	Substituted
Form AOC-1 shall be **substituted by new Form AOC-1.**			
Form AOC-4 shall be **substituted by new Form AOC-4.**			

F. No. 1/19/2013-CL-V-Part dated 27th July, 2016]

3. Companies (Incorporation) Third Amendment Rules, 2016

Following changes have been effected under the Companies (Incorporation) Third Amendment Rules, 2016.

Clause	Companies (incorporation) Rules, 2014	Companies (Incorporation) Third Amendment Rules, 2016	Change
Rule 3(2)	No person shall be eligible to incorporate more than a One Person Company or become nominee in more than one such company.	A natural person shall not be member of more than a One Person Company at any point of time and the said person shall not be a nominee of more than a One Person Company.	**Substituted**
Rule 8(2)(ii)	it includes the name of **a registered trade mark** or a trade mark which is subject of an application for registration, unless the consent of the owner or applicant for registration, of the trade mark, as the case may be, has been obtained and produced by the promoters;	it includes the name of **a trade mark registered** or a trade mark which is subject of an application for registration **under the Trade Marks Act, 1999 and the rules framed there under** unless the consent of the owner or applicant for registration, of the trade mark, as the case may be, has been obtained and produced by the promoters;"	**Substituted**
Rule 8(6)(n)	Financial**,** Corporation and the like;	Financial Corporation and the like;	**substituted**
Explanation to Rule 13 (1) & (2)	--	"**Explanation**- For the purposes of sub-rule (1) and sub-rule (2), the type written or printed particulars of the subscribers and witnesses shall be allowed as if it is written by the subscriber and witness respectively so long as the subscriber and the witness as the case may be appends his or her signature or thumb impression, as the case may be."	**Inserted**
Explanation to	--	"**Explanation**- In case the subscriber is already holding a	**Inserted**

Rule 16 (1)(m)		valid DIN, and the particulars provided therein have been updated as on the date of application, and the declaration to this effect is given in the application, the proof of identity and residence need not be attached."'	
Rule 16 (1)(q)	the specimen signature and latest photograph duly verified by the banker or notary shall be in the prescribed Form No. INC.10	--	**Omitted**
Rule 16 (2)(g)	if the body corporate is a limited liability partnership **or partnership firm,** certified true copy of the resolution agreed to by all the partners specifying inter alia the authorization to subscribe to the memorandum of association of the proposed company and to make investment in the proposed company, the number of shares proposed to be subscribed in the body corporate, and the name of the partner authorized to subscribe to the Memorandum;	if the body corporate is a limited liability partnership certified true copy of the resolution agreed to by all the partners specifying inter alia the authorization to subscribe to the memorandum of association of the proposed company and to make investment in the proposed company, the number of shares proposed to be subscribed in the body corporate, and the name of the partner authorized to subscribe to the Memorandum;	The words "**or partnership firm**" omitted
Rule 26	The Central Government may as and when required, notify the other documents on which the name of the company shall be printed.	(1) Every company which has a website for conducting online business or otherwise, shall disclose/publish its name, address of its registered office, the Corporate Identity Number, Telephone number, fax number if any, email and the name of	**Substituted**

		the person who may be contacted in case of any queries or grievances on the landing/home page of the said website. (2) The Central Government may as and when required, notify the other documents on which the name of the company shall be printed."	
Rule 28(2) after second proviso	--	"Provided also that on completion of such inquiry, inspection or investigation as a consequence of which no prosecution is envisaged or no prosecution is pending, shifting of registered office shall be allowed."	**Inserted**
Rule 29(1)	The change of name shall not be allowed to a company which has defaulted in filing its annual returns or financial statements or any document due for filing with the Registrar or which has defaulted in repayment of matured deposits or debentures or interest on deposits or debentures.	The change of name shall not be allowed to a company which has not filed annual returns or financial statements due for filing with the Registrar or which has failed to pay or repay matured deposits or debentures or interest thereon: Provided that the change of name shall be allowed upon filing necessary documents or payment or repayment of matured deposits or debentures or interest thereon as the case may be."	**Substituted**
Rule 30(1) after clause (i)	--	"a copy of the No Objection Certificate from the Reserve Bank of India where the applicant is a registered Non-Banking Financial Company"	**Inserted**

Rule 30(6)(c)	serve, by registered post with acknowledgement due, a notice together with the copy of the application to the Registrar **and to the Securities and Exchange Board of India, in the case of listed companies** and to the regulatory body, if the company is regulated under any special Act or law for the time being in force.	serve, by registered post with acknowledgement due, a notice together with the copy of the application to the Registrar and to the regulatory body, if the company is regulated under any special Act or law for the time being in force.	The words "**and to the Securities and Exchange Board of India, in the case of listed companies**" omitted.
Explanation to Rule 30(10) after proviso	--	"**Explanation**- On completion of such inquiry, inspection or investigation as a consequence of which no prosecution is envisaged or no prosecution is pending, shifting of registered office shall be allowed."	**Inserted**
New **Rule 37** is **inserted** regarding **Conversion of unlimited liability company into a limited liability company by shares or guarantee**			
Form No. INC-10 shall be **omitted.**			
Form INC-11 and **Form INC-11A** are **substituted** with new versions of the forms.			
Form INC-27 and **Form INC-27A** are **substituted** with new versions of the forms.			

[F. No. 1/13/2013 CL-V dated 27th July, 2016]

For details please refer the following link:

http://www.mca.gov.in/Ministry/pdf/CompaniesThirdAmendementRules_28072016.pdf

4. Relaxation of additional fees and extension of last date in filling Form AOC-4, AOC-4 (XBRL), AOC-4(CFS) and MGT-7 under Companies Act, 2013.

As the ministry has revised form AOC-4 which would be deployed shortly. Further, Form AOC-4 (XBRL) and Form AOC-4 (CFS) are also under revision and this may be available for deployment by the end of August, 2016.

As per the relevant provisions of the Companies Act, 2013 and the financial statements and annual returns will have to be filed by the companies within 30 Days and 60 days of Conclusion of AGM or the last day be which AGM ought to have been held, as the case may be.

The Ministry has decided to allow companies to file financial statements and Annual Returns on or before 29.10.2016 where due date holding of Annual General Meeting is on or after 01.04.2016, without payment of additional filling fees.

[F. No. MCA 21/68/2016 E-Gov Cell dated 29th July, 2016]

5. Issuance of rupee bonds to overseas investors by Indian companies- [Clarification regarding applicability of provisions of Chapter III of the companies Act, 2013].

As the matter relating lo issue of rupee denominated bonds to overseas investors is being regulated by RBI as part of ECB Policy framework. Hence, the Ministry has clarified that unless otherwise provided in the circular/ directions/ regulations issued by reserve Bank of India. **Provisions of Chapter III of the Act and rule 18 of Companies (Share Capital and Debenture) Rules, 2014 would not apply to issue of rupee denominated bonds made exclusively to persons resident outside India** in accordance with applicable sectoral regulatory provisions as stated above. Necessary changes in Companies (Share Capital and Debenture) Rules, 2014 in this regard are being made.

[No. 1/21/2013-CL-V dated 03rd August, 2016]

6. Companies (Share Capital and Debentures) Fourth Amendment Rules, 2016.

In the Companies (Share Capital and Debentures) Rules, 2014, in rule 18, after Sub-rule (10), the following sub-rule shall be inserted, namely:-

"(11) Nothing contained in this rule shall apply to rupee denominated bonds issued exclusively to overseas investors in terms of A.P. (DIR Series) Circular No. 17 dated September 29, 2015 of the Reserve Bank of India."

[F. No. 01/04/2013-CL-V- Part-II dated 12th August, 2016]

Allied Laws Corner

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Imposition of penalty on the Company on its utilization of Initial Public Offer proceeds for giving loan to its subsidiary and suppressing material information from investors.

The Securities Appellate Tribunal, Mumbai in the case of **Sandeep Baid vs. Securities & Exchange Board of India, Mumbai** reported in **72 taxmann.com 154** held that the Appellant has violated provisions of Regulation 57 of the SEBI (Issue of Capital and Disclosure Requirements) Regulations, 2009, read with regulations 3 and 4 of the SEBI (Prohibition of Fraudulent and Unfair Trade Practice Relating to Securities Market) Regulation, 2003 and sections 15HA and 15HB of the SEBI Act, 1992 by utilizing IPO proceeds for a purpose other than purpose specified in IPO and had suppressed material information from investors in giving IPO proceeds as loan to subsidiary company, and therefore, the SEBI has rightly imposed penalty of Rs.2 Crores on the Appellant Directors.

A. Facts of the case :

1. Mr. Sandeep Baid (Appellant in Appeal No. 404 of 2014) was the Whole Time Director of RDB Rasayans Ltd. ("RDB" for short) Mr. Sunder Lal Dugar (Appellant in Appeal No. 403 of 2014) was the Promoter and Chairman of RDB. Mr. Mahendra Pratap Singh, Mr. Prabir Kumar Sarkar and Mr. Sachin Shridhar, (Appellants in Appeal Nos. 402, 401 & 432 of 2014) were the Independent Directors of RDB. RDB Realty & Infrastructure Ltd. ("RDBRIL" for short) is a group/sister company of the RDB group engaged in the business of real estate and infrastructure

2. In March 2010 RDB filed a Draft Red Herring Prospectus (DRHP) with SEBI to raise funds for expanding its manufacturing activities at Haldia, Kolkata through Initial Public Offer ("IPO" for short). On 12.09.2011 SEBI granted its approval to the DRHP filed by RDB. Accordingly, the IPO opened on 21.09.2011 and the IPO closed on 23.09.2011. On 05.10.2011 IPO funds to the tune of Rs. 34.25 crore was credited to the bank account of RDB.

3. On 07.10.2011 at about 11:00 A.M. Audit Committee Meeting of RDB was held and in that meeting the committee decided to recommend to the Board of RDB to utilize the IPO funds by investing in high quality interest bearing instruments for the profitability of the company. It also decided to recommend to the Board for giving secured loan to the group companies of RDB.

4. At 5:00 P.M. on 07.10.2011 Board meeting was held, whereby the Directors of RDB were authorized to invest the unutilized IPO proceeds of RDB in high quality interest bearing instruments. It was further resolved to authorize RDB to enter into loan agreement with RDBRIL and the draft loan agreement placed before the Board was approved with certain modifications with consent of both parties.

5. On 07.10.2011 itself loan of Rs. 31.60 crore out of the amount of Rs. 34.25 crore received from IPO were transferred by RDB to RDBRIL at about 2:47 P.M. i.e. even before the Board approved transfer of funds from RDB to RDBRIL.

6. On 28.12.2011 the Whole Time Member ("WTM" for short of SEBI passed an ad-interim ex-parte order prohibiting various individuals/entities including the appellants

from buying, selling or dealing in the securities until further orders and further directed RDB to call back loan of Rs. 31.60 crore from RDBRIL and deposit the same in an escrow account till further orders.

7. Accordingly, RDB recalled the demand loan and it is not in dispute that during the period from January to 31.03.2012, RDB received total amount of Rs. 33.43 crore (Rs. 31.60 crore being the loan amount + Rs. 1.83 crore being interest) and intimated it to the Stock Exchange.

8. Challenging the aforesaid ad-interim ex-parte order RDB filed a writ petition before the Calcutta High Court wherein partial relief was granted to RDB. Challenging the Calcutta High Court order, SEBI filed an SLP before the Apex Court. On 22.09.2014, by consent SLP was disposed of, whereby, the writ petition filed by RDB before the Calcutta High Court stood withdrawn and SEBI was required to pass orders within three months and till then, RDB was directed not to alienate fixed assets up to the value of Rs. 6.5 crore and it was directed that the amounts lying in the escrow account shall continue to remain in the escrow account.

9. On 19.12.2014 the WTM of SEBI passed final order whereby the RDB and its Directors including the appellant directors were debarred from entering into the securities market till 28.12.2015.

10. On 30.07.2013 a show cause notice was issued by AO of SEBI calling upon the appellants herein to show cause as to why inquiry should not be held against the appellants and why penalty should not be imposed under Section 15HA and 15HB of SEBI Act for violating the provisions contained in the SEBI Act and the regulations framed thereunder.

11. Appellants filed their reply to the show cause notice denying the allegations made therein. Thereafter personal hearing was granted to the appellants and by the impugned order dated 06.08.2014 penalty aggregating to Rs. 3 crore is imposed on the appellants with a direction that the said penalty be paid by the appellants jointly and severally. Additional penalty of Rs. 5 lac was imposed on the appellant director.

12. Thereafter, the Appellant Directors filed an appeal before the SAT challenging the said order of AO.

B. Imposition of penalties by the SEBI : The AO of the SEBI levied following penalties :

(a) Penalty of Rs.5 lacs imposed on Mr. Sandeep Baid for violation of Clause 49 of Listing Agreement because he was the Whole Time Director of the RDB and he chaired the meeting of Audit Committee ;

(b) Penalty of Rs. 1 crore is imposed under Section 15HB of SEBI Act, because the appellants as directors of RDB did not disclose all material information in the offer document that are true and adequate as contemplated under the ICDR Regulations and misutilized the IPO proceeds by giving loan to RDBRIL in violation of the ICDR Regulations;

(c) Penalty of Rs. 1 crore is imposed under Section 15HA of SEBI Act on ground that apart from violating ICDR Regulations, the appellants are also guilty of violating the PFUTP Regulations;

(d) Penalty of Rs. 1 crore is imposed under Section 15HA of SEBI Act on ground that the appellants, in violation of PFUTP Regulations have routed IPO proceeds in a circuitous manner so as to provide funds to four trading clients who had traded in the shares of RDB on the first day of listing RDB shares and had incurred huge losses.

C. Observations and Findings of SAT :

1. Penalty of Rs.5 lacs imposed on Mr. Sandeep Baid for violation of Clause 49 of Listing Agreement:

1.1 When the Listing Agreement specifically provides that the Chairman of the Audit Committee shall be an Independent Director, the Whole Time Director could not have chaired the Audit Committee Meeting held on 07.10.2011 especially when an Independent Director was available on that day to chair the Audit Committee. There is no basis for the alleged bona fide belief entertained by the Whole Time Director and therefore, to chair the Audit Committee by the Whole Time Director on 07.10.2011 was in violation of Clause 49 of the Listing Agreement. Although, penalty imposable for such violation under Section 23H of the SCRA could extend up to Rs. 1 crore, the AO after considering all mitigating factors has deemed it fit to impose penalty of Rs. 5 lac which cannot be said to unreasonable or excessive. Accordingly, imposition of Rs. 5 lac penalty on the appellant in Appeal No. 404 of 2014 cannot be faulted.

2. Penalty of Rs. 1 crore under Section 15HB of SEBI Act for violation of the ICDR Regulations:

2.1 In the present case, the DRHP filed by RDB in March 2010 was approved by SEBI on 12.09.2011 and on the same day RDB passed a resolution approving grant of loan up to Rs. 50 crore to RDBRIL in one or more tranches for their business purpose and the said loan was repayable on demand as per the terms and conditions as may be mutually decided between the management of both the companies. In the impugned order it is held that the above information was a material information which ought to have been disclosed and failure to disclose that information constitutes violation of regulation 57(1), 57(2)(a) read with Scheduled VIII Part A(16)(b) and regulation 60(4)(a) of the ICDR Regulations.

2.2 It is contended by the counsel for the appellants that RDBRIL had requested for financial assistance and therefore, it was resolved on 12.09.2011 to give some of its surplus funds as loan to RDBRIL from time to time up to a maximum of Rs. 50 crore. It was not a resolution to give loan of Rs. 50 crore to RDBRIL, but it was a resolution enabling RDB to give loan to RDBRIL as and when surplus funds were available. There was no preconceived intention to give IPO proceeds to RDBRIL and on 12.09.2011 when the resolution was passed, the IPO was not even opened and there was no certainly that the IPO would be successful. Thus, on 12.09.2011, there was no intention to give IPO proceeds as loan to RDBRIL and therefore, it cannot be said that the resolution dated 12.09.2011 was a material information relating to transfer of IPO proceeds so as to disclose the same in the offer document.

2.3 We see no merit in the above contentions. Admittedly, the reserves and surplus funds of RDB for the financial year ending on March 2010 and March 2011 were Rs. 2.8 crore and Rs. 4.6 crore respectively. Although SEBI had approved IPO of RDB on 12.09.2011, in view of the labour unrest at Haldia, it was known that RDB would not be in a position to utilize the IPO proceeds for the purpose specified in the IPO and thus the IPO proceeds would be rendered surplus. There is nothing on record to suggest that on 12.09.2011 when RDB passed resolution to give loan of Rs. 50 crore in one or more tranches, apart from receiving IPO funds, there were no other funds to be received by RDB which could be treated as surplus. Therefore, on 12.09.2011 when RDB passed a resolution to give loan up to Rs. 50 crore to RDBRIL after receiving the SEBI approval, it is apparent that the resolution to give loan was with reference to the IPO proceeds to be received by RDB.

2.4 Above conclusion is corroborated from the fact that on 12.09.2011 itself RDB decided to call Extra Ordinary General Meeting (EOGM) on 28.09.2011 by curtailing the notice period of 21 days so as to seek approval for giving loan to RDBRIL from the pre IPO shareholders. In the EOGM held on 28.09.2011 (after the IPO closed on 23.09.2011 and before allotment of shares) the pre IPO shareholders approved giving loan up to Rs. 50 crore to RDBRIL. Even on 28.09.2011, apart from the IPO proceeds there were no other funds that could be treated as surplus and transferred to RDBRIL by way of loan. It is relevant to note that on 05.10.2011 IPO funds of Rs. 34.25 crore was credited to the RDB's bank account and on 07.10.2011 at 11.00 A.M. the Audit Committee of RDB recommended to the Board that the unutilized IPO funds should be invested in high quality interest bearing instruments and further recommended giving loan to the RDB group companies which would be repayable on demand. However, before the Board of RDB could consider the above recommendation of the Audit Committee at 5.00 P.M. on 07.10.2011 and approve the draft loan agreement, RDB transferred Rs. 31.60 crore to RDBRIL at 2.37 P.M. on 07.10.2011. Thus, the conduct of RDB in transferring Rs. 31.60 crore out of the IPO proceeds amounting to Rs. 34.25 crore to RDBRIL even before the Board of RDB authorized giving loan to RDBRIL and even before the draft loan agreement was approved at 5.00 P.M. on 07.10.2011, clearly shows that the resolution passed on 12.09.2011 to give loan up to Rs. 50 crore to RDBRIL was with reference to the IPO proceeds. Utilizing the IPO proceeds for a purpose other than the purpose specified in the IPO being a material information ought to have been disclosed as contemplated under the ICDR Regulations. Failure to do so, constitutes violations of ICDR Regulations.

2.5 Argument of the appellants that the disclosure made in the prospectus that 'pending utilization of the proceeds of the issue, we intend to invest such proceeds in high quality interest bearing liquid instruments' entitled RDB to utilize IPO proceeds by giving loan to RDBRIL is without any merit. Investing surplus funds in high quality liquid instruments cannot be equated with giving loan to a group company. Investment in liquid instruments is done without any security as it involves minimum risk and can be accessed easily. However, giving loan involves maximum risk and hence loan is ordinarily given subject to security. In the present case, RDB has utilized the IPO proceeds to give loan to RDBRIL instead of investing the IPO proceeds in high quality interest bearing liquid instruments by obtaining security of valuable assets and post dated cheques. Fact that IPO proceeds have been utilized by giving loan with security, cannot be construed to mean that IPO proceeds have been invested in liquid funds. Hence, decision of the AO that instead of investing IPO proceeds in liquid instruments RDB misutilized the IPO proceeds by giving loan to RDBRIL cannot be faulted.

2.6 Argument of the appellants that giving loan by RDB to RDBRIL would amount to placing surplus funds from one pocket to another cannot be accepted, because, RDB and RDBRIL are two separate and distinct legal entities. Moreover, an investor who wants to invest funds in the IPO of RDB may not prefer to invest in the IPO of RDB if informed that IPO funds are being transferred as loan to RDBRIL. In para 24 of the impugned order the AO has recorded a finding that prior to the IPO, RDBRIL had taken Rs. 7.28 crore from RDB as inter corporate loan at an interest

rate of 15% per annum and since RDBRIL could not repay the said loan within the stipulated time RDBRIL had sought extension of time in the last week of August 2011 and accordingly RDB had granted 90 days time to RDBRIL for repayment of loan. With these facts on record, it is not open to the appellants to contend that giving loan to RDBRIL amounts to placing IPO funds from one pocket to another. Thus, in the facts of present case, resolution passed on 12.09.2011 to give loan up to Rs. 50 crore to RDBRIL being a resolution relating utilization of IPO proceeds was a material information which ought to have been disclosed. Apart from the above, when statement was made in the offer documents that the IPO proceeds would be invested in high quality interest bearing liquid instruments, utilizing the IPO proceeds by giving loan to RDBRIL amounts to misutilizing the IPO funds in violation of ICDR Regulations.

3. Penalty of Rs. 1 crore under Section 15HA of SEBI Act for violating the PFUTP Regulations :

3.1 Failure to disclose aforesaid material information to the investors and misutilizing the IPO funds contrary to the statement made in the offer document was with a manipulative and deceitful intention is evident from the fact that as soon as SEBI approval for the IPO was received, RDB chose to invest surplus fund by way of loan to RDBRIL up to the extent of Rs. 50 crore in one or more tranches, even though no such funds were available. Very fact that on 12.09.2011 itself RDB resolved that along with the Annual General Meeting ("AGM" for short) scheduled on 28.09.2011, Extra Ordinary General Meeting ("EOGM" for short) of RDB shall also be called on 28.09.2011 to seek approval from the pre IPO shareholders of RDB to grant loan to RDBRIL by curtailing the notice period from 21 days to 15 days by invoking Section 171(2) of the Companies Act, 1956, clearly shows that RDB and its directors were in great hurry to seek approval from pre IPO shareholders to give loan up to Rs. 50 crore even though there were no funds for giving the loan. Obviously the hurry was on account of the fact that IPO was commence with effect from 21.09.2011 and if 21 days notice for EOGM was adhered to, then post IPO shareholders would step in and therefore to avoid seeking approval from post IPO shareholders, RDB and its directors chose to suppress resolution dated 12.09.2011 and call EOGM by curtailing the notice period so that approval to give IPO proceeds as loan to RDBRIL is obtained from pre IPO shareholders and not from post IPO shareholders.

3.2 The object of passing the resolution on 12.09.2011 was to transfer IPO funds as loan to RDBRIL and by curtailing the notice period from 21 days to 15 days, RDB chose to seek approval from the pre IPO shareholders for giving IPO proceeds as loan to RDBRIL. Thus, RDB and its directors resorted to manipulative and deceitful method to suppress material information from the offer documents which in violation of PFUTP Regulations.

3.3 It is contended on behalf of the appellants that Section 171(2) of Companies Act, 1956 empowers a company to give shorter period of notice to the shareholders and Section 192 of the Companies Act permits filing of the resolution up to 30 days and therefore, no fault can be found with RDB in invoking shorter period of notice and filing the resolution within 30 days. In the impugned order it is not held that RDB and its directors have violated Section 171(2) and Section 192 of the Companies Act, 1956. What is held in the impugned order

is that the motive in curtailing the notice period for calling EOGM from 21 days to 15 days by invoking Section 171(2) was with a view to avoid taking consent of post IPO shareholders to give loan up to Rs. 50 crore to RDBRIL. Similarly, it is held that filing of EOGM resolution dated 28.09.2011 was delayed till 19.10.2011, so that during the interregnum allotment of IPO shares are made and once the shares are allotted the question of withdrawing from the offer does not arise even if the subscriber intends to withdraw from the offer on account of RDB giving loan up to Rs. 50 crore to RDBRIL. Fact that apart from IPO proceeds, RDB did not have any other surplus funds to give as loan to RDBRIL and the fact that immediately on receiving IPO proceeds amounting to Rs. 34.25 crore, RDB transferred IPO proceeds to the extent of Rs.31.60 crore to RDBRIL, even before the Board of RDB approved giving such loan and even before the Board of RDB approved the draft loan agreement, leaves no manner of doubt that RDB and its directors adopted manipulative and deceptive devices to suppress material facts from the investors which is gross violation of Section 12A of SEBI Act and regulation 3 & 4 of PFUTP Regulations.

3.4 It is equally important to note that on 07.10.2011 the Audit Committee of RDB was chaired by the Whole Time Director instead of Independent Director as mandated by Clause 49 of the Listing Agreement. The said Audit Committee chaired by the Whole Time Director in violation of Clause 49 of the Listing Agreement recommended to the Board to give loan to RDBRIL. However, even before the Board met at 5.00 P.M. on 07.10.2011 to approve the giving of loan and approve the draft loan agreement, RDB transferred IPO proceeds amounting to Rs. 31.60 crore to RDBRIL at 2.47 P.M. on 07.10.2011. Moreover, it is not in dispute that all the above material information was not disclosed even to the book running lead manager. In these circumstances, the inference drawn by the AO that RDB and its directors in a manipulative and deceptive manner suppressed material facts from investors and misutilized the IPO proceeds by giving loan to RDBRIL instead of investing the IPO proceeds in high quality interest bearing liquid funds as represented to the investors in the offer document, cannot be faulted.

3.5 It is contended on behalf of the appellants that the promoter group held 63.34% shareholding of RDB and 61.5% shareholding of RDBRIL even post IPO and therefore the ownership and control of both companies being with the same promoter group, the level of control and confidence was the highest and therefore, giving loan by RDB to RDBRIL amounted to investing in high quality, interest bearing liquid instruments. There is no merit in the above contention. If the confidence level was so high then there was no reason for the appellants to suppress utilization of IPO proceeds by giving loan to RDBRIL. Very fact that RDB resorted to suppressing material facts from the investors in relation to the loan to be given to RDBRIL till the allotments were made and the fact that RDB transferred IPO proceeds to the extent of Rs. 31.60 crore as loan to RDBRIL on the basis of the recommendations of Audit Committee resolution dated 07.10.2011 (chaired by Whole Time Director in violation of Clause 49 of the Listing Agreement) and even before the said recommendations and the draft loan agreement forwarded by the Audit Committee were approved by the Board of RDB, leave no manner of doubt the RDB and its directors resorted to prohibited methods for suppressing material facts from

the investors. It is a matter of record that when RDBRIL was asked to return the entire amount of loan of Rs. 31.60 with interest RDBRIL could not repay the said amount at one go and repaid the same in several installments and the entire loan with interest was paid by 31st March, 2012. In these circumstances, findings recorded by the AO in the impugned order that RDBRIL was not financially sound on account of its inability to repay the entire loan amount at one go cannot be faulted. Assuming that RDBRIL was financially sound on account of assets held by it, very fact that RDBRIL could not repay the loan on demand and repaid it in installments clearly supports the view taken by the AO that giving loan to RDBRIL could not be said to be an investment in high quality interest bearing liquid instruments.

3.6 In the impugned order, reference is made to the breach of the loan agreement between RDB and Axis Bank only to highlight that in a bid to transfer IPO proceeds by way of loan to RDBRIL, RDB not only suppressed material facts from the investors but also suppressed material facts from the Axis Bank. In these circumstances, decision of the AO that the conduct of RDB and its directors (appellants) in suppressing material information from the investors by resorting to manipulative and deceitful devices was in violation of regulation 3 and 4 of the PFUTP Regulations cannot be faulted.

4. Once it is held that the appellants as directors of RDB are guilty of suppressing material facts from the investors and misutilized the IPO proceeds in contravention of statements made in the offer documents and thereby violated regulation 57(1), 57(2)(a) and regulation 60(4) of the ICDR Regulations and committed those violations by adopting manipulative and deceitful method in violation of regulation 3 and 4 of the PFUTP Regulations, the penalty imposable on appellants would be up to Rs. 26 crore (Rs. 1 crore under Section 80HB and Rs. 25 crore under Section 80HA of SEBI Act). **However, after taking into consideration all mitigating factors the AO has deemed it fit to impose penalty of Rs. 1 crore under Section 15HB and penalty of Rs. 1 crore under Section 15HA of SEBI Act which cannot be said to be unreasonable or excessive.**

5. Penalty of Rs. 1 crore imposed under Section 15HA of SEBI Act on ground that the appellants, in violation of PFUTP Regulations have routed IPO proceeds in a circuitous manner so as to provide funds to four trading clients who had traded in the shares of RDB on the first day of listing RDB shares and had incurred huge losses.

5.1 Once it is held that transfer of IPO proceeds as loan to RDBRIL amounts to misutilization of IPO proceeds in contravention of the PFUTP Regulations and accordingly penalty of Rs. 1 crore is imposed, then fact that part of the amounts given by RDB as loan to RDBRIL changed several hands and finally the said amount was in the hands of four trading clients who had traded in the shares of RDB on the first day of trading and incurred losses, cannot be an independent ground to hold that the IPO proceeds have been routed in a circuitous manner so as to fund four trading clients, because, firstly, SEBI has not disbelieved the case of the appellants that transfer of IPO proceeds by RDB to RDBRIL was by way of loan. AO cannot hold on one hand that IPO proceeds were transferred as loan to RDBRIL and on the other hand hold that IPO proceeds were circuitously routed to four clients through RDBRIL. Secondly, by 31.03.2012, entire loan amount with

interest has been received back by RDB from RDBRIL. With these facts on record it is not open to SEBI on one hand to contend that RDB gave IPO proceeds as loan to RDBRIL in violation of ICDR Regulations/PFUTP Regulations and on the other hand contend that the IPO proceeds have been transferred in a circuitous manner so to fund four trading clients who had traded in the shares of RDB on the first day of listing.

5.2 **Consequently, penalty of Rs. 1 crore imposed under Section 15HA of SEBI Act on ground that RDB transferred IPO proceeds to four trading clients through RDBRIL and other entities in violation of PFUTP Regulations cannot be sustained.**

6. In the result, the SAT upheld the penalty of Rs. 1 crore imposed on appellants under Section 15HB of SEBI Act for violating the ICDR Regulations and penalty of Rs. 1 crore imposed under Section 15HA of SEBI Act for violating PFUTP Regulations. Similarly, penalty of Rs. 5 lac imposed on appellant in Appeal No. 404 of 2014 for violating Clause 49 of the Listing Agreement is also upheld. However, penalty of Rs. 1 crore imposed under Section 15HA of SEBI Act on ground that RDB transferred IPO proceeds in a circuitous manner to four trading clients is deleted.

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contd. from page 338

its very nature is retrospective in effect, viz. applicable to past transactions.

The Hon'ble court held that it is an admitted position that in the facts of the present case, the assessee seek the benefit of the scheme in relation to the years 2010-11, 2011-12 and 2012-13 which are well within the ambit of the scheme namely, between 1st April 2006 and 14th October, 2014.

The Hon'ble court held that paragraph 7 of the scheme provided that the dealers shall be entitled to the benefit of the scheme only after the payment of the taxes payable under the scheme during the period of the scheme. In the opinion of this court, the contention that in cases where the tax and interest have been paid prior to the coming into force of the scheme, the scheme would not be applicable, does not appear to be a true construction of the provisions of paragraph 7. Paragraph 7 only provides that the dealer, to be entitled to the benefit of the scheme, shall have to have paid the taxes there under during the operation of the scheme. The same does not in any manner preclude those dealers who have already paid the tax prior to the coming into force of scheme.

The Hon'ble court held that on a conjoint reading of paragraph 10 and paragraph 13 of the scheme, it is evident that the intention is to grant benefit also to those dealers who have paid the tax and interest prior to coming into operation of the scheme. The only condition is that in case where the tax, interest and penalty has already been paid, the dealer shall not be entitled to refund thereof. The provisions of paragraph 7 of the scheme have to be construed in consonance with the provisions of paragraph 10 and 13 thereof, which clearly indicate that all those dealers who have paid the taxes during the period of operation of the scheme and prior thereto are brought within the ambit thereof.

The Hon'ble court held that the revenue, is, therefore, not justified in denying the benefit of the Amnesty Scheme to the assessee. The above view is fortified by the view taken by the Karnataka High Court in the above referred decisions. The SCA came to be disposed accordingly.

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From Published Accounts

CA. Pamil H. Shah
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AS 19 LEASES
Annual Report 2015-16
Accounting Policies and Practices

HOV Services Ltd.

Where the Company has substantially acquired all risks and rewards of ownership of the assets, leases are classified as financial lease. Such assets are capitalized at the inception of the lease, at the lower of the fair value or present value of minimum lease payment and liability is created for equivalent amount. Each lease rent paid is allocated between liability and interest cost so as to obtain constant periodic rate of interest on the outstanding liability for each year.

Where significant portion of risks and reward of ownership of assets acquired under lease are retained by lessor, leases are classified as Operating Lease. Lease rentals for such leases are charged to Statement of Profit and Loss.

Hethway Cable & Datacom Limited

The transactions where the company conveys or receives right to use an asset for an agreed period of time for a payment or series of payments are considered as Lease.

a) As Lessee – Operating Leases

Lease rentals in respect of assets taken on 'operating lease' are charged to statement of profit and loss over the lease term systematic basis, which is more representative of the time pattern of company's benefit.

b) As Lessor – Operating Lease

Assets subject o operating leases are included in fixed assets. Lease income is recognized in the statement of profit and loss over the lease on systematic basis which is more representative of the time pattern of the company's benefit. Costs, including depreciation are recognized as an expense in the statement of the profit & loss.

C) As Lessee – Finance Lease

Finance leases, which effectively transfer to the lessee substantially all the risk and benefits incidental to ownership of the leased item, are capitalized at the lower of the fair value and present value of the leased item of the minimum lease payments at the inception of the lease term and disclosed as leased assets and depreciated as per the applicable policy.

Lease payments are apportioned between the finance charges and reduction of the lease liability so as to achieve a constant rate of interest on the remaining balance of the liability. The finance charge is allocated over the lease term so as to produce a constant periodic rate of interest on the remaining balance of liability. Initial direct cost of lease is capitalized.

Motilal Oswal Financial Services Ltd.

Where the company is lessee

Leases, where the Lessor effectively retains substantially all the risks and benefits of ownership of the leased item, are classified as operating leases. Operating lease payments are recognized as an expense in statement of profit and loss on a straight-line basis over the lease term.

Where the company is Lessor

Leases in which the company does not transfer substantially all the risks and benefits of ownership of the asset are classified as operating leases. Assets subject to operating lease are included in fixed assets. The company recognizes lease rentals from the property leased out, on accrual basis as per the terms of agreement entered with the counter parties. Costs, including depreciation, are recognized as an expense in the statement of profit and loss.

DFL Building India

Assets subject to operating leases are included under fixed assets or current assents as appropriate. Rental income is recognised in the statement of profit and loss on a straight-line basis over the lease team. Costs, straight-line basis over the lease term. Costs, including depreciation, are recognised as an expense in the statement of profit and loss.

BGR Energy Systems Limited

Finance leases, which transfer to the company substantially all the risks and rewards incidental to ownership of the leased item, are capitalized at the lower of the fair value and present value of the minimum lease payments at the inception of the lease term and disclosed as leased assets. Lease payments are apportioned between the finance charges and reduction of the lease liability based on the implicit interest rate or incremental borrowing rate as applicable. Finance charges are charged directly against income. The costs identified as directly attributable to activities performed for a finance lease are included as part of the amount recognized as leased assets.

If there is no reasonable certainty that the company will obtain the ownership by the end of the lease term, capitalized leased assets are fully depreciated over the lease term or their useful life, whichever is shorter.

Leases where the lessor retains substantially all the risks and rewards of ownership of the leased assets, are classified as operating leases.

Lease payments under operating lease are recognized as an expense in the statement of profit and loss on a straight line basis over the lease term.

Teamlease Services Limited

Leases in which a significant portion of the risks and rewards of ownership are retained by the lessor are classified as operating leases. payment made under operating leases are charged to the statement of profit and loss based on the terms of the agreement and the effect of lease equalisation is not given considering the increment is on account of inflation factor .

Puravankara Projects Limited

- Finance leases

Assets acquired on lease which effectively transfer to the Company substantially all the risks and benefits incidental to ownership of the assets, are capitalized at the lower of the fair value and present value of the minimum lease payments at the inception of the lease term and disclosed as leased assets. Lease payments are apportioned between the finance charges and reduction of the lease liability based on the implicit rate of return. Finance charges are charged directly against income. Lease management fees, legal charges and other initial direct costs are capitalized.

If there is no reasonable certainty that the Company will obtain the ownership by the end of the lease term, capitalized leased assets are depreciated over the shorter of the estimated useful life of the asset or the lease term.

-Operating leases

Leases where the lessor effectively retains substantially all the risks and benefits of ownership of the leased assets are classified as operating leases. Operating lease payments are recognized as an expense in the Statement of Profit and Loss on a straight-line basis over the lease term unless other systematic basis is more representative of the time pattern of the benefit.

IFB Indursties Limited

Leases where the lessor effectively retains substantially all the risks and rewards of ownership of the leased asset are classified as operating leases. Operating lease payments are recognized as an expense in the statement of the profit and loss on a straight –line basis over the lease term.

Lotus Eye Hospital And Institute Limited

The company's significant. Leasing arrangements are in respect of operating Lease for medical equipments which are cancellable in nature. The leases paid/received under such agreements are charged to profit and loss account.

Claris Lifesciences Limited

Leases rentals in respect of assets taken on operating leases are changed to the statement of profit and loss on accrual and straight-line basis over the lease term.

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From the Government

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Income Tax

1) CBDT extends 30st September-2016 Returns Filing Due Date to 17th October-2016

The due date for filing return & TAR for assessee whose due date for filing income tax return is 30th September(being company, firms and other required to get accounts audited under income tax act or other law and working partners of such firm) is extended to 17th October,2016.

2) CBDT extends due date for quarterly furnishing/ uploading of 15G/ 15H declarations

The CBDT has extended the due dates for uploading of Form 15G/ 15H received during the period 1 Oct. 2015 to 31 Mar. 2016 and also for the period from 1 April 2016 onwards, as under:

Sl. No	Scenarios	Original Due Date	Extended Due Date
1	Form 15G /H received during the period from 1.10.15 to 31.3.16	30.06.2016	31.10.2016
2	Form 15G/15H declarations received during the period from 1.4.2016 to 30.6.2016	15.07.2016	31.10.2016
3	Form 15G/15H declarations received during the period from 1.7.20 to30.9.16	15.10.2016	31.12.2016

However, the due dates for furnishing of 15G/ 15H declarations for the quarter ending Dec. 2016 and Mar. 2017 (FY 2016-17) will remain the same as specified in the Notification No.9/ 2016 dated 9 June 2016.

(Notification No. 10/2016 dt. 31 Aug. 2016)

3) Clarification regarding document / evidence relating to IDS, 2016 found during the course of search u/s 132 or survey u/s 133A of the IT Act.

The Board has vide this circular clarified that whenever in the course of search under section 132 or survey operation under section 133A of Income Tax Act 1961, any document is found as proof for having already filed a declaration under the scheme, including acknowledgement issued by the Income Tax Department for having filed a declaration, no enquiry would be made by the Income Tax Department in respect of sources of undisclosed income or investment in movable or immovable property declared in a valid declaration made in accordance with the provisions of the Scheme.

(Circular No. 32 , dated 1st September,2016)

4) Clarification on Income Declaration Scheme, 2016

The Income Declaration Scheme, 2016 (hereinafter referred to as 'the Scheme') came into effect on 1st June, 2016. To address further doubts and concerns raised by the stakeholders, the Board has vide this circular issued FAQs over and above the earlier circulars issued.

(For full text refer Circular No. 29, dated 18 th August,2016)

5) CBDT Notification Reg Adoption Of Indexed Stamp Duty Value For Income Declaration Scheme

The CBDT has issued a Notification dated 17th August 2016 by which Rule 3(1)(d) of the

Income Declaration Scheme Rules 2016 have been amended to provide that where the acquisition of immovable property by the declarant is evidenced by a deed registered with any authority of a State Government, the fair market value of such property shall, at the option of the declarant, may be taken on the stamp duty value as increased by the same proportion as Cost Inflation Index for the year 2016-17 bears to the Cost Inflation Index for the year in which the property was registered.

Service Tax

1) Clarificatory circular regarding exemption for services provided to government, a local authority or a government authority

It is hereby stated that among other exemptions, exemption is available to the following services provided to the Government, a local authority or a governmental authority by way of –

- construction , erection, commissioning, installation, completion, fitting out, repair, maintenance, renovation or alteration or alteration of pipeline, conduit or plant for (i) water supply (ii) water treatment and
- water supply.

Thus the above referred exemption under the entries at sr.no. 12(e) and 25(a) of the notification 25/2012, dated 20-6-2012 will cover a wide range of activities/services provided to a government, a local authority or a governmental authority and will include the activity of construction of tube wells.

(For full text refer Circular no. 199 dated 22nd August,2016)

2) Service tax on freight forwarders for transportation of goods from India: CBEC Clarification

CBEC has clarified that a freight forwarder, when acting as a principal, will not be liable to pay service tax when the destination of the goods is from a place in India to a place outside India.

(For full text refer CBEC Circular No. 197/ 7/2016 -Service Tax dt. 12 Aug. 2016)

3) CBEC Clarifies the issue of Service Tax Liability on Hiring of Goods without Transfer of 'Right to Use'of Goods

It is hereby clarified that the transfer of right to use any goods for any purpose for cash, deferred payment or other valuable consideration is deemed to be a sale for those goods by the person making the transfer, delivery or supply and a purchase of those goods by the person to whom such transfer, delivery or supply is made and such transactions will be liable for VAT/Sales Tax. However in terms of sec 66E(f) of the finance act, the transfer of goods by way of hiring, leasing, licensing or in any such manner **without the transfer of right to use such goods** is a declared service and liable to service tax.

Therefore it is essential to determine whether in terms of the contract, there is transfer of right to use goods and the criteria laid down by SC in BSNL should invariably be followed and applied; SC had inter alia laid down that (i) there must be goods available for delivery, (ii) there must be consensus ad idem as to their identity, (iii) transferee should have legal right to use the goods, (iv) such right should be to the exclusion of the transferor i.e. it should not be merely license to use the goods, and (v) during the period of transfer, owner cannot again transfer the same right to others;

(For full text refer Circular no. 198, dated 17th August,2016)

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Association News

CA. Dilip U. Jodhani
Hon. Secretary

CA. Riken J. Patel
Hon. Secretary

1 Forthcoming Programmes

Date/Day	Time	Topic	Speaker	Venue
8-10-2016 Saturday	9.00 a.m. To 1.00 p.m.	3rd Brain Trust cum Workshop Meeting on "GST – New Vistas for Professionals….. Grab it."	CA. Sandesh Mundra	ATMA Hall, Opp. City Gold Cinema Ashram Road, Ahmedabad
21-10-2016 Friday& 22-10-2016 Saturday		Joint Seminar with BCAS at Mumbai Tentative Topics to be discussed 1. Inheritance of Wealth & and Profession 2. Taxation of Non Resident Indians 3. How to read DTAA 4. Penalty u/s.270A vs. 271(1)(c) 5. Transitional Provisions under GST / GST –C A Perspective...	Various Speakers	Mumbai
10-12-2016 Saturday	8.30 a.m.	Cricket Match		Sardar Patel Stadium, Navrangpura, Ahmedabad
31-12-2016 Saturday	8.30 p.m.	Cricket Match		Sardar Patel Stadium, Navrangpura, Ahmedabad

Glimpses of Past Events

Joint Seminar with BCAS on CARO & IFC

Release of BCAS Publication by CA. Sunil Talati, Past President, ICAI

2nd Brain Trust meeing led by CA. N C Hegde, CCM Mumbai

Programme on Tally at President Hotel

Study Circle Meeting led by by CA. Palak Pavagadhi

Talent Evening Prayer by EC and Committee members

Talent Evening with Participants

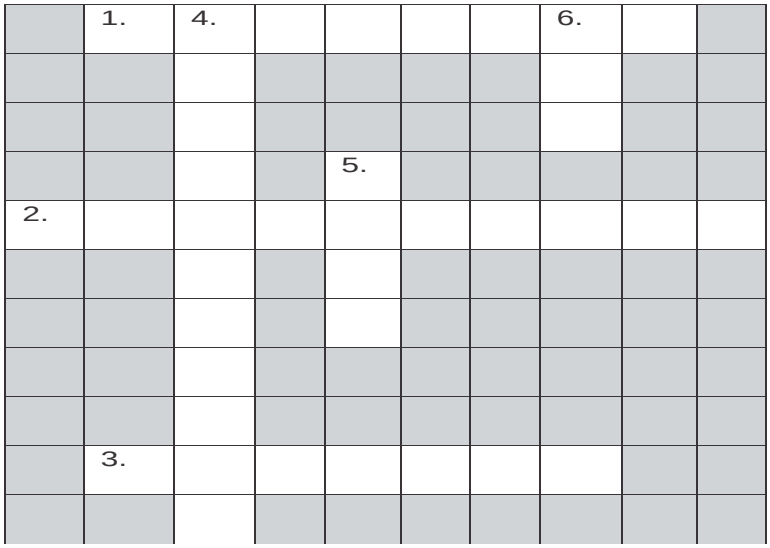
ACAJ Crossword Contest # 28

Across

1. The gift received on the occasion of _____ of an individual is exempt.
2. Religion is a happy and intelligent blending of _____ and ritualism.
3. In case of Lovely Exports (P) Ltd, Supreme Court held that there is no onus on the _____ to prove the source of money in the hands of shareholder or the persons making payment of share application money.

Down

4. In case of K.J. Somaiya Trust, it is well settled that excess of expenditure over income in one year can be set-off in subsequent year against the income u/s 11 as and by way of _____ of income.
5. Once the case of the assessee is not covered by the 1st proviso to section 147, reassessment proceedings beyond the period of _____ years from the end of the relevant assessment year would be without jurisdiction.
6. The _____ will bring in the 'One Nation – One Tax' theory.



Notes:

1. The Crossword puzzle is based on previous issue of ACA Journal.
2. Two lucky winners on the basis of a draw will be awarded prizes.
3. The contest is open only for the members of Chartered Accountants Association and no member is allowed to submit more than one entry.
4. Members may submit their reply either physically at the office of the Association or by email at caaahmedabad@gmail.com on or before 27/09/2016.
5. The decision of Journal Committee shall be final and binding.

Winners of ACAJ Crossword Contest # 27

1. CA. Keyur Shah
2. CA. Ajit Shah

ACAJ Crossword Contest # 27 - Solution

Across

1. Maximum Marginal
2. Land or Building
3. Five

Down

4. Happy
5. Decisions
6. Merits

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