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MananaM

Build Factories

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On reading the title, most will feel that we are talking about 'Make in India' or about some business opportunities. As chartered accountants we always feel that world revolves around the money and finance but life is much beyond that. The entire world is now talking about sustainability. How can there be sustainability when we ourselves are not sustainable? The most important fact is that in trying to earn status, name and fame we forget the most important aspect, our own self.

Meet your friend or meet your partner or any person, the most common word we hear is stress. We are so much obsessed with the word that we tend to forget that the term has been created by us. It is because of our behaviour that we feel stress. In trying to be perfect we tend to give up on our peace. The life requires only three beautiful factories and you will see that the fourth factory will come to you free. So wouldn't everyone want to invest in those factories? Lucrative it sounds but difficult it is! The time and effort you put to build these three factories, it will ensure the fourth one. So what factories one must build?

The first and the foremost factory you need is an 'ice factory' on your head. No matter how worst the situation is, don't panic and keep your cool. Remember every lock has a key. To open, you may need several trials and once you master the art your can open the lock in first attempt. Problems are also similar; you can easily face them and find a solution by keeping cool without getting affected by the problem.

Second factory that one needs to build is 'sweet factory' and place it on your tongue. Howsoever difficult a situation gets, if you can speak sweet, you will always end up with great attitude and respect. If someone would talk to you rudely you would do the job unwillingly but doing the same work with a smile brings happiness within. So speak sweetly and most of your work will get done smoothly. Try doing it.

The third factory that one needs to make is a 'love factory' within your heart. Let this factory flow. Love not from the materialistic or other evil intentions, love unconditionally. Be it your work or people. Love is for respect others and their work. It is appreciating the way they are without any conditions.

If you build these three factories within in yourself, the fourth and the most profitable factory that is 'satisfactory' will be easily built for you. If you are satisfied, life will always give you more, a platter filled with all the riches.

I know it's easier said than done. But let's make a small attempt to build our own factories and achieve the much needed profits that a human being is destined to.

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Editorial

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Indian contingent secured itself 4th rank in the recently concluded Commonwealth Games held in Birmingham, England. This is definitely not India's best performance at this quadrennial international multi-sport event held among athletes from the Commonwealth of Nations which once were ruled by Briton.

India secured 61 medals including 22 Gold Medals in this event. This is far below 101 medals which we managed to secure in the 2010 when these games were held in Delhi. This may not look very satisfactory or praiseworthy in comparison. However, this performance by Indian contingent is commendable as a number of sporting disciplines like shooting, tennis and archery were not part of the Games. India is traditionally strong in these disciplines and has even won Olympic medals previously in these disciplines. In 2010 Commonwealth Games, India had its best medal tally of 101 medals. In 2010 India had won 49 medals in these discontinued disciplines. So, by comparison, this can be termed as India's best Commonwealth performance.

We have hosted Asian Games for 2 times. We have never hosted any Olympic Games. Present government has revealed its plans to bid for Olympic Games in the year 2036. India is looking at a multi-centre bid to host the 2036 Olympic and Paralympic Games. And our beloved city Ahmedabad is a front runner to host the opening ceremony. The Motera Stadium, officially called the Narendra Modi Stadium, is the largest arena in the world with a seating capacity of 132,000 spectators can be a perfect venue to host the opening ceremony. On its part, Government of Gujarat has also started preparations for this bid. Recently Ahmedabad Urban Development Authority invited proposals from consultants to conduct a "gap analysis" to assess if the infrastructure in the city was adequate to host an Olympics. Gujarat government is also in the process of building a large sports complex in Ahmedabad, keeping in mind the possibility of India hosting the first ever Olympic Games in 2036.

However, the road leading to our successful bid is a tough one. Many Asian countries like Qatar and Indonesia are also vying to host Olympics. Russia and Turkey are also expected to renew their decade long quest to be awarded Olympics. Berlin in Germany and London in England are also possible candidates. We as a country will have to be on top of our game and make a very coordinated and planned effort for a successful bid to host this coveted sporting event.

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From the President

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Dear Members,

It was indeed great moment of pride to see entire nation celebrating the Independence Day as AZADI kaUTSAV. The zeal and enthusiasm of all the citizens was tremendous. Such celebrations boost up the feeling of pride and help to develop more patriotism in the young generation by recalling the AzadikiLadaai.

Friends, we too at association celebrated AZADI KA AMRIT MAHOTSAV by organizing Cultural Fellowship Event on eve before Independence Day jointly with our Ahmedabad Branch of WIRC of ICAI . I am thankful to all of you for making this program a grand success with record breaking numbers of presence.

Now, after refreshing ourselves by celebrating various festive days we all are gearing up to march towards the most hectic time of our profession ie Tax Audit Assignments and Filing Return of Income Tax for such cases. These are the most crucial days for our members in practice and also in industry. I would like to draw your attention that like the Income Tax Return Filing compliance date of 31st July, there are all likely chances that compliance dates falling due for Tax Audit Report and Return of Income of such cases will also not going to be extended and therefore all those who are involved in carrying out these assignments at our end and at our clients' end needs to be advised to start and finish their relevant part of the work well within the time limit to avoid any last minute rush.

Here, I want to bring to notice of all of you that a Mega Event of our profession is scheduled on 18 to 21 November, 2023 for all of us. Yes, this time the 21st World Congress of Accountants 2022 is to meet in India for the first time in 118 years of its existence. Our ICAI is hosting this "Olympics of Accountants". The WCOA 2022 would be an apt platform for exchange of ideas through interactive discussions for accounting, finance and business professionals.

CA SARJU MEHTA

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GST on Hospital Room Charges - Legal Issues

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Introduction

The recommendations made through 47th GST council meeting and subsequent notifications issued by Government adds to list of major amendments made in GST since its inception. The GST law does not seem to be settling in foreseeable future. There are many reasons for it. However, in this article, we shall discuss the validity of some amendments made through notifications from legal point of view. One of the amendments made which levies GST on hospital room rents can be taken as an example to discuss the issue on hand.

At the outset, I wish to opine that the imposition of GST on hospital room charges is not legal. The reasons for giving such opinion has been discussed in detail in this article. Our discussion shall be mainly focused on the scope of delegated legislation and administrative law v/s constitutional law.

Amendment made in July 2022

Notification No. 03/2022-Central Tax (Rate) dated 13th July, 2022 has made following amendment to Notification No. 11/2017-Central Tax (Rate), dated the 28th June, 2017-

After serial number 31and the entries relating thereto, the following serial number and entries shall be inserted, namely-

1	2	3	4	5
31A	Heading 9993	Services provided by a clinical establishment by way of providing room [other than Intensive Care Unit (ICU)/ Critical Care Unit(CCU)/ Intensive Cardiac Care Unit (ICCU)/Neo natal Intensive Care Unit (NICU)] having room charges exceeding Rs. 5000 per day to a person receiving health care services	2.5	The credit of input tax charged on goods and services used in supplying the service has not been taken [Please refer to Explanation no. (iv)]"

The words clinical establishment and Healthcare services are defined as under-

"Clinicalestablishment' means, -a hospital, nursing home, clinic, sanatorium or any other institution by, whatever name called, that offers services or facilities requiring diagnosis or treatment or care for illness, injury, deformity, abnormality or pregnancy in any recognised system of medicines in India, or a place established as an independent entity or a part of an establishment to carry out diagnostic or investigative services of diseases;

'health care services'means, -any service by way of diagnosis or treatment or care for illness, injury, deformity, abnormality or pregnancy in any recognised system of medicines in India and includes services by way of transportation of the patient to and from a clinical establishment,

but does not include hair transplant or cosmetic or plastic surgery, except when undertaken to restore or to reconstruct anatomy or functions of body affected due to congenital defects, developmental abnormalities, injury or trauma.

There is an entry no 74 under notification no 12/ 2017-Central Tax (Rate) dated 28th June, 2017 which exempts health care service from levy of GST which is reproduced below-

Services by way of-

(a) health care services by a clinical establishment, an authorised medical practitioner or para-medics;

(b) services provided by way of transportation of a patient in an ambulance, other than those specified in (a) above.

Vide Notification No. 04/2022 -Central Tax (Rate) dated 13th July, 2017 a proviso has been inserted to entry no 74 mentioned above which is reproduced below-

Provided that nothing in this entry shall apply to the services provided by a clinical establishment by way of providing room [other than Intensive Care Unit (ICU)/Critical Care Unit(CCU)/ Intensive Cardiac Care Unit (ICCU)/Neo natal Intensive Care Unit (NICU)]having room charges exceeding Rs. 5000 per day to a person receiving health care services.

Readers can note that basically a proviso has been inserted to the entry providing exemption to healthcare service and consequently excluding the hospital room charges exceeding Rs. 5000 per day from the scope of exemption. Another change has been made to rate notification which provides that 5% GST shall be levied on the hospital room rent exceeding Rs.5000 per day and no input tax credit can be taken to discharge this liability. It has also been provided that GST shall not be imposed on room charges collected for Intensive Care Unit (ICU)/Critical Care Unit (CCU)/Intensive Cardiac Care Unit (ICCU)/Neo natal Intensive Care Unit(NICU) irrespective of the amount collected.

GST Provisions on Composite Supply

The effort is made to separate room charges from healthcare service by way of making above two amendments. As we have understood the method adopted for levy of GST on hospital room charges, now we can understand the legality of such amendment. An important question that arises here is- can hospital room charges be separated from healthcare service? There is a concept of composite supply in GST. The definition of composite supply under section 2(30) of the CGST Act, 2017 is as under-

Composite supply means a supply made by a taxable person to a recipient consisting of two or more taxable supplies of goods or services or both, or any combination thereof, which are naturally bundled and supplied in conjunction with each other in the ordinary course of business, one of which is a principal supply;

Illustration.— Where goods are packed and transported with insurance, the supply of goods, packing materials, transport and insurance is a composite supply and supply of goods is a principal supply.

The taxability of composite supply is determined by section 8(a) of the CGST Act, 2017. Section 8 of the CGST Act, 2017 is reproduced below-

Tax liability on composite and mixed supplies.— The tax liability on a composite or a mixed supply shall be determined in the following manner, namely:—

(a) a composite supply comprising two or more supplies, one of which is a principal supply, shall be treated as a supply of such principal supply; and

(b) a mixed supply comprising two or more supplies shall be treated as a supply of that particular supply which attracts the highest rate of tax.

Hence, once a supply is treated as " composite supply" then the tax liability shall be as per the tax treatment prescribed for principal supply.

In case of healthcare services, the room rents are inseparable part of the healthcare service and treating it separately goes against the concept of " Composite Supply". There is no doubt that the room rents are part of the healthcare service and nobody can avail the room rent service without availing the healthcare service. Another important question which arises is once we classify the whole service into healthcare service by applying the concept of " composite supply", will it be permissible to give different tax treatment to two components of the same supply? In the opinion of the author, such treatment is not permissible as the purpose of "composite supply" is to classify the supply into one category to give it a uniform tax treatment. The example given in the definition of " composite supply" under section 2(30), which classified the insurance and packing service with supply of goods clears the issue beyond doubt. For example, lets say, there is a GST rate of 18 % on packing service and it is used for supplying goods attracting GST rate of 5 % then the whole supply will attract 5% GST only, as per the example given in section 2(30) of the CGST Act, 2017. The amendment made in July, 2022 goes against the clearly defined position of law.

Similar examples can also be taken from earlier tax laws. For example the sale of medicines was chargeable to VAT as saleof goods but the medicines supplied to patient during treatment of the patient is not sale of medicine. It is covered under healthcare service only and hence VATwas not imposed on such medicines. Same concept was applicable to stents placed in artery of patient or lens implanted in cataract surgery.

Parent legislation v/s Delegated Legislation

The work of enactment of law is done by parliament/ state assemblies. However, sometimes, for some reasons this work is entrusted to the administration. This process is called representational authority and the law enacted based on such powers is called Delegated Legislation. In GST, the exemptions and GST rates are governed through delegated legislation. It is done through issuance of notifications on the recommendation of GST council.

The delegated legislation derives its powers from the parent legislation and it must conform with the parent legislation. The Supreme Court has held in case of **State of Tamil Nadu & Anr vs P. Krishnamurthy & Ors. (2006) SCC 517** that any subordinate legislation or part thereof, which does not conform to the object, scheme and provisions of the parent Act under which it is made, is invalid.

In Case of **Indian Express Newspapers (Bombay) (P) Ltd. v. Union of India** Supreme court held as under- *"A piece of subordinate legislation does not carry the same degree of immunity which is enjoyed by a statute passed by a competent legislature. Subordinate legislation may be questioned on any of the grounds on which plenary legislation is questioned. In addition it may also be questioned on the ground that it does not conform to the statute under which it is made. It may further be questioned on the ground that it is contrary to some other statute. That is because subordinate legislation must yield to plenary legislation. It may also be questioned on the ground that it is unreasonable, unreasonable not in the sense of not being reasonable, but in the sense that it is manifestly arbitrary."*

In case of **Employees' Welfare Assn. v. Union of India** Supreme Court held that *the validity of a subordinate legislation is open to question if it is ultra vires the Constitution or the governing Act or repugnant to the general principles of the laws of the land or is so arbitrary or unreasonable that no fair-minded authority could ever have made it. It was further held that the Rules are liable to be declared invalid if they are manifestly unjust or oppressive or outrageous or directed to be unauthorised and/or violative of the general principles of law of the land or so vague that it cannot be predicted with certainty as to what it prohibited or so unreasonable that they cannot be attributed to the power delegated or otherwise disclose bad faith.*

The list of such judgements is endless. For the sake of brevity, we are not discussing other judgements on the issue of Delegated legislation v/s Parent legislation. The ratio laid down in such judgements is that the delegated legislation must conform with the provisions of the parent legislation. In the case on hand, section 2 (30) is part of the parent legislation and the amendment made has been done through delegated legislation which seems to be going against the provisions of the parent legislation.

Judicial Precedent in GST

Our above discussion was based on the legal concepts which are historically accepted. However, there is a recent judgment also available in which a discussion about the composite supply has been made. The issue of "composite supply" has been discussed in case of **Union of India &Anr. V/s M/s Mohit Minerals Pvt. Ltd**. Though the issue in this case was of taxing a component of a transaction twice by vivisection, the observations made by the court are important for our discussion also. In this case honourable Supreme Court agreed with the observation of Gujarat High Court regarding composite supply. The relevant paragraph is reproduced below-

146 The High Court in the impugned judgment has observed that:

"What has led to the present day problems in the implementation of the GST:

*132. The GST is implemented by subsuming various indirect taxes. The difficulty which is being experienced today in proper implementation of the GST is because of t**he erroneous misconception of law, or rather, erroneous assumption on the part of the delegated legislation that service tax is an independent levy as it was prior to the GST and it go vivisect the transaction of supply to levy more taxes on certain components completely overlooking or forgetting the basic concept of composite supply introduced in the GST legislation and the very idea of levying the GST.** Prima facie, it appears that while issuing the impugned notification, the delegated legislature had in mind the provision of the Finance Act, 1994, rather than keeping in mind the object of bringing the GST by making the Constitutional (101st) Amendment Act, 2016 to merge all taxes levied on the goods and services to one tax known as the GST.*

*134. All the learned senior counsel are right in their submission that **if such an erroneous impression is not corrected and if such a trend continues, then in future even the other components of supply of goods, such as, insurance, packaging, loading/unloading, labour, etc. may also be artificially vivisected by the delegated legislation to once again levy the GST on the supply on which the tax is already collected (emphasis supplied)***

Conclusion

The legal issues in GST keeps surfacing regularly. The discussion made above is just another example of it. Though there is no denial that GST is still a new law and such issues shall be tested in the court of law in the days to come, the concept of enactment of delegated legislation is not new. As per the opinion of author the concept of composite supply is already settled. The amendment made to taxability of healthcare service is unsettling the already settled principle. The only comment I wish to make is- The issue already settled in parent legislation cannot be unsettled by a delegated legislation. Such an attempt shall be challenged in the court of law on multiple grounds. We need to wait till the judicial pronouncement on this specific issue. After all, "**Law means what the Judges interpret it to mean."**

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Sustainability & Evolution of Sustainability Reporting in India - An Introduction - Part 1

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Context –

The industrial revolution in Europe resulted in the widespread exploitation of natural resources such as timber and minerals, and vegetation removal for new settlements in the conquered colonies. The mechanization and high consumption also resulted in higher level of pollution. The environmental concerns from the resource exploitation gave rise to the concept of sustaining life on earth. The International Union for the Conservation of Nature (IUCN) published a World Conservation Strategy in 1980 that introduced the term "Sustainable Development" and referred to it as a global priority. Subsequently, the report "Our Common Future (commonly known as Brundtland Report)" was released by the United Nations World Commission on Environment and Development in 1987 that gave the popular definition of Sustainable Development.

"Sustainable development is the development that meets the needs of the present without compromising the ability of future generations to meet their own needs."

It contains within it two key concepts:

- The concept of 'needs', in particular, the essential needs of the world's poor, to which overriding priority should be given; and
- The idea of limitations imposed by the state of technology and social organization on the environment's ability to meet present and future needs.

Traditionally, the organisations considered that economic growth and socio-environmental parameters are mutually exclusive, and hence, economic growth was the only thing that organisations used to disclose. The chemical manufacturing companies started publishing environmental reports in the 1980s as a means of image building, and the tobacco processing industries followed suit in an attempt to attract investment. This disclosure of corporate information developed into non-financial reporting such as Sustainability Reporting in the last 20 years as a means of demonstrating accountability and transparency to the stakeholders.

Introduction –

Globally, there is an increase in awareness and activism amongst stakeholders who are demanding business accountability for the social and environmental impacts on issues such as climate change, gender equality, environmental degradation, etc. Sustainability Reporting is an emerging discipline encompassing the disclosure and communication of an entity's non-financial - Environmental, Social, and Governance (ESG) performance and its overall impact. Over the last few years, more and more entities have started preparing and disclosing their sustainability reports either under a mandate or voluntarily as per the reporting frameworks/ standards provided by standard-setting bodies/ regulators.

Through sustainability reporting, companies communicate their performance and impacts on a wide range of sustainability topics spanning ESG parameters. It enables companies to be more transparent about the risks and opportunities they face, giving stakeholders greater insight into performance beyond the bottom line.

As companies across the world increasingly embrace sustainability reporting, a number of standards have emerged that enable a wide range of stakeholders to more effectively assess and compare sustainability reports. India is one of the early adopters of sustainability reporting for listed

entities amongst its various other global peers. In 2012, requirement of Business Responsibility Report (BRR) containing ESG disclosures was introduced for adoption by the listed entities. Recently, in May 2021, SEBI has introduced new reporting requirement called the Business Responsibility and Sustainability Report (BRSR) with the intent towards having quantitative, qualitative and standardized disclosures on ESG parameters.

Sustainability Reporting - Meaning

As per the definition of the Global Reporting Initiative (GRI), "Sustainability Reporting is an overview of a company's economic, environmental, and social impacts, caused by its everyday activities". This is not merely presenting the data collected, but an approach to drive an organization's commitment to sustainability, and demonstrate it to the interested parties in a transparent manner. It is intended to assist the organisations to assess, measure, analyse and present their performance in economic, social, environmental, and governance parameters, with an objective of setting challenging targets and goals.

Sustainability Reporting - Purpose & Objectives

- Increases understanding of risks and opportunities;
- Emphasizes the link between financial and non-financial performance;
- Influences long-term management strategy, policy and business plans;
- Streamlines processes, reducing costs and improving efficiency;
- Benchmarks and assesses sustainability performance with respect to laws, norms, codes, performance standards and voluntary initiatives;
- Helps companies avoid publicized environmental, social and governance failures;
- Enables the comparison of performance internally and between organizations and sectors.
- Mitigating negative environmental, social and governance impacts, improving reputation and brand loyalty;
- Enabling external stakeholders to understand the organization's true value, along with tangible and intangible assets;
- Demonstrating how the organization influences and is influenced by expectations about sustainable development.

The NGRBCs – The Indian Context –

There was no India specific corporate framework, either voluntary or mandatory, relating to sustainable development till 2011, when the Ministry of Corporate Affairs (MCA) released the National Voluntary Guidelines (NVG). They were based on the triple bottom line principle of sustainability(People, Planet, Profits) andare specific to the Indian context.

- It had nine elements namely ethics, transparency and accountability, product life-cycle sustainability, employee well-being, stakeholder engagement, human rights, environment, policy advocacy, inclusive growth and equitable development, and value to customers and consumers.
- The Securities and Exchange Board of India (SEBI) mandated that the organisations release an annual report on their Business Responsibility in line with the NVGs.

The 9 Principles of the NGRBCs –

Based on the NVGs, the reporting format for Sustainability Reporting was developed on the concepts/ principles promulgated by the National Guidelines for Responsible Business Conduct (NGRBCs). The following are the principles of the NGRBCs -

Principle 1-Businesses should conduct and govern themselves with integrity, and in a manner that is ethical, transparent and accountable.

Principle 2-Businesses should provide goods and services in a manner that is sustainable and safe.

Principle 3-Businesses should respect and promote the well-being of all employees, including those in their value chains.

Principle 4-Businesses should respect the interests of and be responsive to all its stakeholders.

Principle 5-Businesses should respect and promote human rights.

Principle 6-Businesses should respect and make efforts to protect and restore the environment

Principle 7-Businesses, when engaging in influencing public and regulatory policy, should do so in a manner that is responsible and transparent.

Principle 8 -Businesses should promote inclusive growth and equitable development

Principle 9-Businesses should engage with and provide value to their consumers in a responsible manner

MCA'S Committee recommendation and SEBI circular on Business Responsibility and sustainability Reporting (BRSR) –

Timeline of evolution -

- July 2011- MCA releases National Voluntary Guidelines (NVGs)
- August 2012- SEBI circular for the top 100 listed companies to disclose BRR in line with NVG
- 2015- United Nations Sustainable Development Goals 2030 is released
- 2015-16- The applicability of BRR extended to the top 500 listed companies
- March 2019- MCA revised the NVGs to National Guidelines on Responsible Business Conduct (NGRBC)
- December 2019- The applicability of BRR extended to the top 1,000 listed companies
- August 2020- MCA report on BRR with the proposed BRSR

On 10th May, 2021- SEBI Circular (No.SEBI/HO/CFD/CMD-2/P/CIR/2021/562 dated May 10, 2021)on BRSR by Listed Entities. The committee came out with a recommended format for the reporting called as 'Business Responsibility and Sustainability Report (BRSR)". Two formats are proposed for the BRSR along with separate guidance note for each of them. The format with a wider coverage version called BRSR Comprehensive for the listed organisations, and smaller version called BRSR Lite for the non-listed organisations. The structure of the new format has three sections A, B and C.

- **Section A: General Disclosures**– This section covers the general information and basic details of the organisation such as, scale, size, sector, products, employee strength, CSR activities, etc. It also covers the organisation's activity near the environmentally fragile and sensitive areas, protected zones, socially critical areas.
- **Section B: Management and Process** - This section covers the commitment of the organisation to the business responsibility by seeking the information related to the governance system, policies, procedures, and processes they have in place to address their responsibilities in line with the NGRBC principles. This provides an insight into the managerial infrastructure the organisation has to drive business responsibly.
- **Section C: Principle-wise performance** - This section requires the organisation to disclose how they perform with respect to each of the nine Principles and Core Elements of the NGRBCs. The organisation will have to demonstrate objectively how they will meet the commitment to responsible business conduct. The information required in the section can be provided as two categories depending on the extent of the organisation's ambition towards sustainability as essential and leadership. They can report as either of the two.

Essential - The bare minimum the organisation has to do in terms of responsible business conduct

Leadership - The voluntary things taken up by the organisation that are beyond the basic essential things.

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Glimpses of Supreme Court Rulings

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14 Promissory Estoppel – Bar Against Invocation of promissory estoppel –

The doctrine of Promissory Estoppel is an equitable remedy and has to be moulded depending on the facts of each case and not straitjacketed into pigeonholes i.e. there cannot be any hard and fast rule for applying the doctrine of promissory estoppel but the doctrine has to evolve and expand itself so as to do justice between the parties and ensure equity between the parties. In the present case, the principle of promissory estoppel shall not be applicable contrary to the statute and merely because erroneously and/or on misinterpretation some benefits in the earlier assessment years were wrongly given, cannot be a ground to continue the wrong and to grant the benefit of exemption though not eligible under the exemption notification.

(State of Gujarat vs Arcelor Mittal Nippon Steel India Ltd. (2022) 6 SCC 459)

15 Consumer Protection – Legal services/ Advocates

Once it is found that there was no deficiency in service on part of advocates complaint filed against him was liable to be dismissed. In each and every case where a litigant has lost on merits and there is no negligence on part of the advocates it cannot be said that there was any deficiency in service by the advocate. If the submission advance on behalf of the petitioner is accepted, in that case in each and every case where a litigant has lost on merits and his case is dismissed, he will approach the Consumer Fora and pray for compensation alleging deficiency in service. Loosing the case on merits after the advocate argued the matter cannot be said to be deficiency in service on the part of the advocate. In every litigation, either of the parties is bound to loose and in such a situation, either of the parties who will loose in the litigation may approach Consumer Fora for compensation alleging deficiency in service, which is not permissible at all.

(Nandlal Lohariya vs Jagdishchand Purohit) (2022) (6 SCC 456)

16 Section 197 of I.T.Act – TDS Certificate for lower or Nil rate

As issuance of a certificate under Section 197 of the IT Act, an application shall be made to assessing officer under sub rule (1) of Rule 28. The assessing officer after recording satisfaction that existing and estimated tax liability justifies the deduction of tax at lower rate or no deduction of tax as the case may be shall issue certificate. While exercising the power to issue a certificate, the assessing officer is required to follow the procedure as per sub rule (2).

The assessing officer shall consider the existing and estimated liability that what may be tax payable on estimated income of the previous year; tax payable on the assessed or returned income of the last four years from previous year; existing liability under the IT Act; advance tax payment i.e. tax deducted and collected at source for the assessment year relevant to the previous year till the date of making application under sub rule (1) of Rule 28. Thus, for the purpose of issuance of certificate under Chapter XVII of Section 197 of the IT Act, the procedure for determination has been prescribed to the assessing officer on which satisfaction may be recorded by him.

Order passed by the High Court is without considering the perspective and scope of issuance of the certificate for deduction of tax at lower rate or no deduction at tax and also without following the prescribed procedure. The High Court has wrongly distinguished the previous judgement on the premises which is not tenable, and relied upon undertaking dated 22.06.2019 of appellant submitted perforce. After due consideration view High Court has committed error in dismissing the writ petition; therefore, we am unable to concur the opinion of the esteemed sister Judge.

National Petroleum Construction Co. vs DCIT *[Civil Appeal No. 4964 of 2022 (Arising Out of SLP(C) No. 9233 of 2020 dtd.* ***July 29, 2022].***

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Summary & Conclusion –

It has been a long history for the concept of sustainability with the rising concerns over human induced climate change and damage to ecosystems since the mid-1970s till recent times where there has been codification of Sustainability Reporting formats and rising concerns over the ESG impacts of how organizations function. This history has been replete with controversies over climate change at various political and economic forums. The process of evolution of Sustainability Reporting in India reflects the fact that now governments all over the world are taking sustainability related risks very seriously with the corresponding rising concerns over the impacts of climate change and related risks that the society at large faces for the years and decades to come.

Sustainability Reporting is an evolving concept and is in its nascent stage in India at present. Financial Reporting underwent a long process of development from till its present mature form. Likewise, Sustainability Reporting is evolving, developing and with regulatory and reporting frameworks widening and sustainability issues becoming broad based, pervasive and assuming criticality in strategic managerial decision making.ESG Reporting is bound to assume a pivotal role in decision making for all stakeholders.

In part 1 of this series, we covered above the concept of sustainability with its background, context and evolution of Sustainability Reporting in India. In the next part we will endeavour to have ahigh-level perspective of sustainability risks in decision making by various stakeholders.

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From the Courts

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41 Meaning of "pending appeal" in Direct Tax Vivad Se Vishwas Act 2020: Boddu Ramesh v/s. Designated Authority (2021) 437 ITR 32 (Telegana)

Issue:

What meaning should be given to the phrase "pending appeal" in Direct Tax Vivad Se Vishwas Act 2020?

Held:

The assessee having filed an appeal before the Tribunal with an application for condonation and the Tribunal having heard the matter on February 5, 2021 by condoning the delay, it had to be construed as a "pending" appeal as on the date of filing of declaration on February 8, 2021.

42 Power to condone delay how to be exercised. CBDT v/s. Vasudev Adigas Fast Food Pvt. Ltd. (2021) 437 ITR 67 (Karn)

Issue:

How the power to condone delay should be exercised?

Held:

Both the Principal Commissioner and the jurisdictional Additional Commissioner had given a report that the delay in filing the return of income may be condoned. Though the Central Board of Direct Taxes had referred to these opinions, it had not taken them into consideration while deciding the application of the assessee. The Central Board of Direct Taxes had ignored the recommendations of the jurisdictional authorities. The Central Board of Direct Taxes had erroneously relied on circular No. 9 of 2015 dated June 9, 2015 and rejected the application of the assessee. The single judge was right in holding that the order of the Central Board of Direct Taxes was not valid.

43 Faceless assessment: Request by assessee for personal hearing: Lemon Tree Hotels Limited v/s. NFAC (Delhi) (2021) 437 ITR 111 (Delhi)

Issue:

How the request by assessee in faceless assessment is to be dealt with?

Held:

For the assessment year 2018-19, a notice cum draft assessment order was issued to the assessee calling upon it to file its objections. Since the matter was complex on the facts and law, the assessee made a request for personal hearing to the Assessing Officer. Orders were passed under section 143(3) read with section 144B of the Income Tax Act, 1961 and consequential notices of demand were issued under section 156 and for initiation of penalty proceeding under section 274 read with section 270A. On a Writ petition contending that the order and notices were passed in breach of the principles of natural justice:

The court, while issuing notice on the Writ petition, stayed the operation of the order passed under section 143(3) read with section 144B and the consequential notices of demand issued under section 156 and for initiation of penalty proceedings under section 274 read with section 270A on the grounds that the Department did not inform whether steps under sub clause (h) of section 144B(7) (xii) had been taken.

44 Faceless assessment:Principles of natural justice
YCD Industries v/s. NFAC
(2021) 437 ITR 119 (Delhi)

Issue:

Principles of natural justice to be observed in Faceless Assessment.

Held:

The principles of natural justice had been violated. The Department could not have side stepped statutory safeguards put in place by the Legislature. Admittedly, the assessee's income was varied to its prejudice with an addition in the assessment order under section 115BBEE. Had the notice cum draft assessment been issued the assessee could have requested for a personal hearing in the matter. The justification offered by the Department that notices under section 143(2) and 142(1) were issued prior to the passing of the assessment order could not be accepted in view of the schematic design of the statute. Accordingly, the assessment order and the notices of the demand and penalty issued under section 156 and section 274 read with section 270A were set aside.

45 Faceless Assessment Scheme: Requirements
Lokesh Constructions P. Ltd. v/s. Asst. CIT (2021) 437 ITR 123 (Delhi)

Issue:

What are the requirements for assessment under faceless assessment scheme?

Held:

Since there was a variation in the declared income of the assessee, the Assessing Officer was required to issue a notice cum draft assessment order, in consonance with the provisions of section 144B of the Act and the Faceless Assessment Scheme, 2019. Accordingly, the final order under section 143(3) read with section 143(3A) and (3B) and the consequential notice of demand issued under section 156 and the notice for initiation of penalty proceedings issued under section 274 read with section 270A were set aside.

Also See: Satia Industries Limited v/s NAFC (2021) 437 ITR 126 (Delhi)

46 Revision application u/s 264: Application of mind by CIT
Riso India Private Limited v/s. Pr. CIT
(2021) 437 ITR 174 (Delhi)

Issue:

Whether application u/s 264 can be dismissed without application of mind by CIT?

Held:

The Principal Commissioner had dismissed the assessee's revision petition under section 264 without giving any reason on the merits, except stating that the petition was premature. He had neither applied his mind to the controversy at hand nor passed a reasoned order. The order dismissing the revision petition was set aside and the matter was remitted to the Principal Commissioner for passing a reasoned order. [Matter remanded].

47 Interpretation of third proviso to sec. 147:
Pr. CIT v/s. Superior Films Private Limited (2021) 437 ITR 230 (Delhi)

Issue:

How is the third proviso to sec. 147 to be interpreted?

Held:

The third proviso to section 147 of the Income Tax Act, 1961 does not in any manner extend the period within which action under this section could be initiated by the Department. It merely empowers the Assessing Officer to assessee or reassess such income, which is not involved or is the subject matter of any appeal, reference or revision, and has escaped assessment. It does not grant any further extension of the stipulated time to the Department to initiate a proceeding under section 147.

Held, dismissing the appeal, (i) that the contention of the Department that in terms of the third proviso to section 147, the four year period provided in the first proviso to the section would commence only on the final adjudication of the appeal filed by the

assessee and it was disposed of by the Commissioner (Appeals) by an order dated January 30, 2009 and therefore, the notice under section 148 issued on March 22, 2011 was within the four year period as provided in the first proviso to section 147 could not be accepted.

48 Use of new software and public at large Krishna Agarwal v/s. Pr. CIT (2021) 437 ITR 245 (Delhi)

Issue:

How should the new software used which leads hardship to assessees?

Held:

The court took the view that the public at large should be asked to use the new software and programme only after the software has been tested prior in time on a sufficiently large sample base of assessees. The computer software should be flexible enough to incorporate the implementation of the Court's orders. For this purpose, if any policy initiative was required, the Director General of Income Tax (Systems) should take up the issue with the Central Board of Direct Taxes. The Court suggested to the director General of Income Tax (Systems) that in the event the ticket could not be resolved by any of the verticals due to constraints or limitations in the system or software, a mechanism should be put in place whereby the issue could be flagged for a policy decision. The director general of Income Tax (Systems) assured the court that her directorate would take steps to improve on both the fronts, namely, co-ordination and feedback and that wherever necessary, improvements in the process shall be carried out and would be able to resolve the glitches in the system and shall revert back with solutions, if possible, within a fortnight. The Court directed the respondents to file a status report within two weeks.

49 Search in another party: No penalty Pr. CIT v/s. Silemankhan and Mahaboobkan (2021) 437 ITR 260 (AP)

Issue:

Whether penalty can be levied in the case other than in whose case search was conducted?

Held:

No penalty under section 271AAB could be imposed when admittedly search under section 132 had not been conducted in the assessee's premises. The notice issued under section 153C was incidental to the search proceedings of the searched party and could not be a foundation to impose penalty against the assessee under section 271AAB. The legal position was based on the clear and unequivocal meaning transpiring from the words used in section and cannot yield to any other interpretation. The view had been consistently followed by the Tribunal,and was binding on the Department in such cases. No contrary view either of any High Court or the Supreme Court had been placed. In the light of the settled proposition of law the provisions of section 271AAB could not be invoked to impose penalty on the assessee on whom search was not conducted. There was no perversity or illegality in the finding of the Tribunal. No question of law arose.

50 Condition for withholding refund Mcnally Bharat Engineering Co. Ltd. v/s. Asst. CIT (Cal) (2021) 437 ITR 265 (Cal)

Issue:

What are the conditions for withholding refund?

Held:

Income Tax Act 1961, ss 143(1), 241A, 244A. Assessing Officer must apply his mind before withholding refund. Reasons for withholding must be recorded in writing and approval of Commissioner or Principal Commissioner obtained. Discretion to withhold refund must be exercised in judicious manner. Withholding of refund without recording reasons not sustainable.

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Tribunal News

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25 Bangalore Electricity Supply Co. Ltd. v. DCIT 137 taxmann.com 287 (Bang) Assessment Year:2008-09, Order dated: 7th April 2022

Basic Facts

The assessee file appeal against the order of the CIT(Appeals)for the assessment year 2008-09. This appeal came up for hearing before this Tribunal when it was pointed out to the assessee representative that the appeal was not signed by the competent authority and it was signed by General Manager (CT&GST), BESCOM. It was pointed out to the representative that the appeal was defective and the same may be cured and the case was adjourned to 16-3-2022.On 16-3-2022 none appeared for the assessee.

Issue

Whether the appeal filed by the assessee is invalid or defective.

Held

The Tribunal referred to provisions of section 140 and referred to the provisions regarding who can sign the return of income. The Tribunal found that clauses (a) and (c) of section 140, contains the provision for the signing of the return by a valid power of attorney holder, other clauses do not have such provision. Thus, there is a clear line of demarcation between the classes of assessees, who, in certain circumstances, can get their returns signed and verified by the holder of valid PoA, in which case such PoA is required to be attached to the return and on the other hand the classes of assessees who do not enjoy such privilege. From the language of section 140, as per Tribunal it could be easily noticed that only the returns of individuals and companies can be signed by a valid Power of Attorney holders in the specified circumstances and the other categories of the assessee are not entitled to this privilege.Further, section 253(6) of the Act states that the appeal to the appellate tribunal need to be filed in the prescribed form and it is also to be verified in the prescribed manner. Rule 47(1) of the I.T. Rules clarifies that "appeal shall be signed by a person specified in sub-rule (3) of Rule 45. Rule 45(3) states that the form of appeal referred to sub- rule (1) to be verified by a person who is authorized to verify the return of income under section 139(1) of the Act, as applicable to the assessee. According to the provisions of section 140(c) of the Act in case of a company, where the appeal is to be verified by the managing director of the company or for unavoidable reason, such managing director is not able to verify the return or where there is no managing director, by any director thereof. Further, there was an amendment w.e.f. 1.4.2020 to the provisions of section 140(c) of the Act where it was stated that the return could be filed by any other person as may be prescribed for this purpose. Even if we apply this amendment retrospectively also, it is not clear whether the General Manager, (CT&GST), BESCOM was holding a valid Power of Attorney from the assessee company to verify the appeal of the assessee even as provided u/s. 140(c) of the Act. Even this information is not available on the record. Therefore,the appeal was dismissed in limine.

26 Resolve Salvage & Fire India (P.) Ltd. v. DCIT (Mum) Assessment Year: 2015-16Order dated: 18th April 2022

Basic Facts

During the assessment proceedings, the assessee by filing letter made a fresh submission claiming the interest paid on late payment of TDS, which has been

added back in the computation of incomeis compensatory in nature and should be allowed as a deduction. The AO held that the interest is not allowable as deduction since interest paid under section 201(1A) or under section 206C(7) is nothing but penal in nature. Further, he observed that based on the decision in the case of Goetze (India) Ltd. v. CIT [2006] 157 Taxman 1/284 ITR 323 (SC), Hon'ble Apex Court has held that assessing officer cannot entertain the claim made by the assessee otherwise than by filing a revised return. Accordingly, he rejected the submissions made by the assessee. Aggrieved, assessee preferred appeal before the CIT(A) and CIT(A) allowed the fresh claim made by the assessee considering the same as legal in nature; however, disallowed the same on merits relying upon the decision of Ferro Alloys Corpn. Ltd. v. CIT [1992] 196 ITR 406 (Bom.) and CIT v. Chennai Properties & Investment Ltd. [1999] 105 Taxman 346/239 ITR 435 (Mad.). Aggrieved, the assessee is in appeal before the Tribunal.

Issue

Whether interest paid on late payment of TDS was allowable deduction.

Held

In the considered view of the Tribunal, the assessee has deducted the tax on behalf of the third party and failed to remit the same within the due date and the interest charged on such amount is only compensatory in nature. The Tribunal noted that the co-ordinate bench of this Tribunal has already held the same view in the case of STUP Consultants (P.) Ltd. v. Addl. CIT [IT Appeal No.5827 (Mum.) of 2012, dated 11-12-2018] by observing that the assessee claims the specified expenses of certain amount in its profit & loss account and thereafter the assessee from the payment to the party deducts certain percentage as specified under the Act as TDS and pays to the Government Exchequer. The amount of TDS represents the amount of income tax of the party on whose behalf the payment was deducted & paid to the Government Exchequer. Thus, the TDS amount does not represent the tax of the assessee, but it is the tax of the party which has been paid by the assessee. Thus, any delay in the payment of TDS by the assessee cannot be linked to the income tax of the assessee. Being consistent with the above decision of the co-ordinate bench, the Tribunal held that the interest paid on delayed payment of TDS u/s 201(1A) is an allowable deduction. The Tribunal accordingly directed, and the appeal filed by the assessee was allowed.

27 UPS Asia Group PTE v. ACIT, (International Taxation) 138 Taxmann.Com 505 (Mum)

Assessment Year: 2017-18,
Order dated: 8th March 2022

Basic Facts

The assessee, a foreign company, was engaged in the business of provision of supply chain management including the provision of freight forwarding and logistic services. It had entered into a 'Regional Transportation Services Agreement' with Indian Associated Enterprise for the provision of freight and logistics services and the assessee arranged to perform international freight transportation through the Ocean Liner/Airlines and provided overseas support services, while the Indian A.E. performed freight and logistics services in India to its India customers and to the assessee. The AO held that the assessee had a Business Connection in India under section 9(1)(i) in the form of its Indian A.E. and, thus, its business income attributable to operation in India was taxable in India. The AO further held that the Indian A.E. of the assessee constituted P.E. of assessee in India within the meaning of article 5(1), 5(2) and 5(8) of India-Singapore DTAA and attributed profit to the said P.E. of the assessee in India.DRP rejected the objections filed by the assessee.

Issue

Whether the assessee has a Business Connection under section 9(1)(i) of the Act and a Permanent Establishment under Article-5 of the India-Singapore DTAA;

if the assessee is said to have Business Connection/P.E., then how much of the profit can be attributed to the said Business Connection/P.E. particularly when the transaction is at arm's length price.

Held

The TPO accepted the value of international transactions as reported by the Indian A.E. in Form No. 3CEB filed along with its return of income and made no adjustment to same. Thus, it is not disputed that the transaction between the assessee and its Indian A.E. was conducted at arm's length and the transfer pricing analysis of the same was also accepted by the TPO. On identical issue, the Tribunal in assessee's own case vide order passed in UPS Asia Group Pte. Ltd. v Dy. CIT [IT Appeal No. 7171 (Mum.) of 2017, dated 14-7-2021] etc., for the assessment years 2013-14, 2014-15 and 2015-16, has allowed the assessee's appeal by observing that as the assessee has paid arm's length remuneration to its Indian agent, nothing further survives for taxation in the hands of the Dependent Agent PE which, at best, can be brought to tax in the hands of the assessee. If there is held to be a dependent agency permanent establishment, as at best the case of the AO is, it is wholly tax-neutral inasmuch as the Indian agents have been paid arm's length remuneration, and nothing further can, therefore, be taxed in the hands of the assessee.As the issues have already been decided by the Tribunal in favour of the assessee and against the revenue in the preceding assessment years in assessee's own case and further, facts and circumstances of the present case are similar to the assessment year 2015-16, which have also not been denied by the revenue, it is held that when the Indian A.E. is remunerated at arm's length price, no further profit attribution is required and the issue of existence of P.E. becomes wholly tax neutral. Accordingly, the addition made by the Assessing Officer is directed to be deleted.

28 Maxivision Eye Hospital Pvt. Ltd. V DCIT [TS-598-ITAT-2022(CHNY)] Assessment Year: 2012-13, Order dated: 22nd July 2022

Basic Facts

In the year under consideration, the assessee had not earned exempt income, but the CIT(A) confirmed the AO's order disallowing expenses i.e., interest expenses under Rule 8D(2)(ii) and administrative expenses being 0.5% of averagevalue of investment under Rule 8D(2)(iii) therebydisallowance relatable to exempt income byinvoking the provisions of section 14A of the Act. In the proceedings before the Tribunal, the Sr. Dr. brought to the notice of the Tribunal decision of the Guwahati Tribunal, virtualhearing at Kolkata in the case of ACIT vs. Williamson Financial Services Ltd., in ITA Nos.154 to 156/Gau/2019, order dated 06.07.2022, wherein in the Finance Act, 2022 amendment is brought in section 14A of the Act w.e.f. 01.04.2022 is held to be

Retrospective since Explanation seeks to clarify the position that thedisallowance of expenditure relatable to exempt income is notdependent upon actual earning of exempt income.

Issue

Whether the Explanation in section 14A inserted by Finance Act 2022 is retrospective.

Held

During the course of hearing,the Tribunal brought to thenotice of the Senior DR that this issue has been adjudicated bythe Hon'ble High Court of Delhi in the case of PCIT vs. EraInfrastructure (India) Ltd., in ITA 204/2022 & CM Appl.31445/ 2022,order dated 20.07.2022, considering the amendment brought in by the Finance Act, 2022 and Explanation inserted to section 14A of the Act held as prospective by observing as under:-

5. *However a perusal of the Memorandum of the Finance Bill, 2022 reveals that it explicitly stipulates that the amendment made to Section 14A will take effect from 1st April 2022 and will apply inrelation to the assessment year 2022-23 and subsequent assessmentyears. The relevant extract of Clauses 4, 5, 6 & 7 of theMemorandum of Finance Bill, 2022 are reproduced herein below:*

   "4. In order to make the intention of the legislation clear and tomake it free from any misinterpretation, it is proposed to insert an Explanation to section 14A of the Act to clarify thatnotwithstanding anything to the contrary contained in this Act, theprovisions of this section shall apply and

shall be deemed tohave always applied in a case where exempt income has notaccrued or arisen or has not been received during the previousyear relevant to an assessment year and the expenditure hasbeen incurred during the said previous year in relation to suchexempt income.

5. *This amendment will take effect from 1st April 2022.*

6. *It is also proposed to amend sub-section (1) of the said section, so as to include a non-obstante clause in respect of other provisions of the Income-tax Act and provide that nodeduction shall be allowed in relation to exempt income, notwithstanding anything to the contrary contained in this Act.*

7. *This amendment will take effect from 1st April 2022 and will accordingly apply in relation to the assessment year 2022-23 and subsequent assessment years."(emphasis supplied)*

6. *Furthermore, the Supreme Court in Sedco Forex International Drill. Inc. v. CIT, (2005) 12 SCC 717 has held that a retrospective provision in a tax act which is "for the removal of doubts" cannot bepresumed to be retrospective, even where such language is used, if it alters or changes the law as it earlier stood. The relevant extract of the said judgment is reproduced herein below:*

……..

The aforesaid proposition of law has been reiterated by the Supreme Court in M.M Aqua Technologies Ltd. V. Commissionerof Income Tax, Delhi-III, 2021 SCC OnLine SC 575. The relevant portion of the said judgment is reproduced herein below:-

……..

8. *Consequently, this Court is of the view that the amendment ofSection 14A, which is "for removal of doubts" cannot be presumedto be retrospective even where such language is used, if it alters or changes thelaw as it earlier stood.*

After considering the rival contentions and going through the decisionof Hon'ble Delhi High Court in the case of Era Infrastructure (India)Ltd., supra, the Tribunal was of the view that the explanation inserted in theprovisions of section 14A of the Act by the Finance Act, 2022 isprospective and not retrospective. Accordingly, since the assesseehas not earned any exempt income, no disallowance can be resorted.

29 JCIT V Bhanu Chopra TS-388-ITAT-2022 (Del)
Assessment year: 2015-16,
Order Dated: 29th April 2022

Basic Facts

The assessee is an individual who had received bonus shares during the year without any consideration.During the course of assessment proceedings, the AO computed the fair market value (FMV) of bonus shares in terms of Rule 11UA of the Income-tax Rules, 1962 and added the amount to the total income of the assessee by applying the provisions of section 56(2)(vii)(c) of the Act [relating to Income from Other Sources, similar provisions have now been subsumed under section 56(2)(x) of the ITA].Aggrieved by the AO's order, the taxpayer filed an appeal before the CIT(A), who deleted the aforesaid addition made by the AO. Aggrieved by the CIT(A)'s order, the Revenue filed an appeal before theITAT.

Issue:

Whether the provisions of section 56(2)(vii)(c) of the Act are applicable to acquiring of bonus shares.

Held

The ITAT referred to the Supreme Court in an earlier ruling, CIT vs. Dalmia Investment Co. Ltd [1964] 52 ITR 567 (SC)had observed that A stock dividend took nothing from the property of the corporation and added nothing to the interest of the shareholders. The proportional interest of each shareholder remained the same. The only change was in the evidence which represented that interest, the new shares and the original shares together representing the same proportional interest that the

original shares represented before the issue of the new ones. In short, the corporation was no poorer and the stockholder was no richer than they were before.In other words, by the issue of bonus shares pro rata, which ranked paripassu with the existing shares, the market price was exactly halved, and divided between the old and bonus shares. The total value remained the same, but the evidence of that value was not in one certificate but in two. The Bangalore ITAT in an earlier decisionDCIT vs. Rajan Pai [2017] 82 taxmann.com 347 (Bangalore - Trib.) had held thatAllotment of bonus shares could not be considered as received for an inadequate consideration and therefore, it was not taxable as income from other sources under section 56(2)(vii)(c) of the Act.Further, the issue of bonus share was by capitalisation of its profit by the issuing company and when the bonus shares were received it was not something which had been received free or for a lesser FMV. Consideration had flown out from the holder of the shares may be unknown to him/her, which was reflected in the depression in the intrinsic value of the original shares held by him/her.As long as there was no disproportionate allotment, i.e., shares were allotted pro-rata to the shareholders, based on their existing holdings, there was no scope for any property being received by them on the said allotment of shares, there being only an apportionment of the value of their existing holding over a larger number of shares. Accordingly, there was no question of section 56(2)(vii)(c) of the Act getting attracted. The CBDT circular No. 06/2014 issued on dated 11.02.20145 had clarified that bonus units at the time of issue would not be subjected to additional income tax under section 115R of the ITA [relating to tax on distributed income to unit holders], since issue of bonus units was not akin to distribution of income by way of dividend. This was inferred from the provisions of section 55 of the ITA which prescribed that cost of acquisition of bonus units would be Nil for the purpose of computation of capital gains. In view of the aforesaid judgements and circular, the ITAT held that the provisions of section 56(2)(vii)(c) of the ITA were not applicable to the allotment of bonus shares in the case under consideration.

30 Tata Medical Centre Trust V CIT (Exemption)TS-585-ITAT-2022 (Kol) Assessment Year 2016-17, Order dated 18th July 2022

Basic Facts

Assessee, a charitable trust registered with an objective of treating cancer patients, filed its return of income reporting Nil income. Assessment u/s 143(3) was completed at Nil. However, theAssessee was subjected to revision proceedings under Section 263 against which Assessee preferred theappeal to the ITAT. ITAT admits the additional ground raised by Assessee as per Rule 11, that the revisionorder under Section 263 is null and void as it fails to mention any DIN on its body or adhere to CircularNo. 19/2019 by the CBDT, since the issue goes to the root of the matter for which facts relatingthereto were already on record.

Issue:

Whether the order passed u/s 263 is null and void as it fails tomention any DIN number on its body or adhere to Circular No.19/2019 by the CBDT.

Held:

In the light of CBDT Circular No. 19/2019 dated Aug 14, 2019, ITAT observes that in order to prevent the instances where correspondence issued manually in the formof notices, orders etc. do not have proper audit trail, CBDT directed that no communication shall be issued by any income-tax authority relating to assessment, appeals, orders, statutory or otherwise, exemptions, enquiry, investigation, verification of information, penalty, prosecution, rectification, approval etc. to the Assessee or any other person on or after the Oct 01, 2019 unless a computer generated DIN has been allotted and is duly quoted in the body of such communication; Further observesthat the said Circular alsoprovides for certain exceptional circumstances when the communication isissued manually, in which case such manually issued communications should contain in its body, the fact that the said communication is issued manually without a DIN and the date of obtaining of the writtenapproval of the CCIT/DGIT for issue of said manual communication, failing which such

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Unreported Judgements

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In this issue, we are giving gist of recent Ahmedabad Tribunal decision in the case of Rekhaben Indravadan Chokshi decided on 05.08.2022, wherein order u/s.147 passed by the Assessing Officer was held as bad in law and quashed on the ground that reopening proceedings cannot be undertaken to verify the genuineness of the cash payment made by the assessee. The same does not constitute the reason to believe on the part of the Assessing Officer.

We hope the readers would find the same useful.

Annexure

In the Income Tax Appellate Tribunal Ahmedabad "SMC" Bench

Before Shri Waseem Ahmed, Accountant Member
And Ms. Madhumita Roy, Judicial Member

ITA No.1886/Ahd/2019
Assessment Year: 2011-12

Rekhaben Indravadan Chokshi Vs. The ITO, Ahmedabad. Ahmedabad.
PAN: AAQPC9768D
(Applicant) (Respondent)

Assessee by : Shri S.N. Divatia, A.R.
Respondent by: Shri Rakesh Jha, Sr. DR

Date of hearing : 29-07-2022
Date of pronouncement : 05-08-2022

Gist Only

1. In this appeal, the assessee challenges the order of Assessing Officer passed u/s.143(3) r.w.s. 147 of the Act, which was confirmed by C.I.T.(Appeals) upholding the addition of cash payment aggregating to Rs.12.60 lacs made to GSS Realty LLP towards purchase of property following the reopening of assessment.

Facts of the Case:

2. The proceedings u/s.147 of the Act were initiated to verify the genuineness of the cash payment made by the assessee for Rs.25,20,000/- to M/s Safal Estate which, according to the Assessng Officer, was not disclosed in the income tax return. For this purpose, the Assessing Officer recorded the following reasons to believe.

"As per information received from DCIT, central Circle-1(4), Ahmedabad vide letter dated 25/04/2017, the assessee has paid payment in cash amounting to Rs.25,20,000/- to M/s.Safal Estate, Group case of HN Safal during the search proceedings.

The assessee has filed her return of income for A.Y. 2011-12. The cash deposit of Rs.25,20,000/- made by her during the financial year 2010-11 is unexplained/ undisclosed. To verify the genuineness, the further investigation is needful in the case.

In view of the above facts, I have reason to believe that income chargeable to tax has escaped assessment within the meaning of Section 147 of the IT Act for A.Y. 2011-12 by an amount exceeding Rs.1 lakh as the assessee has failed to disclose fully and truly all material facts necessary for her assessment. Therefore this is a fit case for issue of Notice u/s.148 of the IT Act for A.Y. 2011-12."

Contentions of the Assessee:

3. The AR submitted that the proceedings u/s.147 of the Act were initiated to verify the genuineness of the cash payment made by the assessee for Rs.25,20,000/- to M/s Safal Estate. According to the AR, there was no reason to believe formed by the AO to hold that the

income of the assessee has escaped assessment based on tangible materials.

Findings of the Tribunal:

4. The Tribunal noted that the proceedings were initiated to verify the genuineness of cash payment made by the assessee for Rs.25,20,000/-. The Tribunal, thereafter, relied upon the decision of Hon'ble Gujarat High Court in the case of PCIT V/s Manzil Dineshkumar Shah (2018) reported in 406 ITR 326 which held that the reopening was invalid if it is initiated for the purpose of verification. The relevant extract of the decision of Hon'ble Gujarat High Court is reproduced as under:

"9. If on the basis of information made available to him and upon applying his mind to such information, the Assessing Officer had formed a belief that income chargeable to tax has escaped assessment, the Court would have readily allow him to reassess the income. In the present case however, he recorded that the information required deep verification. In plain terms therefore, the notice was being issued for such verification. His later recitation of the mandatory words that he believed that income chargeable to tax has escaped assessment, would not cure this fundamental defect.

10. Learned counsel for the Revenue however urged us to read the reasons as a whole and come to the conclusion that the Assessing Officer had independently formed a belief on the basis of information available on record that income in case of the assessee had escaped assessment. Accepting such a request would in plain terms require us to ignore an important sentence from the reasons recorded viz. 'it needs deep verification'.

11. Before closing, we can only lament at the possible revenue loss. The law and the principles noted above are far too well settled to have escaped the notice of the Assessing Officer despite which if the reasons recorded fail the test of validity on account of a sentence contained, it would be for the Revenue to examine reasons behind it."

5. Following the above decision, the Tribunal held that in the facts of the case, there is no ambiguity to the fact that the proceedings were initiated u/s.147 of the Act to verify the genuineness of the cash payment and based on this reasoning, the AO recorded his satisfaction to form a reason to believe that income chargeable to tax has escaped assessment. Since, the proceedings were initiated to verify the genuineness of cash payment, the Tribunal held that reopening of the assessment following the decision of Hon'ble Gujarat High Court is bad in law, and hence, the same was quashed.

6. Since the appeal was allowed on technical ground, the Tribunal refrained from adjudicating the issues on the merit raised by the assessee in grounds of appeal.

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communicationshall be treated as 'invalid' and shall be deemed to have never been issued. The Tribunal notes that , in contrast tothe electronically issued communication, the show cause notices issued during the course of revisionary proceeding and the order under Section 263 were issued manually without bearing any reference to DIN in terms of CBDT circular. Further the impugned order under Section 263, issued manually doesnot bear the signature of the authority passing the order, also notes that nowhere in its body does the order mentions that this order being issued manually without a DIN for which the written approval of CCIT/DGIT was required to be obtained in the prescribed format in terms of the CBDT circular. The Tribunal Relies on SC ruling in Hero Cycles and UCO Bank and jurisdictional HC ruling in Amal Kumar Ghosh, wherein it washeld that circulars bind the Revenue and explains that CBDT circulars is binding on the Income-tax authorities. And accordingly holds that such a lapse renders this impugned order as invalid and deemed to have neverbeen issued.

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Controversies

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Issue

Whether penalty proceedings can be initiated under section 271(1)(c) against legal representatives for default committed by deceased-assessee?

Proposition

As per Section 159(1), the legal representative has obligation to pay any sum. Section 159(2) deals with assessment against the legal representative and recovery of sum from him. Sub-section (2) provides for assessment of income only and does not provide for levy of penalty. Thus, if penalty was not levied when the assessee was alive the same cannot be levied on the legal representative of the deceased assessee. Hence, it is proposed that penalty proceedings cannot be initiated under section 271(1)(c) against legal representatives for default committed by deceased-assessee.

View against the proposition

Extract of the relevant provision is as under

- Section 159(1) provides that where a person dies, his legal representative shall be liable to pay any sum, which the deceased would have been liable to pay if he had not died.
- As per section 159(2)(b), any proceedings which could have been taken against the deceased if he had survived may be taken against the legal representative, for the purpose of making an assessment of income of the deceased and for the purpose of levying any sum in the hands of the legal representative in accordance with the provisions of section 159(1).

In view of Section 159, legal representative shall be liable to pay "*any sum*" which may be interpreted in a way that such sum may include penalty. Further it can be interpreted that any proceedings which could have been taken against the deceased if he had survived may also be taken against the legal representative whether for the purpose of making an assessment of income of the deceased and for the purpose of levying "any sum" which may include any penalty levied in the hands of the legal representative.

In case of Srikishan Agarwal vs. Deputy commissioner of Income Tax, Commissioner of Income-tax (Appeals)held that the assessment proceedings was completed at the time when the assessee was alive and the assessee himself have filed the return. Therefore, he confirmed the penalty on the legal heir of the assessee even after his death.

View in favour of the Proposition

It is for the purpose of assessment of the deceased-assessee and not for penalty purposes, that any proceedings which could have been taken against the deceased, had he survived, may be taken against the legal representatives [as has been provided in section 159(2)(b)]. Since section 159(1) uses the phrase 'any sum' and not the phrase 'any tax', the legal heir, in such a circumstance, is liable for the initiation of penalty proceedings for the act committed by the deceased-assessee. This is a palpable misconception of law. In section 159, there is no mention of penalty proceedings and henceit is amply clear that proceedings under section 159(2)(b) do not include penalty proceedings.

In the case of ITO v. V. P. Sharma [2006] 154 Taxman 34 (Delhi) (Mag.), the co-ordinate Bench has considered the phrase "any sum" given in section 159(1) and held that which includes only tax not penalty proceedings. Accordingly, it allowed the appeal of the assessee.

In the case of Bhuban Mohan Mitter Charitable Trust v. ITO [1993] 45 ITD 617 (Cal), the honourable High Court has held that penalty proceedings are quasi-criminal in nature. In criminal jurisprudence, a crime dies with a man and the legal representative of the deceased offender or criminal legal heirs cannot be penalised for the offences or crimes committed by the deceased. Therefore, penalty proceedings abate on the death of the assessee.

Moreover in the case of Bhagwansingh Shriramsingh L/H Dinesh Bhagwan Singh v. ITO [2006] [2006] 9 SOT 73 (Mum) (URO), it has been held that penalty proceedings are different and distinct in nature than tax while tax are price paid for buying civilisation. Penalties are levied for the contumacious conduct of the wrong doer, who is deceased in the case before it. The honourable Income- tax Appellate Tribunal deleted the penalty on the deceased person.

Summation

Decision taken in the case of ITO v. V. P. Sharma [2006]has set the benchmark for key matter of this controversy.

The co-ordinate Bench has considered the phrase "any sum" given in section 159(1) and held that which includes only tax not penalty proceedings.As per Section 159(1), the legal representative has obligation to pay any sum. Section 159(2) deals with assessment against the legal representative and recovery of sum from him.

Section 159(2) provides for assessment of income only and does not provide for levy of penalty. Thus, if penalty was levied on the assessee while he was alive the liability to pay the said sum would be on the legal representatives in terms of Section 159(1). However, if penalty was not levied when the assessee was alive the same cannot be levied on the legal representative of the deceased assessee as no such authority is given under Section 159(2).

Even after the decision, the issue is still highly debatable because provisions of the Act can be misinterpreted to the benefit of the Assessee. Any penalty proceedings cannot be initiated against legal representatives however if any penalty is imposed on the assessee before his death then legal heir will be liable to pay such penalty and he cannot argue that there is no mention of penalty proceedings in Section 159 and hence he is not liable to pay such penalty.

In view of above, in my humble opinion, penalty proceedings cannot be initiated under section 271(1)(c) against legal representatives for default committed by deceased-assessee.

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Judicial Analysis

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While granting registration u/s 12AA/12A, CIT's role is limited to satisfying himself about "genuineness of its activities" and compliance of other laws for achieving "objects of a trust".

17 Bai Navajbai Tata Zoroastrian Girls Schoolv.CIT (Exemptions)[2022] 141 taxmann.com 62 (Mumbai - Trib.)

5. We have heard the rival contentions, perused the material on record, and duly considered the facts of the case in the light of the applicable legal position.

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7. As a plain look at the above statutory provision shows, under the scheme of the Act, all that the Commissioner of Income Tax, or the Principal Commissioner of Income Tax- as the case may be, is empowered, in the process of exercising discretion for the registration of a charitable institution in terms of an application under section 12A(1)(ac)(i)- that the application in question admittedly is, is to "(i) call for such documents or information from the trust or institution or make such inquiries as he thinks necessary in order to satisfy himself about—(A) the genuineness of activities of the trust or institution; and (B) the compliance of such requirements of any other law for the time being in force by the trust or institution as are material for the purpose of achieving its objects". Once he does so, he may take a call on grant of registration, or decline to grant the registration, (ii) after satisfying himself about the objects of the trust or institution and the genuineness of its activities under item (A) and compliance of the requirements under item (B), of sub-clause (i)". The Commissioner has the authority to, upon such exercise being completed, to "(A) pass an order in writing registering the trust or institution for a period of five years; or (B) if he is not so satisfied, pass an order in writing rejecting such application and also cancelling its registration after affording a reasonable opportunity of being heard". So far as the questions of objects of the trust and genuineness of activities are concerned, these are subjective calls, and obviously, there cannot be any conditions attached to the findings thereto; either one is satisfied with the objects of the trust and about the genuineness of the activities, or one is not. The finding on this aspect cannot be conditional. However, so far as "compliance of the requirements under item (B), of sub-clause (i) (i.e. the compliance of such requirements of any other law for the time being in force by the trust or institution as are material for the purpose of achieving its objects)" is concerned, such a finding can be conditional inasmuch as if a particular registration, say under the Foreign Contribution Regulation Act 2010 (FCRA) is a condition precedent for the trust objects, and the process for that registration is still in process at the point of time when the registration application under section 12A comes up for consideration of the Commissioner, the grant of registration under section 12A can be subject to the FCRA registration being obtained by the applicant. There can also be many other examples as well. Therefore, to say that the law does not visualize conditional registration does not appear to be correct, and we must leave that issue open for adjudication in a fit case.

8. However, on a perusal of conditions subject to which the registration is granted, we find these conditions are with respect to the conduct of the trust and the circumstances in which the

registration granted to the appellant can be cancelled. These are the matters which are regulated by the specific provisions of law, and the observations of the learned Commissioner, no matter how well intended, cannot have the independent force of law. If the conditions set out in the registration order have the sanction of the law, irrespective of these conditions being attached to the registration of the trust or not, the law has to take its course, but when the scheme of the law does not visualize these conditions being part of the scheme of the registration being granted to the applicant trust, learned Commissioner cannot supplement the law by laying down these conditions either.

9. Learned Commissioner ought to have realized the limitation of the role he plays when the registration of trust, under section 12A, comes up for his consideration. As we have seen earlier, while looking at the scheme of Section 12AB, there is a limited role that the learned Commissioner could have played under section 12AB(1). It was open to him to "call for such documents or information from the trust or institution or make such inquiries as he thinks necessary in order to satisfy himself about— (A) the genuineness of activities of the trust or institution; and (B) the compliance of such requirements of any other law for the time being in force by the trust or institution as are material for the purpose of achieving its objects" and then proceed to take a call on whether to grant the registration under section 12A or not "after satisfying himself about the objects of the trust or institution and the genuineness of its activities under item (A) and compliance of the requirements under item (B), of sub-clause (i)". As to when and how should cancellation of the registration be made, it is not for the learned Commissioner to decide at the point of time of granting the registration. There are specific provisions of law which govern the cancellation of registration, and these provisions can neither be diluted or supplemented by the learned Commissioner. The consequences of any lapses by the assessee, even with respect to the points covered by these conditions, cannot simply be, or confined to be, cancellation of the registration, as is stated in the impugned, unless the law specifically so provides. To give a simple example, learned Departmental Representative cannot even seriously argue that if the appellant fails to quote PAN in its communication with the income tax department, this lapse per se can be reason enough for the cancellation of registration under section 12A, but then, going by the words of the impugned order, that is what the impugned order states. That brings home the short point that no matter what the conditions attached to the registration granted under section 12A state, these conditions are to be tested on the scheme of the law, and, if that be so- as indeed is the case, these conditions serve no purpose in law. We are therefore unable to see any legally sustainable merits in the approach adopted by the learned Commissioner.

10. Learned Commissioner's guidance about the conduct of the assessee- which is what in substance, the conditions attached to the registration, signify, cannot be treated, no matter how well intended is it, as a condition attached to the registration, nor this fact per se will govern, or limit, the consequences of lapses in this regard. While the assessee will be well advised to bear in mind and carefully examine his conduct vis-à-vis the points made by the learned Commissioner, these observations cannot be construed as legally binding in the sense that non-compliance with such guidance will not have any consequence, unless and beyond what is specifically envisaged by the statute- such as in Section 12AB(4) and (5) as indeed elsewhere, nor the implications of not doing what is set out in the conditions will remain confined to the cancellation of registration when the law stipulates much harsher consequences. To this extent, and in these terms, the legal effect of these conditions, as visualized in the conditional grant of registration dated 24th September 1991, stands vacated.

18 Ananda Social & Educational Trust v. CIT [2020] 114 taxmann.com 693 (SC)

Order

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5. The above section provides for registration of a trust. Such registration can be applied for by a trust which has been in existence for some time and also by a newly registered trust. There is no stipulation that the trust should have already been in existence and should have undertaken any activities before making the application for registration.

6. In brief, section 12AA of the Act empowers the Principal Commissioner or the Commissioner of the Income-tax on receipt of an application for registration of a trust to call for such documents as may be necessary to satisfy himself about the genuineness of activities of the trust or institution and make inquiries in that behalf; it empowers the Commissioner to thereupon register the trust if he is satisfied about the objects of the trust or institution and genuineness of its activities.

7. In the present case, the trust was formed as a society on 30-5-2008 and it applied for registration on 10-7-2008 i.e. within a period of about two months.

8. No activities had been undertaken by the respondent Trust before the application was made. The Commissioner rejected the application on the sole ground that since no activities have been undertaken by the trust, it was not possible to register it, presumably because it was not possible to be satisfied about whether the activities of the trust are genuine. The Income-tax Appellate Tribunal, Delhi (for short, the 'Tribunal') reversed the orders of the Commissioner. The Revenue Department approached the High Court by way of filing an appeal. The High Court upheld the order of the Tribunal and came to the conclusion that in case of a newly registered trust even though there was no activities, it was possible to consider whether the trust can be registered under section 12AA of the Act. This judgment is assailed before us.

9. Section 12AA undoubtedly requires the Commissioner to satisfy himself about the objects of the trust or institution and genuineness of its activities and grant a registration only if he is so satisfied. The said section requires the Commissioner to be so satisfied in order to ensure that the object of the trust and its activities are charitable since the consequence of such registration is that the trust is entitled to claim benefits under sections 11 and 12 of the Act. In other words, if it appears that the objects of the trust and its activities are not genuine that is to say not charitable the Commissioner is entitled to refuse and in fact, bound to refuse such registration.

10. It was argued before us that the Commissioner is required to be satisfied about two things - firstly that the objects of the trust and secondly, its activities are genuine. If there have been no activities undertaken by the trust then the Commissioner cannot assess whether such activities are genuine and therefore, the Commissioner is bound to refuse the registration of such a trust.

11. We have given our anxious consideration to the above submissions made by Ms. Aishwarya Bhati, learned Senior Counsel appearing for the appellant - Director of Income-tax and find that it is not possible to agree with the same. The purpose of section 12AA of the Act is to enable registration only of such trust or institution whose objects and activities are genuine. In other words, the Commissioner is bound to satisfy himself that the object of the Trust are genuine and that its activities are in furtherance of the objects of the Trust, that is equally genuine.

12. Since section 12AA pertains to the registration of the Trust and not to assess of what a trust has actually done, we are of the view that the term 'activities' in the provision includes 'proposed activities'. That is to say, a Commissioner is bound to consider whether

the objects of the Trust are genuinely charitable in nature and whether the activities which the Trust proposed to carry on are genuine in the sense that they are in line with the objects of the Trust. In contrast, the position would be different where the Commissioner proposes to cancel the registration of a Trust under sub-section (3) of section 12AA of the Act. There the Commissioner would be bound to record the finding that an activity or activities actually carried on by the Trust are not genuine being not in accordance with the objects of the Trust. Similarly, the situation would be different where the trust has before applying for registration found to have undertaken activities contrary to the objects of the Trust.

13. We therefore find that the view of the Delhi High Court in the impugned judgment is correct and liable to be upheld.

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19 DIT (Exemption) v. Panna Lalbhai Foundation [2013] 35 taxmann.com 104 (Gujarat)

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5. As can be noted in the instant case also, for availing benefits under Sections 11 and 12, the Trust made an application under Sections 12A for registration u/s. 12AA before the Director of Income-tax (Exemption). It also further emerges that Commissioner since is required to call for documents and information from the Trust if he deems it necessary in order to satisfy about the genuineness of the activities of the Trust, he, in this case also, made such inquiries. After duly satisfying himself about the objects of the Trust and genuineness of the activities, he is required to grant registration as held hereinabove. The powers of the Commissioner to satisfy himself about objects and the genuineness of the activities are recognized under law. However, only because the Trust has not commenced the activities, the Commissioner would have no authority to ipso facto reject the application for registration on that count alone.

6. In the instant case, the Director of Income-tax (Exemption) held that Trust had not commenced its activities and denied registration. However, there was nothing to indicate any material to conclude that the objects of the Trust or the activities of the Trust were not genuine or any doubt arose in respect of the genuineness of the activities. The Tribunal, in the instant case, therefore, has rightly held in favour of the assesee by interfering with such an order. Considering the objects of the Trust, the Tribunal, with cogent reasons, directed the DIT(E) to grant registration u/s. 12AA on an application preferred under Sections 12A.

7. We see absolutely no reason to interfere with the order of the Tribunal and as such, stand of the Tribunal is in consonance with the decision of this Court referred to hereinabove. It is also to be noted that additionally the Statute itself provides for cancellation of such registration in the event of satisfaction of the authority concerned with the amendment in the Statute. With regard toactivities of the Trust, after once registration is granted under clause (b) of Sub-section (1) of Section 12AA or under Section 12A, Commissioner, in the event of any its conclusion that activities of Trust are not genuine or not being carried out in accordance with the objects, can direct cancellation under Sub-section (3) of Section 12AA. In other words, the registration once granted can always be cancelled if the activities of the Trust are found to be dubious or non-genuine or contrary to objectives of the Act. On cumulative examination of the facts, it can be held that questions proposed are answered as above. Therefore, this Tax Appeal does not deserve any further consideration and the same is disposed of.

20 CIT v. Kutchi Dasa Oswal Moto Pariwar Ambama Trust [2013] 29 taxmann.com 228 (Gujarat)

4. Section 12A of the Act pertains to conditions of applicability of sections 11 & 12. Sub-section (1) thereof provides that provisions of sections 11 & 12 shall not apply in relation to the income

of the Trust or institution unless (a) the person in receipt of the income has made application for registration of the Trust or institution in the prescribed manner before the Commissioner before 1st day of July, 1973 or before the expiry of period of one year from the date of creation of the Trust or institution; whichever is later and such Trust and Institution is registered under section 12AA of the Act.

3.2 Thus, to avoid applicability of sections 11 & 12 of the Act, a Trust would have to make an application for registration before the Commissioner before expiry of period of one year from the date of its creation and such Trust would have to be registered under section 12AA of the Act.

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4. Upon perusal of the provisions of sub-section (1) of section 12AA of the Act, it emerges that upon receipt of an application for registration of a Trust or Institution under section 12A(1)(a) of the Act, the Commissioner would call for such documents or information from the trust or institution as he thinks necessary in order to satisfy himself about the genuineness of activities of the trust or institution and may also make such inquiries as he may deem necessary in this behalf. After satisfying himself about the objectives of the trust or institution and the genuineness of its activities, the Commissioner would pass an order in writing registering a trust or institution, and if he is not satisfied, would pass an order in writing refusing the registration of the trust or institution.

5. It can thus be seen that under section 12AA of the Act, the Commissioner has to satisfy himself about the objectives of the trust and the genuineness of its activities. For such purpose, he has the power to call for such documents or information from the trust as he think are necessary. However, this does not mean that if the activities of the trust have not commenced, the Commissioner has authority to reject its application for registration on the ground that the Trust failed to convince him about the genuineness of the activities. That is what unfortunately the Commissioner did in the present case. In that view of the matter, we see no error in the Tribunal's impugned order reversing the order of the Commissioner. It is of course true that even if the activities of the trust have not commenced, if the Commissioner has sufficient material in his command, he may still come to the conclusion that he is not satisfied about the objectives of the Trust or the genuineness of its activities. We understand the decision of the Tribunal accordingly.

6. In the present case, however, merely on the ground that the activities of the Trust had not commenced, the Commissioner was persuaded to reject its application for registration, which in our opinion, was not appropriate and therefore, rightly interfered by the Tribunal.

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21 CIT v. Niranjanbapu Education And Charitable Trust [2014] 52 taxmann.com 158 (Gujarat)

2. We have heard Mr. Pranav G. Desai learned advocate appearing on behalf of the appellant-Revenue. We have also gone through the order passed by the Commissioner of Income-tax dated 28.9.2012 as well as impugned judgment and order dated 31.1.2014 passed by the learned Tribunal.

3. At the out-set, it is required to be noted that, on appreciation of the evidence and considering the documents available on record, including the paper-book filed by the assessee-Trust, the learned Tribunal has specifically observed and held that the objective of the Trust is charitable. It appears that the main contention of the learned Commissioner was that the assessee trust has not engaged in any other activities apart from carrying out activities of distribution of free note Books and given scholarship to a student, and therefore, denied the registration under section 12A of the Act. On another ground, on which, the learned Commissioner denied the registration was that the assessee trust made donation to another trust to the tune

of Rs. 50,000/-. Relying upon the decision of this Court in the case of CIT v. Kutchi Dasa Oswal Moto PariwarAmbama Trust [2013] 29 taxmann.com 228/212 Taxman 435 (Guj.), which took the view that "absence of any activity of a trust at the time of registration is not a ground to question genuineness of objectives and activities; registration for trust cannot be denied on the sole ground of non-commencement of activity and such absence of activity does not empower Commissioner to infer absence of genuineness", the learned Tribunal has quashed and set aside the decision of the Commissioner denying the registration and directed the Commissioner to grant registration to the assessee trust under section 12A of the Act.

4. Now, so far as another ground, on which, the registration was denied by the ld. Commissioner was that the assessee trust made donations to another trust; namely Laxman Ray Kelvani Fund, Mandavi to the tune of Rs. 50,000/- is concerned, it is noted that even the said donation was also given to a charitable trust and the amount was used for charity purpose. In para-7, the learned Tribunal has observed as under:

> "7. I have heard both sides and carefully gone through the impugned order of ld. Commissioner of Income-tax, Rajkot-I, the decisions cited and the documents available on records including paper-book filed by the assessee-trust. The main contention of ld. CIT is that the assessee-trust has not engaged in any other activities apart from carrying out activities of distribution of free note books and given scholarship to a student. It is observed by the Hon'ble Jurisdictional High Court in the case of Kutchi DasaOswal Moto PariwarAmbama Trust (supra), as relied by the ld. Counsel of the assessee-trust, that "absence of any activity of a trust at the time of registration is not a ground to question genuineness of objectives and activities; registration for trust cannot be denied on the sole ground of non-commencement of activity and such absence of activity does not empower Commissioner to infer absence of genuineness." The other main contention of the ld. CIT for rejecting the application of the assessee-trust for registration u/s 12A is that the assessee-trust has only made donations to some other trust namely Laxman Ray Kelvani Fund, Mandvi to the tune of Rs. 50,000/-. The decision of Karnataka High Court in the case Karunya Rural Health-care Society v. Director of Income-tax (Exemptions), [2012] 24 taxmann.com 344, as relied upon by the assessee-trust, is very much relevant in this behalf; wherein, it has been held by the Hon'ble High Court that "once evidence produced disclosed that funds of trust are applied for carrying on charitable activities, purpose of establishing trust is fully satisfied and it does not matter that assessee is carrying on charitable activity through another trust." Therefore, in view of the foregoing, I see aside the impugned order dated 28.9.2012 passed by the ld. Commissioner of Income-tax, Rajkot-1 u/s. 12AA(1)(b)(ii) and direct him to grant registration to the assessee-trust under section 12A of the Act."

5. We are in complete agreement with the view taken by the learned Tribunal. The decision of the Division Bench of this court in the case of Kutchi DasaOswalPariwarAmbama Trust (supra), would be squarely applicable to the facts of the case on hand. Under the circumstances, as such no error has been committed by the learned Tribunal in directing the ld. Commissioner to grant registration to the assessee-trust under section 12A of the Act. Under the circumstances, the proposed question is also held against the appellant-Revenue. Consequently, the present appeal deserves to be dismissed and it is dismissed.

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FEMA Updates

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8 Master Direction on Interest Rate on Deposits - Foreign Currency (Non-resident) Accounts (Banks) Scheme [FCNR(B)] and Non-Resident (External) Rupee (NRE) Deposit

RBI drew attention of all the banks to instructions regarding interest rates on FCNR (B) deposits contained in Section 19 of the Master Direction (MD) on Interest Rate on Deposits dated March 03, 2016, and Section 18 of the Master Direction (MD) on Interest Rate on Deposits dated May 12, 2016. In this connection, banks are advised that with effect from July 07, 2022, the interest rate ceiling applicable to FCNR (B) deposits is being temporarily withdrawn for incremental FCNR (B) deposits mobilized by banks for the period until October 31, 2022.

Further, in terms of Section 15 (d) and Section 14 (d) of the above-mentioned MDs respectively, interest rates on NRE deposits shall not be higher than those offered by the banks on comparable domestic rupee term deposits. In this regard, the said restriction with respect to interest rates offered on incremental NRE deposits mobilized by banks shall be temporarily withdrawn with effect from July 07, 2022, for the period until October 31, 2022. The above relaxation shall not be applicable to Ordinary Non-Resident (NRO) Deposits.

These concessions will be subject to review.

Source:RBI/2022-23/82 DOR.SOG (SPE).REC.No 53/13.03.000/2022-23, dated July6, 2022

For full text refer:https://rbi.org.in/Scripts/BS_CircularIndexDisplay.aspx?Id=12350

9 FCNR (B)/NRE Term deposits - Exemption from maintenance of CRR/SLR

The major developments relating to India's external debt as at end-March 2022 are presented below.

At present, banks are required to include all Foreign Currency Non-Resident (Bank) [FCNR (B)] and Non-Resident (External) Rupee (NRE) deposit liabilities for computation of Net Demand and Time Liabilities (NDTL) for maintenance of CRR and SLR.

Banks are advised that with effect from the reporting fortnight beginning July 30, 2022, incremental FCNR (B) deposits as also NRE Term deposits with reference to base date of July 1, 2022, mobilised by banks will be exempt from maintenance of CRR and SLR. To amplify, if a bank had total FCNR (B) deposit of say USD 100 as on the base date, and mobilises an incremental deposit of say USD 20, that portion of USD 20 will not be part of liabilities reckoned for the purpose of NDTL computation for CRR and SLR maintenance with effect from the fortnight beginning July 30, 2022. The same principle will apply for calculation of NRE Term deposits for exemption from maintenance of CRR/SLR requirements. However, any transfer from Non-Resident (Ordinary) (NRO) accounts to NRE accounts will not qualify for such exemptions.

The above exemptions are valid for deposits raised till November 04, 2022. The exemption on reserves maintenance will be available for the original deposit amounts till such time the deposits are held in the bank books.

Source:RBI/2022-23/83 DOR.RET.REC.54/12.01.001/2022-23, dated July 06, 2022

For full text refer:https://rbi.org.in/Scripts/BS_CircularIndexDisplay.aspx?Id=12351

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GST and VAT Judgments and Updates

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[I] Important Case Laws: (High Court)

[1] Issue:

Mandatory deduction of 1/3rd of total consideration towards the value of land is arbitrary: Gujarat High Court:

Case Laws:

Munjalal Manishbhai Bhatt v. Union of India [2022] 138 taxmann.com 117 (Guj).

Facts:

The writ applicant was a practicing advocate and he entered into an agreement to purchase a bungalow. A separate and distinct consideration was agreed upon between the parties to the agreement for the sale of land and construction of a bungalow on the land. He received an invoice levying tax at the rate of 9% CGST and 9% SGST on the entire consideration payable for land as well as construction of bungalow after deducting 1/3rd of the value towards the land. It filed writ petition to challenge the mandatory deduction of 1/3rd of total consideration towards the value of land as sale of land is neither supply of goods nor services.

Held:

The Hon'ble High Court observed that the paragraph 2 of the Notification No. 11/2017-Central Tax (Rate) dated 28.6.2017 provides for a mandatory fixed rate of deduction of 1/3rd of total consideration towards the value of land. Such deeming fiction is not only contrary to the scheme of GST Acts but mandatory uniform rate of deduction is discriminatory, arbitrary and violative of Article 14 of the Constitution of India. It was also observed that when detailed statutory mechanism for determination of value is available then the impugned deeming fiction can't be justified on the basis that it is meant to curb avoidance of tax when in fact such fiction is leading to arbitrary consequences. Thus, it was held that the mandatory deeming fiction for deduction of value of land was liable to be quashed and set aside.

[2] **Issue:**

Detention of goods and conveyance for indefinite period is not correct: HC:

Case Laws:

Active Metals (P) Ltd. v. State of Gujarat [2022] 137 taxmann.com 387 (Guj).

Facts:

The vehicle carrying goods of the petitioner was intercepted by department after which physical verification was ordered. As per physical verification report, description and quantity of goods in transit were in accordance with invoice, e-way bills and other allied documents. However, the vehicle along with goods were not released after physical verification. The petitioner filed writ petition against the same.

Held:

The Hon'ble High Court observed that after detention, no notice was issued for confiscation of conveyance and goods. The detention of conveyance and goods for an indefinite period of time was not going to serve any good purpose. The department should take final call whether any case of confiscation had been made out or not and court should not interfere in such matters. The petitioner was also directed

to deposit amount of tax and penalty and department was directed to release conveyance and goods upon such deposit.

[3] **Issue:**

Refund of the input tax credit under section 16(3) of IGST Act r/w Section 54 of CGST Act cannot be denied merely because the petitioner has claimed duty drawback under Drawback Rules, 2017 (Central Goods & Services Tax Act, 2017).

Case Laws:

Numinous Impex (I) Pvt. Ltd. v. The Commissioner of Customs, Tuticorin [2022-VIL-262-MAD]

Facts:

The petitioner is a taxable person registered under the Act. The petitioner exported consignments of goods classifiable under Customs Heading 8483 4000 and claimed duty drawback under section 75 of the Customs Act, 1962. The Petitioner also sought refund of input tax credit availed on the input and input services used in the export goods which came to be denied by the concerned officer. Being aggrieved, the petitioner filed present writ petition before the Madras High Court. The question of law that was raised before the High Court was whether exports made without payment of IGST under bond on which, duty drawback is claimed under the provisions of the Customs and Central Excise Duties and Service Tax Drawback Rules, 2017 would entitle such an exporter the benefit of refund of input tax credit under sub-section (3) of Rule 16 of the IGST Act 2017 r/w Section 54 of the CGST Act, 2017.

Held:

The Hon'ble High Court held that refund of the input tax credit under section 16(3) of IGST Act r/w Section 54 of the CGST Act cannot be denied merely because the petitioner has claimed duty drawback under Drawback Rules, 2017. The expression 'Cenvat Facility' in Column Nos. 4 & 5 of the Schedule to the Notification No. 131/2016-Cus(N.T) dated 31.10.2016 is to be read as 'Input Tax Facility' under the respective enactments. Para No. 2.5 of Circular No. 37/2018-Cus dated 09.10.2018 cannot be pressed to deny legitimate export incentive as same is not sanctioned under law. The respondents came to be directed to scrutinize the refund claims filed by the petitioner and refund the same together with applicable interest. The Writ Petition came to be allowed accordingly.

[4] **Issue:**

Minor Penalty to be levied if discrepancy in date of invoice due to default in computer; HC:

Case Laws:

Greenlights Power Solutions v. State Tax Officer [2022] 140 taxmann.com 295 (Ker.)

Facts:

The petitioner was carrying business of electrical contract works. In connection with the work of a hospital, some goods were transported through a vehicle after paying the required tax. During the course of transportation, the goods were detained on noticing an irregularity om the e-way bill and invoice.

It filed writ petition against the detention order levying interest and penalty and submitted that though the goods were being transported on 02.03.201 (2nd March,2021) but the invoice mentioned the date as 03.02.2021 (3rd February, 2021) due to the default computer formatting system. Instead of day-month-year (dd-mm-yyyy)formatting for the Indian system, the computer generated bill provided for a month-day-year(mm-dd-yyyy) format.

Held:

The Hon'ble High Court observed that all other details in invoice and e-Way bill including nature of goods transported, details of consignor and consignee, GSTIN of supplier and

recipient, place of delivery, invoice number, value of goods, HSN Code, vehicle number etc. were correct and there was no discrepancy. The error noticed was insignificant and not of any consequence for invoking power to impose tax and penalty. Therefore, only minor penalty would be levied and tax and penalty imposed under section 129 of CGST Act was liable to be set aside.

[5] **Issue:**

P&H HC granted bail to CA being not a beneficiary of illegal availment of ITC.

Case Laws:

Yogendra Yadav v. Union of India [2022] 140 taxmann.com 54 (Punj. & Har.)

Facts:

The petitioner was serving as a Chartered Accountant, with two proprietorship concerns. The prosecution alleged that petitioner-Chartered Accountant had facilitated preparation of fictitious invoices and statements of accounts to enable two assessees to avail ineligibleinput tax credit. The petitioner was arrested by the department and it filed bail application.

Held:

The Hon'ble High Court observed that no tangible evidence was available to determine whether the petitioner was beneficiary of illegal drawings of monetary sums received from Government Treasury concerned. The investigation was still underway and role of petitioner was still to be determined. However, the petitioner was still in judicial custody since he was arrested over 3 months ago. Therefore, his further judicial incarceration may not be prolonged, as if would unnecessarily curtail, and fetter his personal liberty. Thus, the petitioner bail applicant was ordered to be released from judicial custody.

[II] **Important Case Laws: (AAR):**

[1] Issue:

Interest/Penalty charged on delayed payment of subscription from members is a supply of service: AAAR :

Case Laws:

Andhra Pradesh Ushabala Chits (P) Ltd., In re [2022] 137 taxmann.com 318 (AAAR – Andhra Pradesh.

Facts:

The applicant was a company engaged in conducting chit auctions. It filed an application for advance ruling to determine whether interest/ penalty collected for delay in payment of monthly subscription by the members would be treated as supply under GST. The Authority for Advance Ruling held that interest/penalty charged on delayed payment of subscription by members of chit fund would be supply of GST and liable to tax. It filed appeal against the order.

Held:

The Authority for Advance Ruling observed that the collection of delayed/defaulted installments and penal interest thereon would be a service rendered in relation to chit. Therefore, the collection of defaulted installments and interest thereon by foreman shall be considered as a supply of service in relation to chit and would fall under SAC 9971 as services shall be provided by foreman of chit fund in relation to chit.

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Corporate Law Update

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MCA Updates:

1. Clarification on spending of CSR funds for "Har Ghar Tiranga" campaign:

The MCA has clarified that 'Har Ghar Tiranga', a campaign under the aegis of Azadi Ka Amrit Mahotsav, is aimed to invoke the feeling of patriotism in the hearts of the people and to promote awareness about the Indian National Flag and the spending of CSR funds for the activities related to this campaign, such as mass scale production and supply of the National Flag, outreach and amplification efforts and other related activities, are eligible CSR activities under item no. (ii) of Schedule VII of the Companies Act, 2013 pertaining to promotion of education relating to culture. The companies may undertake the aforesaid activities, subject to fulfillment of the Companies (CSR Policy) Rules, 2014 and related circulars/ clarifications issued by the Ministry thereof, from time to time.

[General Circular No. 08/2022 dated 26.07.2022]

2. PAN integration with LLP incorporation form FiLLiP by the CBDT:

The Central Board of Direct Taxes vide its notification dated 26.07.2022 has notified the procedure of PAN application and allotment through Simplified Proforma for incorporating Limited Liability Partnerships (LLPs) electronically (Form: FiLLiP) of the Ministry of Corporate Affairs.

The Application for PAN (Permanent Account Number) will be filed in FiLLiP form using Digital Signature of the applicant as specified by the MCA. After generation of LLPIN, MCA will forward the data in form 49A to the Income Tax Authority under its Digital Signature.

[F. No. DGIT(S)/ADG(S)-1/FiLLiP form for LLP/2022-23 dated 26.07.2022]

SEBI Updates:

1. Disclosure of holding of specified securities and holding of specified securities in dematerialized form:

The SEBI has partially modified the Circular No. CIR/CFD/CMD/13/2015 dated November 30, 2015, which prescribed the formats for disclosure of holding of specified securities and shareholding pattern under Annexure-I to the Circular.

Now, the Clause 2(d) of the aforesaid Circular has been amended as under:

i. In the disclosure of public shareholding, names of the shareholders holding 1% or more than 1% of shares of the listed entity is to be disclosed.

ii. Names of the shareholders who are persons acting in concert, if available, shall be disclosed separately.

This Circular shall come into force with effect from the quarter ending September 30, 2022.

[SEBI/HO/CFD/PoD-1/P/CIR/2022/92 dated 30.06.2022]

2. SEBI (Issue of Capital and Disclosure Requirements) (Third Amendment) Regulations, 2022:

Vide these amendment rules, the SEBI has prescribed the framework for Social Stock Exchange by inserting a separate "Chapter X-A" under the SEBI (Issue of Capital and Disclosure Requirements) Regulations, 2018.

This framework provides for Social Stock Exchange(s), Social Enterprise(s), Eligibility conditions for being identified as a Social Enterprise, Requirements relating to registration for a Not-for-Profit Organization, Fund raising by Social Enterprises, Procedure for public issuance of Zero Coupon Zero Principal Instruments by a Not-for-Profit Organization, Contents of the fund-raising document etc.

Some of the key definitions are as under:

"Social Stock Exchange" means a separate segment of a recognized stock exchange having nationwide trading terminals permitted to register Not for Profit Organizations and / or list the securities issued by Not-for-Profit Organizations in accordance with provisions of these regulations.

"**Not for Profit Organization**" means a Social Enterprise which is any of the following entities:

(i) a charitable trust registered under the Indian Trusts Act, 1882 (2 of 1882);

(ii) a charitable trust registered under the public trust statute of the relevant state;

(iii) a charitable society registered under the Societies Registration Act, 1860 (21 of 1860);

(iv) a company incorporated under section 8 of the Companies Act, 2013 (18 of 2013);

(v) any other entity as may be specified by the Board;

Applicability:

The provisions of the above-mentioned Chapter shall apply to:

(i) a Not-for-Profit Organization seeking to only get registered with a Social Stock Exchange;

(ii) a Not-for-Profit Organization seeking to get registered and raise funds through a Social Stock Exchange; and

(iii) a For Profit Social Enterprise seeking to be identified as a Social Enterprise under the provisions of this Chapter.

"**Social Enterprise**" means either a Not-for-Profit Organization or a For Profit Social Enterprise that meets the eligibility criteria specified in this Chapter.

For, detailed text, please refer, https://egazette.nic.in/WriteReadData/2022/237561.pdf

[F. No. SEBI/LAD-NRO/GN/2022/90 dated 25.07.2022]

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GujRERA Corner

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Revocation of registration under RERA

The Real Estate (Regulation and Development) Act, 2016 has established quasi-judicial courts to provide legal assistance to both the home buyers and developers in the event of disputes arising out of real estate transactions. It has strict compliance rules that must be met and followed by all developers who want to develop a real estate project.

Once a developer gets the Real Estate Project registered under this Act. Then the developer is bound to comply with the provisions of this act. And Non – Compliance of this Act can lead to unfavorable consequences to the extent of Revocation of registration by the competent authorities under Section 7 of The Real Estate (Regulation & Development) Act, 2016.

Section 7 of the act states that,

"(1) The Authority may, on receipt of a complaint or suo motu in this behalf or on the recommendation of the competent authority, revoke the registration granted under section 5, after being satisfied that—

(a) the promoter makes default in doing anything required by or under this Act or the rules or the regulations made thereunder;

(b) the promoter violates any of the terms or conditions of the approval given by the competent authority;

(c) the promoter is involved in any kind of unfair practice or irregularities.

Explanation.—For the purposes of this clause, the term "unfair practice means" a practice which, for the purpose of promoting the sale or development of any real estate project adopts any unfair method or unfair or deceptive practice including any of the following practices, namely:—

(A) the practice of making any statement, whether in writing or by visible representation which,—

(i) falsely represents that the services are of a particular standard or grade;

(ii) represents that the promoter has approval or affiliation which such promoter does not have;

(iii) makes a false or misleading representation concerning the services;

(B) the promoter permits the publication of any advertisement or prospectus whether in any newspaper or otherwise of services that are not intended to be offered;

(d) the promoter indulges in any fraudulent practices.

(2) The registration granted to the promoter under section 5 shall not be revoked unless the Authority has given to the promoter not less than thirty days notice, in writing, stating the grounds on which it is proposed to revoke the registration, and has considered any cause shown by the promoter within the period of that notice against the proposed revocation.

(3) The Authority may, instead of revoking the registration under sub-section (1), permit it to remain in force subject to such further terms and conditions as it thinks fit to impose in the interest of the allottees, and any such terms and conditions so imposed shall be binding upon the promoter.

(4) The Authority, upon the revocation of the registration,—

(a) shall debar the promoter from accessing its website in relation to that project and specify his name in the list of defaulters and display his photograph on its website and also inform the other Real Estate Regulatory Authority in other States and Union territories about such revocation or registration;

(b) shall facilitate the remaining development works to be carried out in accordance with the provisions of section 8;

(c) shall direct the bank holding the project back account, specified under subclause (D) of clause (I) of sub-section (2) of section 4, to freeze the account, and thereafter take such further necessary actions, including consequent de-freezing of the said account, towards facilitating the remaining development works in accordance with the provisions of section 8;

(d) may, to protect the interest of allottees or in the public interest, issue such directions as it may deem necessary."

Ideally RERA authority shall have to consider complaints for revocation of project when the said complaint is received from association of allotees. Maharashtra RERA has vide order 8/19 dated 28/03/2019 states that wherein association of allotees have made complaint for revocation of project at least 51% of the members of association should be party to complaint of such revocation of project.

RERA may suo moto or on receipt of complaint revoke registration of a project if it is satisfied that:

a. Promoter makes any default under the act

b. Promoter violates any terms or conditions of approval given by planning authority

c. Promoter is involved in any kind of unfair practice or irregularities

d. Promoter indulges in any kind of fraudulent activities

Clause a to section 7 is a very wide to include any non compliance/default under the Act. It has to be noted that the nature default has to be a serious kind in order to attract clause a to revoke registration of the project. Further, under clause b if the promoter violates any terms or conditions of approval given by competent authority. Competent authority is no where defined under RERA act, however it has to be understood in a way that an authority who approved plan of a project i.e. planning authority. If at all the promoter violates any terms conditions of approval given by planning authority then too the RERA has powers to revoke registration of the project.

Clause c to section 7 states about revocation in case promoter is involved in any kind of unfair practice or irregularities. "Unfair practice" has been defined under explanation to section 7 which is as follows:

(A) the practice of making any statement, whether in writing or by visiblerepresentation which,—

(i) falsely represents that the services are of a particular standard or grade;

(ii) represents that the promoter has approval or affiliation which such promoter does not have;

(iii) makes a false or misleading representation concerning the services;

(B) the promoter permits the publication of any advertisement or prospectuswhether in any newspaper or otherwise of services that are not intended to be offered;

Clause d to section 7 states that if promoter indulges in any kind of fraudulent activities, the authority has powers to revoke registration of the project.

It has to be understood that the registration of the project cannot be invoked unless a time of 30 days is given and an show cause notice has been issued to the promoter. On receipt of reply by the promoter the authority instead of revoking the registration, permit it to remain in force subject to terms and conditions as it thinks fit in the interest of the allotees. Such terms and conditions shall be binding on the promoter.

Once the project registration is revoked the authority:

a. shall debar the promoter from accessing its website in relation to that projectand specify his name in the list of defaulters and display his photograph on its websiteand also inform the other Real Estate Regulatory Authority in other States and Unionterritories about such revocation or registration.

b. shall facilitate the remaining development works to be carried out by the association of allotees or in any other manner as it may deem fit. The association of allotees shall have first right of refusal for carrying out remaining development works.

c. shall direct the bank holding the project back account, specified under subclause(D) of clause (I) of sub-section (2) of section 4, to freeze the account, andthereafter take such further necessary actions, including consequent de-freezing ofthe said account, towards facilitating the remaining development works.

Maharashtra RERA has issued order wherein it talks about constitution of designated resolution panel (DRP) consisting of one member from association of allotees and one member from consumer forum. The said panel shall prepare a blueprint which shall consist of :

a. Financial blueprint detailing current financial status. It shall contain financial estimate to complete the project and detailed roadmap towards arranging finance.

b. Construction blueprint determining the amount of construction work needed to complete the work.

c. The existing professional of the project i.e. Architect, Engineer and CA shall assist the panel in preparation of blueprint.

The UP RERA has cancelled 3 projects in Gaziabad for non-compliance and violation of Sections 4 and 11 and Rule No. 3 and 14 of the RERA Act, by the promoters i.e., Antriksh Realtek Private Limited.

The allottees had complained against the promoter under Section 31 of the RERA Act, for violation of the agreement. After receiving the complaint, the RERA Authority inspected the project site and found that the completion of the project is uncertain and that the development of the project is only 40% even after 7 years.

The promoter had failed to update the physical and financial progress of the project on the website of the authority. Only one quarterly update was updated by the promoter i.e., for the period January 2019 to March 2019, which is nil. He also failed to provide the audited balance sheet, which he has to update within 6 months from the end of every financial year. For non-compliance, the authority imposed a fine on the promoter which was violated since by the promoter for not paying the fine.

The sanctioned plan issued by the concerned authorities expired in 2020. Renewal of the plan was also not obtained by the promoter or uploaded on the RERA website.

These circumstances and situations prove *prima-facie* basis to believe the negligence of the work done by the promoter.

In the exercise of the power confirmed under Section 7 of the Act, UP RERA Authority cancelled the project Antriksh Sanskriti (Phase-2), developed by Antariksh Realtek Private Limited with immediate effect.

The promoter is also banned from using the website of UP RERA website and has been declared a defaulter. His bank account has been seized. A committee has also been created wherein the allottees will also be the members of the committee to complete the remaining developmental work in the project.

Similarly, other projects have also been cancelled by the UP RERA i.e., Antriksh Sanskriti Phase-3 and Raksha Vigyan Sanskriti Phase-2 developed by Antriksh Realtek Private Limited and Raksha Vigyan Karmchaari Sahkaari Aawas Samiti Limited.

Bombay High Court in Swapnil Promoters and Developers … vs The Union Of India And Ors

Continued to page 325

Allied Laws Corner

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Vijay Madanlal Choudhary
V.
Union of India
Special Leave Petition (Criminal) No. 4634 of 2014
Decided on 27.07.2022

Introduction

1. The three-judge Bench of AM Khanwilkar**,** Dinesh Maheshwari and CT Ravikumardealt with various aspects of the Prevention of Money Laundering Act, 2002 (hereinafter referred as "*the Act*") and upheld the validity of certain impugned provisions by holding that the same have reasonable nexus with the object sought be achieved i.e., combatting the menace of money laundering. The Apex Court upheld the provisions of the Prevention of Money Laundering Act, 2002 which relate to the power of arrest, attachment and search and seizure conferred on the Enforcement Directorate.

2. A batch of petitions had challenged the constitutionality of provisions under the Prevention of Money Laundering Act, 2002 (PMLA), related to the Directorate of Enforcement's (ED) powers to attach assets, conduct search-and-seizure, and arrest individuals.

3. After the decision of the Supreme Court in Nikesh Tarachand Shah v. Union of India and Anr., the Parliament amended Section 45 of the 2002 Act vide Act 13 of 2018, so as to remove the defect noted in the said decision and to revive the effect of twin conditions specified in Section 45 to offences under the 2002 Act and this amendment was challenged before different High Courts. Those decisions have been assailed before the Apex Court and the same form part of these batch of cases. At the same time, separate writ petitions were filed to challenge several other provisions of the Act and all those cases were tagged & heard together as overlapping issue were raised.

Key Issues & Findings of the Court

1. **Is the amendment to Section 3 of the PMLA a permissible expansion of the meaning of 'offence' under the Act?**

   Section 3 of the PMLA defines the crime of money laundering. The provisions state that anyone involved in any activity connected to proceeds of crime and is projecting it as untainted, is guilty of money laundering.

   While deciding upon the essentials to define the crime of money laundering as per Section 3 of PMLA, the petitioners contended that S3 should not be interpreted to mean that the mere possession of the proceeds of crime are enough to constitute money laundering. The petitioners also argued that projecting tainted money to be clean is an essential component of money laundering. It is not enough to have raised proceeds from crime or to have used the proceeds. There must be an attempt to project the proceeds to be laundered.Moreover, in respect of the effect that International Conventions have on interpretation of Section 3, the petitioners further contended that The Vienna and Palermo convention obligations have been fulfilled in other statutes dealing with drug trafficking and organised crime, however they have no relation to money laundering and a country's International obligations cannot be

used to interpret domestic law if the interpretation leads to a violation of fundamental rights.

The Respondents contended that giving a narrower definition to exclude the possession of the proceeds of crime shall consequentially defeat the PMLA's purpose of curbing the transnational effect of money laundering. The Respondents also argued that India must define money laundering widely to meet its international obligations to combat drug trafficking and organised crime, from which the proceeds of crime are generated and these obligations are contained in the Vienna and Palermo Conventions.

Rejecting the arguments of the petitioners, the Bench held that 'and' in the provision under Section 3 must be read as 'or', and effectively, a person may now be charged with money laundering if they have received or used proceeds from crime, without attempting to pass the proceeds off as untainted.

2. APPLICABILITY OF RULES OF INVESTIGATION TO POLICE AGENCIES UNDER THE CRIMINAL PROCEDURE CODE 1973 ON ENFORCEMENT DIRECTORATE UNDER THE PMLA

Another key issue in these batch of petitions was 'Are ED officers bound to follow the investigation procedure set out in the CrPC?' The petitioners in this regard argued that since ED has powers akin to the police, and their investigations should accordingly be governed by the same procedural safeguards as the police. The petitioners further contended that since PMLA fails to set out any investigative procedure rigorous enough to qualify as 'procedure established by law' and in this regard, there are no procedural safeguards to prevent arbitrary misuse of the ED's wide powers. Hence, the safeguards in the CrPC must apply to the ED to protect the accused's right to fair trial.

The Respondents however argued that following the provisions of CrPC including the requirement of registering an FIR and serving notice before making an arrest, will afford the PMLA accused time to delete all incriminating evidence. Therefore, the CrPC cannot apply to PMLA investigations as it would defeat the purpose of the Act and a distinct procedure needs to be followed to investigate the sophisticated offence of money laundering. Moreover, as MLA places adequate limits on the ED's powers, it is constitutional.

Moreover, comparing the powers of ED officers with that of police, the petitioners contended that since PMLA's object and purpose is to detect and punish money laundering crimes, and ED officers have been given coercive police powers (such as arrest, taking remand in custody of the arrested person, search of property and person, and seizure, etc.), which facilitate obtaining a confession from suspect, the ED officers shall be treated same as police officers and the same rules that apply to the police under Criminal Code of Procedure (CrPC) must apply to the ED. Contrary to this, the Respondents have put forth that PMLA is a regulatory statute whose objective is not to merely detect and punish crimes. The ED's main purpose is not to punish crimes, like the police, but to detain property involved in money laundering and PMLA does not give the ED police powers.

With respect to this issue, the Bench observed that Section 50 of PMLA that empowers the ED to conduct an inquiry is significantly different from a criminal investigation and held that Section 50 does not violate the right against self-incrimination, since ED inquiries are not criminal investigations. The Bench also held that since ED has no police powers, it did not follow the procedural requirements as police.

3. DOES SECTION 50 OF PMLA VIOLATE THE ACCUSED'S FUNDAMENTAL RIGHT AGAINST SELF-INCRIMINATION.

Section 50 allows the ED to compel accused to make self-incriminating statements under threat of a fine, was challenged for violating the fundamental rights of the accused

under Article 20 of the Constitution. The petitioners challenged this provision, since the statements made under this provision are permissible in trial under the PMLA, meaning they may be used against the accused. The Respondents contended that the right against self-incrimination is violated when an accused person is compelled to make statements against themselves to the police. Under PMLA, no formal complaint exists against the person questioned at the stage of Section 50 summons and they are not yet accused. Mere fine is not compulsion since compulsion must involve a greater degree of intimidation and therefore, the said Section was not unconstitutional.

The bench observed that crucially, since the ED is not a police agency, statements made by the accused to ED members in the course of an investigation can be used against the accused in judicial proceedings and upheld the constitutionality of Section 50 of the Act.

4. Correct proposition of law on bail conditions in light of the Nikesh Tarachand Judgment

Section 45 of the Act lays down onerous conditions for bail under PMLA. It requires the accused person to prove that they are not guilty before the trial commences. Section 24 of the Act reverses the burden of proof in general criminal law. Usually, the Court presumes the accused is innocent and the State must prove guilt. Under the PMLA, the accused is assumed to be guilty and must disprove all the State's allegations.This is distinct from the CrPC, where bail can be granted if the magistrate is convinced that the accused will not impede the investigation or pose a flight risk if released on bail.

The petitioners contended that in 2017, the Apex Court held that Section 45 was unconstitutional. The Union government amended Section 45 to rectify one of the defects the Court found in the provision. However, the amendment did not rectify the most crucial defect that the provision reverses the presumption of innocence in criminal law by making the Court assume guilt. This reduces the chances of the accused person securing bail to a 'vanishing point'. The provision is arbitrary and unconstitutional. The Respondents argued that in 2017, the Apex Court found only one defect in Section 45—that bail could be granted only after the Court was convinced that the money laundering accused was innocent in both the money laundering offence and the predicate offence. The predicate offence was found to have no nexus with the onerous bail requirement. The Union rectified this defect through the 2019 Amendment. The onerous requirement of proving innocence is required to meet the aims of PMLA.

The SC declared Section 45 unconstitutional in Nikesh Tarachand Shah v Union of India (2017), holding that the reversed burden was unconstitutional. The Court also found it arbitrary that the provision required the accused to prove innocence under the 'predicate offence' from which the proceeds arose, instead of the money laundering offence.

The Union government amended the provision in 2018. It removed the predicate offence requirement but retained the reversed burden. In the Judgment, the Court upheld the amendment to Section 45, stating that the reversed burden was necessary to counter the heinous crime of money laundering. Justice Khanwilkar stated that the ED's wide powers of arrest under Section 19 are also justified for the same reason.

5. Are the accused person's fundamental rights violated by the burden of proof placed on them by PMLA?

Another issue that was raised by the Apex Court was as Section 24, which requires the Court to assume that the accused is guilty of money laundering if a predicate offence is proved to have generated proceeds of crime, unconstitutional. The petitioners contended that in ordinary criminal investigations, it is up to the police to prove that their accusation is true.

Under Section 24, the accused must disprove the allegation against them instead of the prosecution having to first prove it. This reversed burden of proof violates the presumption of innocence, and hence the right to liberty guaranteed in Articles 14, 19, 20 and 21. The Respondents contended that the Court has upheld the constitutional validity of reversed burdens of proof in other special criminal legislations. The serious nature of the money laundering offence and the societal need to curb it justifies the reversed burden in Section 24 of the Act.The Bench upheld the Section 24 and observed that the reversed burden was necessary to counter the heinous crime of money laundering.

6. Constitutionality of the Amendments to PMLA through Money Bills.

Another key issue raised before the Hon'ble Apex Court was are the PMLA Amendments (2015,2016,2018,2019) which introduced many of the challenged provisions unconstitutional because they were enacted through money bills. The Petitioners contended that the PMLA Amendments do not constitute financial matters. Their enactment through money bills violates the principle of bicameralism, a part of the basic structure of the Constitution. The PMLA Bench must wait for the judgment of the 7-Judge Bench before whom the constitutionality of the relevant money bills is pending.After the PMLA Bench indicated that it will not address the Money Bill argument, the Respondents made no submissions on the issue.The issue, however, was not dealt with by the Court in the present case as the same is pending for consideration before the Larger Bench as per decision in Rojer Mathew v. South Indian Bank Limited, (2020) 6 SCC 1.

Conclusion

Therefore, in this interesting yet lengthy judgment, the Hon'ble Apex Court has wide investigative powers of the Directorate of Enforcement and the restrictive bail conditions under the Prevention of Money Laundering Act, 2002.

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Continued from page 321

noted that Revocation of the registration takes place only upon satisfaction of the Authority as regards grounds (a) to (c) of sub-section (1) of Section 7. The Authority, before taking action of revocation of registration has to give not less than 30 days' notice in writing stating the ground on which it is proposed to revoke the registration. The Authority has to consider any cause shown by the promoter against the proposed revocation. Any promoter aggrieved by the decision of the Authority has a remedy of appeal before the Appellate Tribunal. The power conferred on the Authority under sub-section (4) of Section 7 cannot be said to be unbridled and unguided. It is only in the event of the Authority satisfying as regards one or the other ground under clauses (a) to (c) of sub-section (1) of Section 7, it can revoke the registration. The object behind debarring the promoter from accessing its website and also specifying his name in the list of defaulters and displaying his photograph on the website of the Authority and informing other Real Estate Regulatory Authority in other States and Union Territories about the revocation of the registration is cautioning other public from dealing with such promoter. The purpose behind this is absolutely salutary and no fault can be found with this object. Likewise after revocation of registration the promoter cannot be permitted to deal with the amounts deposited in dedicated bank account as specified in Section 4(2)(l)(D). 70% amount deposited under Section 4(2)(l)(D) covers the cost of construction and the land cost and has to be utilized for that purpose only. The object behind clause (c) of sub-section (4) of Section 7 is also salutary and the amounts deposited in the dedicated account can be utilized by the Authority for carrying out remaining development works which was left behind by the promoter.

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Capital Markets

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Summary:

RBI increased policy rate by further 50 bps to control inflation, at the same time, Inflation has eased for third month in row. Rupee hit all-time low and crossed 80 as US dollar is becoming stronger due to recession fears in Europe. Stock Markets have turned bullish and have jumped almost 9% on account of ease in inflation, resilient economic recovery and foreign inflows returning to markets after nine months.

Private Equity Deals include Advent and Carlyle to buy 10% stake each in Yes Bank for an overall $1.1 Billion fund raiseand Ahmedabad based Accumax raising $68 Million from Creador and Inv Ascent.

Economic Update:

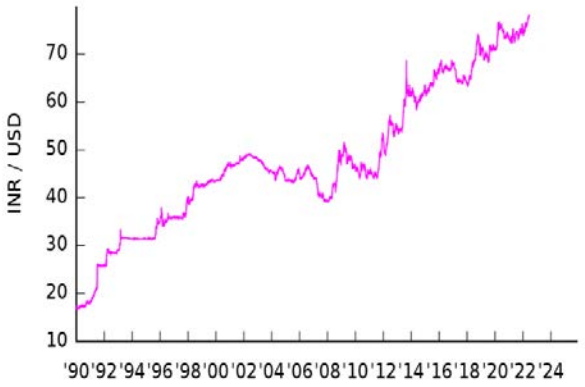
- Monetary Policy Committee (MPC) of RBI at its meeting on August 5, 2022 decided to Increase the policy repo rate under the liquidity adjustment facility (LAF) by 50 basis points to 5.40 per cent with immediate effect. The standing deposit facility (SDF) rate was adjusted to 5.15 per cent and the marginal standing facility (MSF) rate and the Bank Rate to 5.65 per cent.
- The MPC decided to remain focused on withdrawal of accommodation to ensure that inflation remains within the target going forward, while supporting growth.
- Consumer Price Index (CPI) Inflation eased for third month in a row to 6.71% in July 2022. While it is still more than the RBI's upper limit of 6%, it is still a welcome relief. The inflation has eased as food and metal prices have come down. Crude Oil prices have also eased in recent weeks as global demand outlook is weakening.
- GST data for July was second highest ever at Rs. 1.49 lakh Crore. Finance ministry said that the GST data rose on back of economic recovery and measures taken to curb tax evasion.
- India's core sector output growth was up 12.7% in June with coal, cement, electricity and refinery products growing strongly and natural gas, steel and fertilizers growing moderately.

Rupee at 80 against USD:

- Rupee hit all-time low and breached the psychological mark of 80 per dollar in July 22 as dollar became stronger on account of recession fears and economic troubles in Europe. Investors are choosing US market over European markets due to recession fears.
- Europe is dealing with severe inflation which is hurting consumers and is ending post lockdown spending boon. Europe is also facing an energy crisis and political uncertainty and many economists are warning that a recession later this year is a possibility.
- Apart from underlying strength of the US Dollar, the foreign portfolio investments (FPI) equity outflows of last 9 months are also one of the reasons for depreciation in currency.
- However as FPI net inflows have again become positive in July, it should ease the depreciation pressure on the rupee.
- RBI had intervened heavily in the forex markets to make sure that there are no volatile swings in

the currency market. RBI governor Mr. Das said that RBI was fine with rupee finding its level in line with the fundamentals but RBI will have zero tolerance for volatile and bumpy swings.

- Depreciating rupee impacts imports the most as imported items get more expensive. It also makes foreign education and foreign travel more expensive. At the same time currency depreciation is a boon for exporters and NRI remittances.



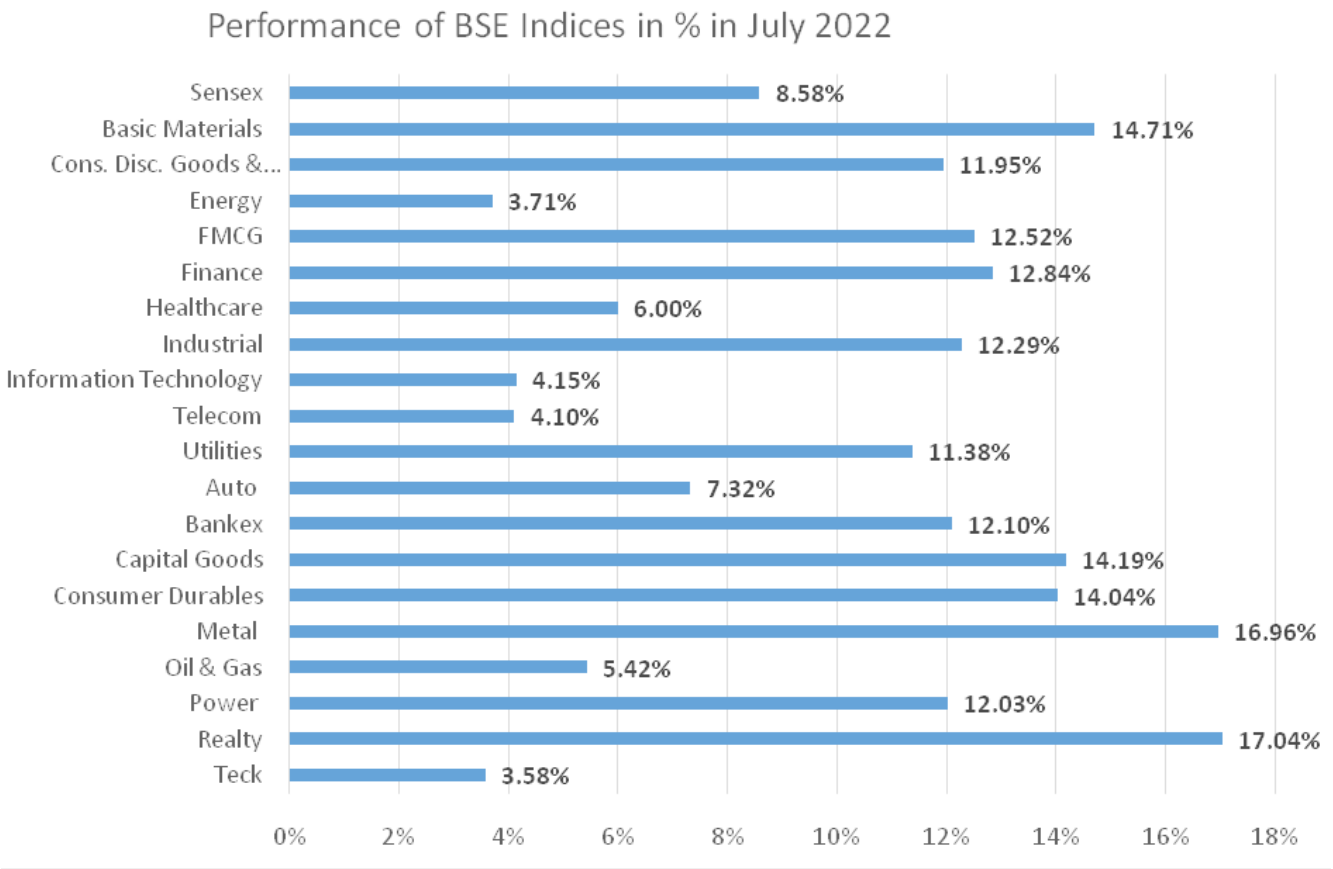
- Historically, rupee was pegged at around Rs. 3.30 against dollar in 1947. It was at a fixed exchange system whereby Indian currency was pegged against pound and devalued as required. This started creating balance of payment problems from time to time. From 1985 India again started having economic problem which resulted into economic crisis in 1991. Finally in 1992, liberalized exchange rate system was introduced.
- The rupee remained in 40's upto 2010 due to sustained foreign investments in country. It however continued its slide from 2010 to present level of over 75.

Trends in Secondary Markets:

Markets turned bullish in July 22 with BSE Sensex jumped around 9% to close at 57,570 as against 53,019 in June 22 and Nifty closing at 17,158 as against 15,780 in June 22. Markets are bullish on account of strong corporate earnings, foreign funds inflows, fall in crude oil prices and improvement in inflation numbers.

- After nine consecutive months of selling, the foreign investors turned net buyers for the first time in July 22. The FPI's invested Net Rs. 4989 Crore in Equity in July 22 as against net outflow of over Rs. 50,000 Crore in June 22.
- The net outflow by FPIs from equities this year so far has reached a record high of Rs 225 thousand Crore. For reference, in 2008 crisis, FPI had withdrawn around Rs. 50 thousand Crore from Indian markets.
- The reasons for FIIs coming back could be many fold. Global cues are becoming favorable as the central banks are now likely to go slow on rate hikes. At the same time, Indian economy is also doing well along with decent corporate earnings in Q1 FY23 making Indian market attractive for FIIs, which are sitting on cash.

Equity Markets	Jul-22	Jun-22	Change%
Sensex	57,570	53,019	8.58%
Nifty 50	17,158	15,780	8.73%
BSE 500	23,360	21,324	9.55%
BSE Healthcare	22,902	21,606	6.00%
BSE IT	29,488	28,313	4.15%
BSE Industrial	5,910	5,263	12.29%
BSE Teck	13,429	12,964	3.58%



- 5G auction ended in July with Jio being the largest bidder with bids of Rs. 88000 Crore followed by Airtel Rs. 43000 Crore and Vi Rs. 18,800 Crore. Adani also brought a small Rs. 200 Crore spectrum indicating it is for captive consumption.

- Reliance Industries Ltd. posted record profits in Q1 of FY23 (46% increase in net profity-o-yto Rs. 19,443 Crore) with jump in earnings in oil refining business. The prices of Crude had gone up post Russia-Ukraine war and company could perform well in highly volatile market. RIL's other than oil refining businesses like retail and telecom also did well.

- ONGC also posted strong Q1 results with profit jump to Rs. 15,206 Crore (251% increase y-o-y).

- Chemical companies posted strong Q1 profit numbers with sales rising by more than 40% in most of the larger companies due to higher demand and disruption in global supply. While chemical industry saw volatility in raw material prices, number of larger players like SRF, Deepak fertilizers, GHCL, Gujarat Fluorochem and Meghmani posted strong profits.

- PE funds Advent and Carlyle will infuse around $1.1 Billion in Yes Bank for stake of around 10% each. The investment was approved by board of bank and in principally by RBI.

Primary market Update:

There were no new IPOs in July 22 as against two main board IPOs in June, ofeMudhra Limited and Aether Industries Limited. However with markets again becoming bullish the new IPOs should start again.The IPO of Electronics Manufacturing Services (EMS) firmSyrma SGS Technology Ltd. is lined up in August 22.

Particulars	May-22	Jun-22
I. Equity Issue	**49,471**	**6,723**
a. IPOs (i+ii)	31,387	1,344
i. Main Board	31,270	1,221
ii. SME Platform	117	123
b. FPOs	0	0
c. Equity Rights Issue	932	125
d. QIP/IPP	0	50
e. Preferential Allotment	17,152	5,204
II. Debt Issue	**18,379**	**45,712**
a. Debt Public Issue	339	842
b. Private Placement of Debt	18,038	44,869
Total Funds Mobilised (I+II)	**67,850**	**52,435**

Mergers and Acquisitions (M&A)and Private Equity (PE) key deals:

PE: Advent and Carlyle to buy stake in Yes Bank:

Transaction:

- PE funds Advent International and Carlyle will buy upto 10% stake each in Yes Bank, sixth largest private sector bank in India, as part of an overall $1.1 billion capital fundraise by the Bank.
- The investment was approved by Yes bank and is in principally approved by RBI. Both funds will have one nominee on the board of directors.
- This will be raised through a combination of $640 Mn (Rs. 5,100 Crore) in equity shares and $475 Mn (Rs. 3,800 Crore) through equity share warrants.

About Yes Bank:

- Yes Bank is a Full Service Commercial Bank, headquartered in Mumbai and founded by Rana Kapoor and Ashok Kapoor in 2004.
- In March 2020, RBI took control of the bank in order to avoid collapse of the bank due to large number of bad loans.RBI later reconstructed the board and named Prashant Kumar, former CFO and deputy MD of State Bank of India, as MD & CEO of Yes Bank.
- Under new leadership, bank was bailed out by number of banks like SBI, HDFC, ICICI, Axiswhich stepped in by infusing capital in lieu of stake. Yes Bank then became an associate of State Bank of India which has 30% stake in the company.

About Investors:

- Founded in 1984, Advent International is a global investment fund with over 390 private equity investments across 41 countries, and assets under management of $75.9 billion. It's recent investments in India include Eureka Forbes Ltd, Encora, Avra labs etc.
- Carlyle is also a global investment fund with $376 billion of assets under management as of June22. Financial investments of firm include SBI Life, HDFC Limited, PNB Housing Finance, SBI Card, India Infoline Ltd, China Pacific Insurance and KorAm Bank amongst others.

Rationale:

- The capital raised will bolster the capital adequacy of the Bank, thereby providing growth capital for the core business of the Bank.
- Advent, said, "We believe India's banking sector is at an inflection point where tech-enabled banks like YES BANK have an advantage.We think the Bank's leadership team, led by Prashant Kumar, has done great work in reviving its performance over the last two years."
- Carlyle said "We are confident about India's long-term economic growth prospects and believe that YES BANK is well-placed to capture this growth, given its strong capabilities in transaction banking and digital payments."
- Yes Bank was brought under reconstruction scheme in 2020 and has done a turnaround since then under present leadership. Firm has posted profit of over Rs. 1000 Crore in FY22, its first after FY19. It has also been able to raise capital and improve its capital adequacy ratio.

- Yes Bank shares jumped 6% after the bank made the announcement.

PE: Accumax raises $68 Million from Creador and InvAscent:

Transaction:

- Accumax Lab Devices Pvt. Ltd ("Accumax"), a leading provider of lab equipment and consumables, has raised its first private equity funding of $68 million (around Rs. 520 crore) from Creadorand InvAscent.

About Accumax:

- Incorporated in 2003 by Chiragbhai Shah and Tejas Shah, Accumax is an Ahmedabad-based Laboratory equipment and consumables manufacturer with presence in Germany as well.
- Accumax is one of the largest producers of liquid handling products globally. It supplies to hospitals, universities and laboratories in over 130 countries across the world.
- Company's exclusive product basket has over 2300 SKUs which includes pipettes (a specialized liquid transfer tool used in diagnostics and biomedical research), pipette controllers, bottle top dispensers, tubes, polymerase chainreaction (PCR) consumables and tips.

About Investors:

- InvAscent provides private equity growth capital to companies in the Indian pharmaceutical, healthcare, animal health and medtech industries. It is currently investing out of its third fund where it has made 10 investments till date.
- Creador invests across India and Southeast Asia and has floated its fifth fund. It recently exited Corona Remedies by sale to ChrysCapital, generating a 3.7x multiple and 32% IRR.

Rationale:

- Accumax will use the capital to expand its global presence in the lab equipment andconsumables segment organically as well as through acquisitions.
- Accumax offers end-to-end, computer-aided engineering and design service with capacities around prototyping, testing and certification, electronics, software, and manufacturing methods including 3D printing. Customized design and production services are also available, both technically and with respect to branding; equipment can be shaped, coloured, and logoed to order.
- Global medical devices market is estimated to be $500 Billion in 2022 and is expected to grow at 5.5% CAGR in coming 5 to 6 years.

Acknowledgements:

RBI Bulletin (www.bulletin.rbi.org.in), SEBI (www.sebi.gov.in), NSE (www.nseindia.com), BSE (www.bseindia.com)

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From Published Accounts

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Financial Instrument - Annual Report 2021-22

JK Tyre

A financial instrument is any contract that gives rise to a financial asset of one entity and a financial liability or equity instrument of another entity.

(a) Financial assets: Financial assets include cash and cash equivalents, trade and other receivables, investments in securities and other eligible current and non-current assets. At initial recognition, all financial assets are measured at fair value. Such financial assets are subsequently classified under one of the following three categories according to the purpose for which they are held. The classification is reviewed at the end of each reporting period.

- Financial assets at amortised cost: At the date of initial recognition, are held to collect contractual cash flows of principal and interest on principal amount outstanding on specified dates. These financial assets are intended to be held until maturity. Therefore, they are subsequently measured at amortised cost by applying the Effective Interest Rate (EIR) method to the gross carrying amount of the financial asset. The EIR amortisation is included as interest income in the profit or loss on time proportionate basis. The losses arising from impairment are recognised in the profit or loss.

- Financial assets at fair value through other comprehensive income: At the date of initial recognition, are held to collect contractual cash flows of principal and interest on principal amount outstanding on specified dates, as well as held for selling. Therefore, they are subsequently measured at each reporting date at fair value, with all fair value movements recognised in Other Comprehensive Income (OCI). Interest income calculated using the effective interest rate (EIR) method on time proportionate basis, impairment loss or gain and foreign exchange loss or gain are recognised in the Statement of Profit and Loss. On derecognition of the asset, cumulative gain or loss previously recognised in Other Comprehensive Income is reclassified from the OCI toStatement of Profit and Loss.

- Financial assets at fair value through profit or loss: At the date of initial recognition, financial assets are held for trading, designated financial assets to be valued through profit or loss or which are measured neither at Amortised Cost nor at Fair Value through OCI. Therefore, they are subsequently measured at each reporting date at fair value, with all fair value movements recognised in the Statement of Profit and Loss. Dividend income on equity shares is recognised when the right to receive payment is established, which becomes certain after shareholders' approval. Interest and Dividend Income as well as fair value changes are disclosed separately in the Statement of Profit & Loss. Investment in Equity shares of subsidiaries and associates

are valued at cost. The Company derecognises a financial asset when the contractual rights to the cash flows from the financial asset expires or it transfers the financial asset and the transfer qualifies for derecognition under Ind AS 109. Upon derecognition the difference between the carrying amount of a financial asset derecognised and the sum of the consideration received and receivable and the cumulative gain or loss that had been recognised in other comprehensive income and accumulated in equity is recognised in the Statement of Profit and Loss. The company assesses impairment based on the expected credit losses (ECL) model to all its financial assets measured at amortised cost. ECL is the difference between all contractual cash flows that are due to the Company in accordance with the contract and all the cash flows that entity expects to receive (i.e. all cash shortfalls) discounted at original effective interest rate. Impairment loss allowance (or reversal) for the period is recognised in the Statement of Profit and Loss.

(b) Financial liabilities:Financial liabilities include long-term and short-term loans and borrowings, trade and other payables and other eligible current and non-current liabilities. All financial liabilities are recognised initially at fair value and, in the case of loans and borrowings and other payables, net of directly attributable transaction costs. After initial recognition, financial liabilities are classified under one of the following two categories:

- Financial liabilities at amortised cost: After initial recognition, such financial liabilities are subsequently measured at amortised cost by applying the Effective Interest Rate (EIR) method to the gross carrying amount of the financial liability. The EIR amortisation is included in finance expense in the Statement of Profit or Loss.

- Financial liabilities at fair value through profit or loss: which are designated as such on initial recognition, or which are held for trading. Fair value gains / losses attributable to changes in own credit risk is recognised in OCI. These gains / loss are not subsequently transferred to Statement of Profit and Loss. All other changes in fair value of such liabilities are recognised in the Statement of Profit and Loss. The Company derecognises a financial liability when the obligation specified in the contract is discharged, cancelled or expired. The difference between the carrying amount of a financial liability derecognised and the sum of consideration paid and payable is recognised in Statement of Profit and Loss as other income or finance costs / other expenses.

Solara Active Pharma Sciences Limited

A financial instrument is any contract that gives rise to a financial asset of one entity and a financial liability or equity instrument of another entity. Financial assets and financial liabilities Financial assets and financial liabilities are recognised when Group becomes a party to the contractual provisions of the instruments. Initial recognition and measurement: Other financial assets and financial liabilities are initially measured at fair value. Transaction costs that are directly attributable to the acquisition or issue of financial assets and f inancial liabilities (other than financial assets and financial liabilities at fair value through profit or loss) are added to or deducted from the fair value of the financial assets or financial liabilities, as appropriate, on initial recognition. Transaction costs directly attributable to the acquisition of financial assets or financial liabilities at fair value through profit or loss are recognised immediately in Consolidated statement of profit and loss.

Gujarat Ambuja Exports Limited

Initial Recognition and Measurement: The Group recognises a financial asset in its balance sheet when it becomes party to the contractual provisions of the instrument. All financial assets are recognised initially at fair value, plus in the case of f inancial assets not recorded at fair value through profit or loss(FVTPL), transaction cost that are attributable to the acquisition of the financial asset. Where the fair value of a financial asset at initial recognition is different from its transaction price, the difference between the fair value and the transaction price is recognised as a gain or loss in the Statement of Profit and Loss at initial recognition if the fair value is determined through a quoted market price in an active market for an identical asset (i.e. level 1 input) or through a valuation technique that users data from observable markets (i.e. level 2 input). In case the fair value in not determined using a level 1 or level 2 inputs as mentioned above, the difference between the arises due to a change in factor that market participants take into account when pricing the financial asset. However trade receivables that do not contain a significant financing component are measured at fair value and transaction price is deferred appropriately and recognised as a gain in the Statement of Profit and Loss only to the extent the such gain or loss transaction price.

Solar Industries India Limited

A financial instrument is any contract that gives rise to a financial asset of one entity and a financial liability or equity instrument of another entity.

1. Financial assets Classification Financial assets are classified, at initial recognition in the following categories

   - as subsequently measured at fair value (either through other comprehensive income, or through the Statement of Profit and Loss), and
   - measured at amortized cost The classification of financial assets at initial recognition depends on the financial asset's contractual cash flow characteristics and theGroup's business model for managing them. Measurement at initial recognition, the Group measures a financial asset at its fair value. Transaction costs of financial assets carried at fair value through the profit and loss are expensed in the statement of profit and loss.

A. Debt instruments: Subsequent measurement of debt instruments depends on the Group's business model for managing the asset and the cash flow characteristics of the asset. The Group classifies its debt instruments into following categories:

A.1 Amortized cost: Assets that are held for collection of contractual cash flows where thosecash flows represent solely payments of principal and interest are measured at amortized cost. Interest income from these financial assets is included in other income using effective interest rate method.

A.2 Fair value through profit and loss: Assets that do not meet the criteria of amortized cost are measured at fair value through profit and loss. Interest income from these financial assets is included in other income.

B. Equity instruments:

B.1 Fair value through OCI: Upon initial recognition, the Group can elect to classify irrevocably its equity investments as equity instruments designated at fair value through OCI when they meet the definition of equity under Ind AS 32 Financial Instruments: Presentation and are not held for trading. The classification is determined on an instrument-byinstrument basis.Gains and losses on these financial assets are never recycled to profit or loss. Dividends are recognised as other income

in the statement of profit and loss when the right of payment has been established, except when the Group benefits from such proceeds as a recovery of part of the cost of the financial asset, in which case, such gains are recorded in OCI. Equity instruments designated at fair value through OCI are not subject to impairment assessment. The Group elected to classify irrevocably its non-listed equity investments under this category.

B.2 Fair value through profit and loss:

Financial assets at fair value through profit or loss are carried in the balance sheet at fair value with net changes in fair value recognised in the statement of profit and loss. This category includes derivative instruments and listed equityinvestments which the Group had not irrevocably elected to classify at fair value through OCI. Dividends on listed equity investments are recognised in the statement of profit and loss when the right of payment has been established.

C. De-recognition:

A financial asset (or, where applicable, a part of a financial asset or part of a group of similar financial assets) is primarily derecognised (i.e. removed from the Group's balance sheet) when:

- The rights to receive cash flows from the asset have expired, or
- The Group has transferred its rights to receive cash flows from the asset or has assumed an obligation to pay the received cash flows in full without material delay to a third party under a 'pass-through' arrangement~ and either

(a) the Group has transferred substantially all the risks and rewards of the asset, or

(b) the Group has neither transferred nor retained substantially all the risks and rewards of the asset, but has transferred control of the asset. When the Group has transferred its rights to receive cash flows from an asset or has entered into a pass-through arrangement, it evaluates if and to what extent it has retained the risks and rewards of ownership. When it has neither transferred nor retained substantially all of the risks and rewards of the asset, nor transferred control of the asset, the Group continues to recognise the transferred asset to the extent of the Group's continuing involvement. In that case, the Group also recognises an associated liability. The transferred asset and the associated liability are measured on a basis that reflects the rights and obligations that the Group has retained. Continuing involvement that takes the form of a guarantee over the transferred asset is measured at the lower of the original carrying amount of the asset and the maximum amount of consideration that the Group could be required to repay.

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From the Government

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INCOME TAX

1) Notification relating to insertion of clause XIII in the proviso to section 56(2)(x) to exempt any sum of money from the provisions of section 56(2)(x):-

In exercise of the powers conferred by clause (XIII) of the first proviso to clause (x) of sub-section (2) of section 56 of the Income-tax Act, 1961 (43 of 1961), the Central Government hereby specifies the following conditions, namely:-

1) (i) the death of the individual should be within six months from the date of testing positive or from the date of being clinically determined as a COVID-19 case, for which any sum of money has been received by the member of the family;

a. the family member of the individual shall keep a record of the following documents, -

i. the COVID-19 positive report of the individual, or medical report if clinically determined to be COVID-19 positive through investigations in a hospital or an in- patient facility by a treating physician;

ii. a medical report or death certificate issued by a medical practitioner or a Government civil registration office, in which it is stated that death of the person is related to corona virus disease (COVID-19).

2) Statement of any sum of money received by a member of the family of a deceased person from the employer of the deceased person or from any other person or persons, on account of death due to COVID-19 for the purposes of clause (XIII) of the first proviso to clause (x) of sub- section (2) of section 56 of the Income-tax Act, 1961 shall be verified and furnished in **Form A.**

3) The details of the amount received in any financial year shall be furnished in Form A to the Assessing Officer within nine months from the end of such financial year or 31.12.2022 whichever is later.

(For form A refer notification no 92, dated 05/08/2022)

2) Notification relating to Amendment in Income Tax Rules

In exercise of the powers conferred by clause (a) of the tenth proviso to clause (23C) of section 10 and sub-clause (i) of clause (b) of sub-section (1) of section 12A read with section 295 of the Income-tax Act, 1961 (43 of 1961), the Central Board of Direct Taxes hereby makes the following rules further to amend the Income-tax Rules, 1962, namely:-

1. Short title and commencement. —

(1) These rules may be called the Income-tax (24th Amendment) Rules, 2022.

(2) They shall come into force from the date of their publication in the Official Gazette.

2. In the Income-tax Rules, 1962, after rule 17A the following rule shall be inserted, namely: -

"17AA. Books of account and other documents to be kept and maintained.— (1) Every fund or institution or trust or any university or other educational institution or any hospital or other medical institution which is required to keep and maintain books of account and other documents under clause (a) of tenth proviso to clause (23C) of section 10 of the Act or sub-clause (i) of clause (b) of sub-section (1) of section 12A of the Act shall keep and maintain the following, namely:-

(a) books of account, including the following, namely: -

(i) cash book;

(ii) ledger;

(iii) journal;

(iv) copies of bills, whether machine numbered or otherwise serially numbered, wherever such bills are issued by the assessee, and copies or counterfoils of machine numbered or otherwise serially numbered receipts issued by the assessee;

(v) original bills wherever issued to the person and receipts in respect of payments made by the person;

(vi) any other book that may be required to be maintained in order to give a true and fair view of the state of the affairs of the person and explain the transactions effected;

(b) books of account, as referred in clause (a), for business undertaking referred in sub-section (4) of section 11 of the Act;

(c) books of account, as referred in clause (a), for business carried on by the assessee other than the business undertaking referred in sub-section (4) of section 11 of the Act;

(d) other documents for maintaining, - ……..

(For full text refer Notification No.94, dated 10/08/2022)

GOODS AND SERVICE TAX

1) Advisory on Upcoming Changes in GSTR-3B

- The Government vide Notification No. 14/2022 – Central Tax dated 05th July, 2022 has notified few changes in Table 4 of Form GSTR-3B requiring taxpayers to report information on ITC correctly availed, reversal thereof and declaring ineligible ITC in Table 4 of GSTR-3B.

  (Refer Notification 14/2022 , dated 05/07/2022)

- **T**he notified changes in Table 4 of GSTR-3B are being implemented on the GST Portal and will be available shortly. Until these changes are implemented on the GST Portal, taxpayers are advised to continue to report their ITC availment, reversal of ITC and ineligible ITC as per the current practice.

  (GST New and Updates, dt 22/07/2022)

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IT Corner

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The opportunity funnel behind Intuit QuickBooks' India Exit

After a journey of a decade, software company Intuit will stop offering QuickBooks, its financial and business management software for small businesses, in India from January 31, 2023.

The company has also stopped accepting new subscriptions in India for QuickBooks Online, QuickBooks Online Accountant, QuickBooks mobile app, and QuickBooks Time.

QuickBooks' offerings include cloud accounting, invoicing, inventory, and cash flow management. It also offers an online practice management solution for chartered accountants through QuickBooks Online Accountant. For a seamless experience, QuickBooks also launched a GST-ready version of its online accounting product in 2017.

The shutdown of QuickBooks in India will not impact Intuit's 1,300 Indian employees, per reports.The company will convert all paid subscribers into free users before July 31, 2022, to enable them to continue using QuickBooks until January 31, 2023, without any charges. Customers who have an annual subscription will receive a refund for the unused portion of their subscription.

Exit Provides Opportunity To Indian Companies

Surprisingly, the exit comes when Indian small and medium enterprises (SMEs) are digitising their processes more than ever due to the pandemic. SMEs are increasing their investment in technology, from digital bookkeeping to payments and several other needs such as inventory and delivery. Many are collaborating with SaaS start-ups to increase their efficiency.

In 2021, Indian enterprise tech start-ups raised more than $3.2 Bn in investments across 229 deals, compared to $1.6 Bn in 2020 across 130 deals, as per an Inc42 report.

Further, Indian SaaS companies are poised to reach $30 Bn in revenue, capturing an 8% to 9% share of the global SaaS market, by 2025, according to a Bain and Company report.

The exit of QuickBooks will help its competitors, such as SaaS unicorn Zoho, and Tally, to increase their market share. Unlike many other unicorns, Zoho is already running a profitable business, posting a total profit after tax of INR 1,917 Cr in FY21. It has more than 60 Mn customers and over 9K employees globally.

Considerably, Zoho has already started taking small steps to fill the gap caused due to QuickBooks' exit. In a statement shared on Thursday, Zoho said it is open to serving customers of QuickBooks India. The Chennai-based unicorn also emphasised itshyper-focused on strengthening its operation in India.

Speaking about the challenges while building for Indian SMEs, Dukaan founder and CEO Sumit Shah, had said that one of the key focus areas for SaaS platforms should be speed.

Meanwhile, speaking on QuickBooks exit, Abhishek Rungta, CEO of Indus Net Technologies, said on Twitter that India is a cost-conscious mass market. Therefore, a player can make substantial revenues in the services sector only if it has a huge customer base with all paying a small amount.

Continued to page 338

Association News

CA. Jay B. Parekh
Hon. Secretary

CA. Mayur H. Modha
Hon. Secretary

1. Glimpses of previous events:

Time	Program	Venue
14th August 2022, Sunday	Adikham Gujarat Ni Gauravgatha - Musical Event Joint Programme with Ahmedabad Branch of WIRC OF ICAI.	Pandit Dindayal Upadhyay Auditorium

2. Upcoming Events.

Time	Program	Speaker	Venue
3rd January, 2023 Tuesday	52nd Residential Refresher Course on 3rd - 6th January 2023.	CA Manoj Fadnis, CA Jignesh Shah, Eminent Faculty	Sheraton Grand Palace, Indore

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IT Corner

The emphasis on cost is not new for players who are building for Indian SMEs.

During the same conversations, Manish Patel, founder and MD of MSwipe, had said that India's bottom and middle-end of the pyramid are all about cost-efficiency.

"Cost is an important component of the strategy – everything from what we are going to use, how effectively can we deliver upgrades to our customers and the overall cost of ownership of our service for our customers," Patel said.

The unique needs and cost consciousness of Indian SMEs make it a difficult task to build for this segment. The challenge is bigger for international companies who might not always have enough understanding of their customers.

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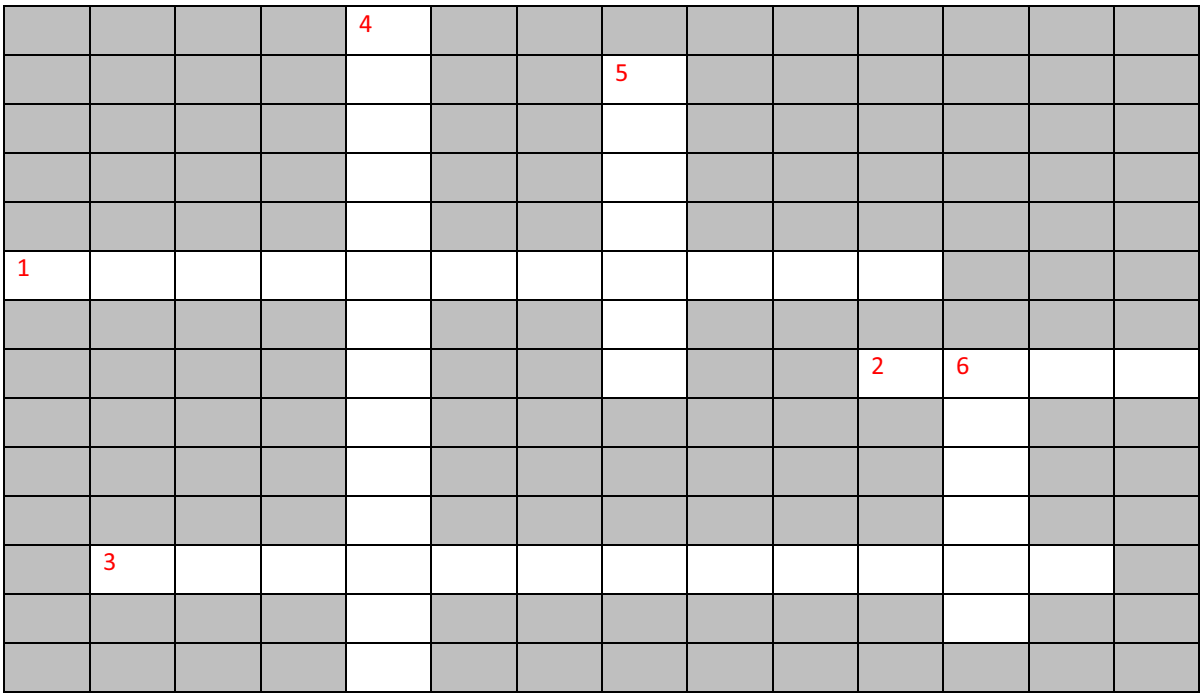
ACAJ Crossword Contest - 15

Across

1. Reopening proceedings cannot be undertaken to verify the _____ of cash payments made by the assessee.
2. GST @ _____ percent is now levied on hospital room rent exceeding Rs. 5000.
3. Ice factory, sweet factory and love factory within us makes us build '_____'.

Down

4. _____ reporting is an overview of company's economic, environmental and social impacts caused by its everyday activities.
5. HarGhar _____ expenditure qualifies under CSR activity.
6. The 52nd RRC of CA Association is to be held at _____.



Notes:

1. The Crossword puzzle is based on this 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 15-09-2022.
5. The decision of Journal Committee shall be final and binding.

Prize Courtesy

Winners of ACAJ Crossword Contest – 14

1. CA. Gaurang Choksi
2. CA. Mohan Akalkotkar

ACAJ Crossword Contest 14 - Solution

Across:	Down:
1. Stockholm	4. Supreme
2. Twenty	5. One
3. Fake	6. Void

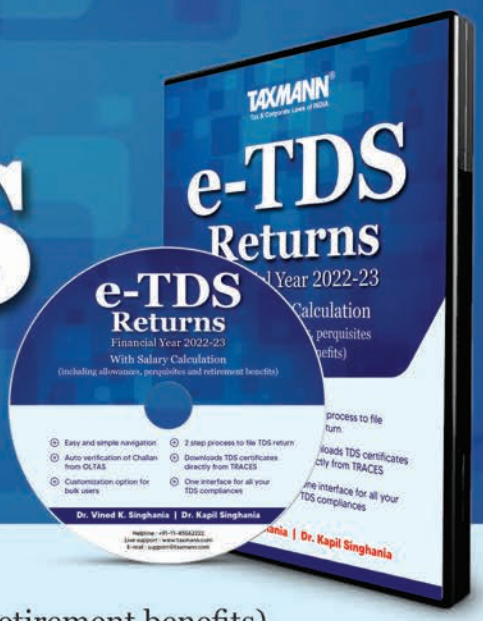
❊ ❊ ❊

Glimpses of Independence Day Celebrations

TAXMANN®
Tax & Corporate Laws of INDIA

e-TDS Returns

Financial Year 2022-23



KNOW MORE

With Salary Calculation

(including allowances, perquisites and retirement benefits)

Dr. Vinod K. Singhania
Dr. Kapil Singhania

Import/Prepare

- Prepare TDS/TCS return by importing the data with .txt files, Conso files or MS Excel templates
- Simple navigation helps you at every step to prepare the TDS/TCS returns in just a few clicks

Auto Calculation/Validation

- e-TDS Returns helps you in error free TDS/TCS return preparation and filing
- It pre-validates the TDS/TCS return with features like default notice predictor, higher tax deduction/collection for non-filers, etc.
- Annexure II and Annexure III come with auto calculation for accurate and easy TDS Return preparation

Integrated Interface

- One interface for all your TDS/TCS compliances to save time & manage multiple clients at the same time
- e-TDS Returns is 100% online & no-paperwork is required
- Secured & fast
- Rebuilt on the latest technology for fast validation and bulk return generation

Get Ready

for a hassle-free compliance experience

Error-Free & Easy to Use with

- Detailed Salary Calculation | Annexure 2
- Computation of TDS on Pension & Interest

Simple Yet Powerful

- TDS Computation as per Alternate Tax Regime
- Easy Import/Export with MS Excel

Default Notice Predictor

- Software's algorithm identifies the possible errors in the return and predicts the possibility of getting a default notice

Higher Tax Deduction for Non-filers

- Auto calculation for TDS/TCS at a higher rate for deductees/collectees who have not filed their Income Tax Returns for the specified period

Validation

e-TDS has you covered!

Filing

Your TDS/TCS compliances made easier

- Return Preparation → Return Generation & Uploading
- Generation of TDS/TCS Certificates from TRACES
- Request for a Revised Return for any Correction from TRACES
- Bulk PAN Verification → 100% Online, No Paper Work!

Secure & Fast Generation of Bulk TDS Entries

Rebuilt on the Latest Technology

Bulk Filing?

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