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Volume : 41 I Part 8 I November, 2017

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

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

Published By

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Mananam

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Fit and Proper

Wishing you all a very Happy and Prosperous New year!

In this context I remember one shlok in sanskrit

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It means, all should/must be happy, be healthy, see good;

May no one have a share in sorrow.

And I have read somewhere that "Happiness is a perfume you cannot pour on others without getting a few drops on yourself." so by giving happiness you will be happy.

Now, I would like to wish my readers and friends, Chartered accountants that in new year be "fit and proper" fit means one should have expertise, knowledge and competing skill to remain in the field of Chartered accountants and practice.

<u>Proper is really a very vide subject</u>

"Proper" means integrity and reputation as perceived by the society, this impression or opinion is generally formed on the basis of the association one has with others. Society will form an opinion after seeing conduct of the person. Further, a professional person must be straight forward and independent and not to be influenced by any things or hospitality. Character of a person should be so high that no one should dare raise a finger on the character of the person and that level is expected by the society from our profession. Now it is our turn to introspect whether we are fit and proper or not? If during this introspection one find any deficiency it is to be improved or removed at the earliest. In past one Railway minister had resigned on account of Railway accident this is an excellent example for the society at large.

These qualities may come from hard training and strong willingness and the result would be "Fit and proper"

So let me wish you all "fit and proper" in the coming year.

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Reforms - the order of the day

The Gujarat and Himachal assembly elections gave thumbs up to the Bharatiya Janta Party (BJP). The BJP retained Gujarat despite 22 years of incumbency and successfully snatched Himachal Pradesh as Congress lost yet another state to the duo of Narendra Modi and Amit Shah. In democracy, opposition plays an important role. After the Narendra Modi has taken over as the Prime Minister, the opposition has been reduced to almost a negligible number. In the context, Gujarat has voted very smartly. On one had it has supported the reforms of the Modi government and granted five more years to govern Gujarat and on the other hand it has restricted the margin of majority so that there's also a strong opposition to question the action of the government.

Though the BJP in Gujarat has lost few seats to the Congress, the intent of the Narendra Modi government at the centre is clear that there won't be any compromise to reforms. In the process, The Companies (Amendment) Bill, 2017 which seeks to bring about major changes in the Companies Act, 2013, has been cleared by the Rajya Sabha by a voice vote. The bill, which was adopted by the Lok Sabha in July, will now have to receive the assent of the President to become law. The proposed changes in the said Bill will help in simplifying the procedures, make compliance easy and take stringent action against defaulting companies. Some of the features include:

Loans to Director: The bill substitutes entire section relating to 'loans to director' under Companies Act, 2013. It introduces certain checks and balances by way of approval process and for enabling 'loans to directors' in certain cases.

Managerial Remuneration: The Bill liberalises provision related to Managerial Remuneration by replacing approval mechanism for managerial remuneration.

Auditors Report: It mandates requirement that statutory auditor of company to report on compliance of provisions of managerial remuneration and whether remuneration paid to any director is in excess of prescribed limits.

The FRDI Bill, 2017 has been much talked about in the media, including social media. This has become the topic for discussion in every chat be it business, household or professionals. The bill has raised many concerns among the depositors. It deals with insolvency and bankruptcy in financial sector companies covering all financial service providers including banks, NBFCs, microfinance institutions and insurance companies. There has been a lot of hue and cry over the bill's clauses, especially the 'bail-in' article, which allows restructuring of a bank's debt by adopting different provisions, including usage of depositors' money to take crumbling banking institutions out of bankruptcy. We need to understand whether the concept of bail-in is justified or not and what impact it will carry on the deposits of public at large. Well, the time will clear the dust as the law unfolds!

CA. Ashok Kataria

From the President

CA. Kunal A. Shah
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Dear Members,

The much-talked about elections in the state resulted in a win for Bharatiya Janta Party on 18/12/2017 and an impressive part of the triumph came from fresh faces that fought the elections for the first time. BJP set to form government for the sixth consecutive term in Gujarat. Thanks to its one-man army PM Shri Narendra Modi. Shri Narendra Modi with his extensive campaigning ensured that the "Lotus" continues to bloom in Gujarat.

We Gujarati's are such a nice people !!! Even when we vote we make sure everyone is happy about the outcome. Shri Narendra Modi retains his state with reasonable pride.

India's global branding

Emphasising on India's progress on the international arena and repositioning the nation as a global brand, Modi said, "where globally India stands, countries, large or small, want to work with India. India is constantly increasing its influence on the international stage. It has to keep moving ahead. Today, Indians living abroad are able to take pride of this nation with their heads held high."

Digital initiatives

That the several digital and online initiatives have helped farmers to sell their produce in an effective and non-hassle manner. "Mandis have been connected online. Government's e-market place called GEM is a platform where online tendering and procurement can be done, and artisans from cottage industries can sell and supply handicrafts both to public and government. Digitisation has created an ecosystem due to which the level of organised corruption has declined,"

Mirabai Chanu gave India a reason to smile after clinching the country's first weightlifting World Championships gold medal since 1995.

Manushi Chhillar goes from Miss India to India's Daughter: It was a moment of overwhelming joy for Manushi Chhillar and for the whole of India when she was crowned Miss World 2017. Manushi, a medical student from Haryana who dreams of being a cardiac surgeon and who took a one year break from studies to focus on representing India at the international pageant, is the sixth Indian to be crowned Miss World. She is now even recognized as the "greatest ambassador of 'Beti Bachao, Beti Padhao'.

- Activities at the Association:

A year of Demonetization and five months of GST implementation have passed and lots of changes have been implemented by the Government since then. Last two meeting of GST Council have resulted in substantial changes in GST law for "ease of doing business" and to avoid undue hardship being faced by stake holders in GST. Being Chartered Accountants, we need to understand the impact of demonetization and GST on economic growth and also the intricacies of recent recommendations of GST council and of notifications issued to implement such recommendations. Recognizing a need of time, CAA had organized a seminar jointly with The Institute of Company Secretaries of India, Ahmedabad Chapter for their members which was well attended by the participants.

Chartered Accountants Association, Ahmedabad won the cricket match against Rajkot Branch of ICAI of WIRC by 33 runs at Rajkot on 25th November,2017.

CAA celebrated its 67th Foundation day on 15th December, 2017 by organizing a "Walkathon" in which members including past presidents of CAA were present at large and made the event a successful one.

A Memorial Lecture Meeting in the auspices of late Shri C. F. Patel and Late Shri K. T. Thakor was organized by CAA on 15th December, 2017 in which participants took benefit of the subject on Contemporary issues under GST by CA Abhay Desai from Baroda and Latest Judicial Decisions under I.Tax. law by Advocate Manish J. Shah and Advocate Mehul K. Patel.

I would like to conclude with the thought on fellowship - "Fellowship is a place of grace, where mistakes aren't rubbed in but rubbed out. Fellowship happens when mercy wins over justice."

¯ Rick Warren

"The fellowship of true friends who can hear you out, share your joys, help carry your burdens, and correctly counsel you is priceless." - **Ezra Taft Benson**

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

With best regards,
CA. Kunal A. Shah
President

Short Analysis on the Powers of the Commissioner u/s 263 of the Income Tax Act, 1961.

Adv. Tej Shah
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Scope of Revision u/s 263 - Once an assessee during the course of scrutiny furnishes all the requisite details and the AO passes an order, the matter attains finality qua the assessee's front. Therefore, in order to keep a check on the abuse of the powers of the AO that he has passed the order after thorough examination of facts and as per the prevailing law, the CIT has been conferred with plenary powers under the act to revise any order passed by the AO. However, in order to ensure that those powers are not misused and the assessee is not put to undue hardships, a cap was put on the jurisdiction of the CIT to revise such orders. Let us understand in further detail as to under what circumstances can a CIT exercise such powers.

Analysis of the provision - Sub-Sec (1) to S. 263 starts with the words "*the CIT may call for any record and examine the record of any proceeding*". There are 3 essential ingredients of this part.

Firstly, that "*the CIT **may** call for*". Therefore it is the absolute discretion of the CIT to revise an order passed by the AO. He need not take the permission of any authority/court for exercising his powers. The condition precedent is that he has to apply his own mind and come to a definite conclusion, which has to be an independent act and not act on the directions of the CBDT or any other authority. See **Sirpur Paper Mill Ltd. v CWT (77 ITR 6) (SC) and Greenworld Corporation 314 ITR 81(SC)**.

Secondly, "***record***" has been given a wide connotation to mean not only the record before the AO during scrutiny proceedings, but also any such material/information coming into the possession of the CIT even after the passing of the AO's order, if such record/information conclusively proves the AO's order is erroneous in so far as prejudicial to the interest of the revenue.

Thirdly, he can exercise such discretion in relation to "***any order***" passed by the AO. Such order has been construed as not necessarily an order passed u/s 143(3). Example an order rejecting the registration of a firm or; dropping the assessment proceedings even though a return has not been filed. Once an order passed by the AO has attained finality meaning thereby it affects the rights of an assessee, the CIT has the authority to revise any such order.

A question may arise as to **whether an order u/s 143(1)(a) can be revised or not** – The CBDT vide Circular No. 176 dt.August, 28, 1987, has instructed all Commissioners that no remedial action is necessary in summary assessment cases. This has been followed by the **Hon'ble Gujarat High Court in CIT v. Vikrant Crimpers (282 ITR 503) andAllahbad High Court in CIT v. BrijBala (274 ITR 33)**. However the **Hon'ble Patna High Court in CIT v. Happy Medical Stores (185 ITR 413)**has taken a contrary view and held that revision in summary assessment cases is permissible.

Now coming to the most important ingredient of this section. What is the nature of such orders that can be revised by the CIT? If the CIT was given unfetterd powers to rectify each and every little error committed by the AO, then it would lead to unnecessary hardships to the assessee and multiplicity of litigations. Therefore Sub-Sec (1) carries within itself an inbuilt proviso or a safeguard that an order of the AO can be revised only if it is "***erroneous and thereby prejudicial to the revenue***". It is imperative that both the elements of being erroneous **and** being prejudicial to the revenue must co-exist because the word "*and*" is used. It was interpreted by the Hon'ble SC in the case of **Malabar Industrial Co. v. CIT (243 ITR 83)** that even if either of the ingredients is missing, i.e. if the order is erroneous but not prejudicial to

the interests of the revenue, or, if the order is not erroneous but prejudicial to the interests of the revenue, the CIT does not have jurisdiction to revise them.

Erroneous order in its first glance means an order passed by incorrect assumption of facts or incorrect application of law as interpreted by the Hon'ble SC (supra). Similarly "Prejudicial to the revenue" would mean that by way of such erroneous order, a bias is caused to the revenue thereby resulting into loss of revenue which otherwise would not have resulted into if the AO had passed a judicious order. This is the reason why the words "erroneous" and thereby "being prejudicial to the revenue" are used in conjunction with each other. A distinguishing line has to be drawn between causing "loss" and causing "prejudice" to the revenue. For instance if an AO calls for the requisite details relating to a particular issue, the assessee furnishes it and the AO chooses to accept that view after delving into the nuances of the facts and the prevailing law, the CIT cannot again say that it has prejudiced the revenue merely because there is a revenue loss. It is very important to note here that the AO should have applied his mind to all the facts and the underlying law to have accepted the claim of the assessee. If it prima facie appears that the AO has grossly neglected in appreciating the facts and the taxing section, then even though if he has called for every minute detail and examined it, does not estop the CIT from exercising his jurisdiction to revise. **GreenworldCorporation (supra)** and a very recent instance of the ***Delhi ITAT in the case of Technip U.K. Ltd. v. DIT (2017 – 81 Taxmann.com 311)*** would make it clear. In this case, the AO after calling for details and examining the same was satisfied that the assessee was liable to be presumptively taxed u/s 44BB. The DIT on the other hand held that as S. 44BB did not cover second leg of contract and the said beneficial section was not applicable to sub-contractors engaged in providing technical services to contractors undertaking projects in oil exploration. According to him, income received by the assessee was squarely covered u/s 44DA. The ITAT in its wisdom held that the assessee had furnished complete details of contract and detailed submission on queries raised by the AO and after duly examining/verifying the details/explanation filed by assessee, passed an order u/s 143(3) accepting the returned income. Since a possible view was adopted by the AO, the exercise of jurisdiction u/s 263 was held to be bad in law. See **Hon'ble Gujarat High Court in Micro Inks Ltd. v. Pr. CIT (2017) 85 Taxmann.com 310**.

If income is assessed in wrong hands other than the assessee because the assessee wants to be assessed in his hands, revision is permissible. See **Smt. Tara Devi Aggarwal v. CIT (88 ITR 323) (SC)**.

Where AO has followed decision of High Court which was later reversed by the Supreme Court revision is not permissible as during scrutiny proceedings the decision of the High Court was in favour of the assessee. See **CIT v. G.M. Mittal Stainless Steel P. Ltd. 263 ITR 255 (SC)**. However, if a decision of a High Court was in favour of the assessee during scrutiny which was later on reversed by the same High Court expounding the law which was in existence at the time of scrutiny before the AO, the CIT has powers to revise such orders. See **CIT v. Shriram Development Co. (159 ITR 812) (M.P.)**.

Subsequent amendment in law cannot for the basis of revision if the AO had applied the prevailing law after thorough application of mind. See **CIT v. Saluja Exim Ltd. (329 ITR 603) (Punj. &Har.)**.

Ommission to make further inquiries before accepting the statements made by the assessee in his return is termed to be erroeneous. See **CIT v. Pushpa Devi (164 ITR 639) (Pat)**.

If the assessee has adopted an accounting principle consistently since many years which has been accepted by the AO, the CIT does not have the powers to revise the same, provided special circumstances warrant it. See **CIT v. Escorts Ltd. (2011) 198 Taxmann 324 (Delhi) and Gujarat High Court in SJ & SP Family Trust (2016) 76 Taxmann.com 215**.

No Inquiry v. Lack of Inquiry - If the AO without inquiring into the facts and circumstances of the case and without applying his mind to the controversy, allows the claim of the assessee on a blanket basis, it is a bounden duty of the CIT to revise such orders and direct the AO to pass a fresh order after properly inquiring into it. Whereas if after thorough examination of all the material on record, if the AO passes an order, the CIT cannot revise the same merely because some other view is possible. The AO should have thoroughly examined all the material before him and applied the law rationally, even though there is no mention of the same in the assessment order while allowing the claim. See **Malabar Industrial (supra) and Hon'ble Gujarat High Court in ArvindJewellers (290 ITR 689)**.

CIT must establish beyond reasonable doubt how the order is erroneous and prejudicial to the revenue – The words "***if he considers***" postulate that before the CIT assumes jurisdiction to revise, he himself must come to a definite conclusion that because of such reasons the order is in erroneous and prejudicial. The said reasons have to be recorded in the show cause notice so as to enable the assessee to furnish his explanation. Only after he concludes that such claim is unacceptable in law, can the CIT proceed to revise. Failure to undergo this exercise and merely on a blanket basis directing the AO will vitiate the proceedings u/s 263. See **Patna High Court in CIT v. ShantilalAgarwalla142 ITR 778 and Gujarat High Court in CLP India P. Ltd (2017) 85 Taxmann.com 103**. More importantly, if the CIT does not include the ground of revision in the show cause notice, that ground cannot be made the basis of an order passed u/s 263. This is because it has not enabled the assessee to file his explanation, which is grossly against the principles of natural justice. See **Delhi ITAT in Maxpak Investment Ltd. v. ACIT (2007) 13 SOT 67**.

Powers of CIT when the issue(s) is in appeal– Explanation 1(c) has clarified that when the subject matter of revision is in appeal before the CIT(A), the CIT has no power to revise the same. This is because the powers of the CIT(A) are co-terminus to that of the CIT and the CIT(A) has the powers to enhance qua that subject matter. However, if the subject matter of revision is not in appeal before the CIT(A) and the AO has not conducted any inquiry on those issues, then the CIT has the power to revise u/s 263 so as to guard the interests of the revenue. **See Hon'ble A.P. High Court in CIT v. G.K. Kabra (211 ITR 336) andDelhi ITAT in Fabindia Overseas P. Ltd. v. DCIT (2011) 10 Taxmann.com 70**.

Effect of the new Explanation 2 vide Finance Act, 2015 -

What tantamounts to an order being erroneous and prejudicial to the revenue was a matter of controversy wherein various courts have aided in interpreting the same. However, in order to bring more clarity to the issue, S. 263 was amended and Explanation 2 w.e.f. 1-6-2015 was brought into the statue book whichlays down 4 conditions wherein an order passed by the AO shall be deemed to be erroneous in so far as it is prejudicial to the interests of the revenue. This is not something which the tax practitioners were not aware of. The crux of this explanation is what was till now implicit, has been made explicit.

The **Mumbai ITAT in Narayan TatuRane (2016) 70 Taxmann.com 227** after analyzing the effect of New Explanation has held that it does not grant unfettered powers to the CIT to revise each and every order, if in his opinion, same has been passed without making enquiries or verification which should have been made.

To sum up, the position even after the newly added explanation remains the same. The principles laid down by various courts have to be followed by the CIT in concluding as to what constitutes an order to be erroneous and thereby prejudicial to the revenue.

***

Glimpses of Supreme Court Rulings

Adv. Samir N. Divatia
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22 Presumption of Jointness of Property:

It is more so when these findings are neither against the pleadings nor against the evidence and nor contrary to any provision of law. They are also not perverse to the extent that no such findings could ever be recorded by any judicial person. In other words, unless the findings could ever be recorded by any are found to be extremely perverse so as to affect the judicial conscience of a judge, they would be binding on the appellate court.

It is a settled principle of law that the initial burden is always on the plaintiff to prove his case by proper pleading and adequate evidence (oral and documentary) in support thereof.

It is a settled principle of Hindu law that there lies a legal presumption that every Hindu family is joint in food, worship and estate and in the absence of any proof of division, such legal presumption continues to operate in the family. The burden, therefore, lies upon the member who after admitting the existence of jointness in the family properties asserts his claim that some properties out of entire lot of ancestral properties are his self-acquired property (See Mulla, *Hindu Law*, 22nd Edn. Article 23 "Presumption as to coparcenary and self-acquired property."

Adiveppa and Others Vs. Bhimappa and Another (2017) 9 SCC 586

23 Scope of interference-Appreciation of evidence

The Supreme Court cannot appreciate the evidence again *de novo* while hearing the appeal by special leave. Though it is not permissible, yet the evidence is probed herein with a view to find out any error in the impugned judgment calling interference of the Supreme Court. The court, however, finds no such error in the present case.

Nagar Palika, Raisinghnagar Vs. Rameshwar Lal and Others. (2017) 9 SCC 618

24 SEBI Act, 1992 – S.28A r.w.s. 220(2) Income Tax Act, 1961 and S.4(1) Interest Act, 1978:

Section 28-A was first inserted by an ordinance dated 18.07.2013.

Ultimately, Section 28-A was enacted by the securities laws(Amendment)Act of 2014 by which this section was brought into force, with effect from the date of the first ordinance i.e. with effect from 18.07.2013.

Provision by which the authority is empowered to levy and collect interest, even if construed as forming part of the machinery provisions, is substantive law for the simple reason that in the absence of contract or usage, interest can be levied under law and it cannot be recovered by way of damages for wrongful detention of the amount.

An examination of the Interest Act, 1978 would clearly establish that interest can be granted in equity for causes of action from the date on which such cause of action till the date of institution of proceedings.

In order to invoke a rule of equity it is necessary in the first instance to establish the existence of a state of circumstances which attracts the equitable jurisdiction, as, for example, the non-performance of a contract of which equity can give specific performance.

The Interest Act of 1978 would enable tribunals such as SAT to award interest from the date on which the cause of action arose till the date commencement of proceedings for recovery of such interest in equity.

Dushyant N. Dalal and Another Vs. SEBI (2017) 9 SCC 660

25 Retrospectivity of CBDT circulars

The view of the two-judge bench in Suman Dhamija & Gemini Distilleries that CBDT's low tax Circular dated 09.02.2011 cannot be given retrospective effect cannot be followed as it is contrary to the three-judge bench verdict in Surya Herbal. A beneficial circular has to be applied retrospectively while an oppressive circular has to be applied prospectively. Circular dated 9.2.2011 has retrospective operation except for two caveats: (i) The Circular should not be applied ipso facto when the matter has cascading effect and/or (ii) where common principles are involved in subsequent group of matters or a large number of matters.

DIT v. SRMB Dairy Farming P Ltd (dt 23-11-2017)

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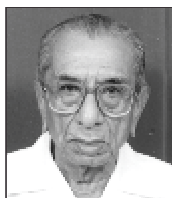

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71 Slump Sale v/s. Sale of Block of Assets : Applicability of Sec. 50(2) : CIT v/s. Epuinox Solution P. Ltd. (2017) 294 CTR SC(1)

Issue :

What is the taxability of Slump Sale and sale of block of assets?

Held :

Assessee sold entire running business and claimed the excess as long term capital gain.

Department negatived the claim of the assessee and held that provisions of Sec. 50(2) would apply and taxed the gain as short term capital gain.

Learned CIT (A), Hon. Tribunal and Hon. Gujarat High Court accepted the claim of the assessee.

On appeal to the Supreme Court by the department, it is held that:

"In our considered opinion, the case of the respondent (assessee) does not fall within the four corners of s. 50(2) of the Act. Sec. 50(2) applies to a case where any block of assets are transferred by the assessee but where the entire running business with assets and liabilities is sold by the assessee in one go, such sale, in our view, cannot be considered as "short term capital assets". In other words, the provisions of S. 50(2) of the Act would apply to a case where the assessee transfers one or more block of assets, which he was using in running of his business. Such is not the case here because in this case, the assessee sold the entire business as a running concern.

As rightly noticed by the CIT(A) that the entire running business with all assets and liabilities having been sold in one go by the respondent assessee, it was a slump sale of a "long term capital asset". It was therefore, required to be taxed accordingly."

72 Speculative Business : Applicability of Sec. 73 to Sale of shares which are allotted. AMP Spinning & Weaving Mills (P) Ltd. v/s. ITO (2017) 295 CTR 171 (Guj), 243 Taxman 0001 (Guj)

Issue :

Whether loss arising out of sale of shares which were received on allotment can be said to be speculative loss in terms of provisions of Sec. 73 of the I.T. Act?

Held :

"Getting shares by allotment in public issue did not constitute "purchase", hence sale of such shares did not constitute speculative business under Explanation to S. 73 and loss from sale was not speculative loss".

Allotment of shares by way of application in public issue does not amount to be a transaction hence did not amount to purchase. There is a vital difference between "creation" and "transfer" of shares. Words "Allotment of shares" have been used to indicate the creation of shares by appropriation out of the unappropriated share capital to a particular person. Whichever rule of interpretation is followed, whether literal or object –wise or purposive, the transactions of the assessee cannot imaginably be deemed to be a speculative business. When the allotment of shares cannot be termed as purchase, then the assessee cannot be said to be carrying on a speculation business to the extent to which the business consists of the purchase and sale of such shares. Thus it shall not be covered under Explanation to S. 73.

73 Sec. 144C : Variation in the income proposed in the draft assessment order : Not permitted : Principal CIT v/s. WOCO Motherson Advanced Rubber Technologies Ltd. (2017) 295 CTR 161 (Guj), 246 Taxman 0377 (Guj)

Issue :

In the matter of transfer pricing, whether the A.O. can change the income which is shown in the draft order?

Held :

There is complete machinery provided under S. 144C. In the entire scheme of S.144C, it refers to the draft assessment order i.e. variation in the income or loss returned proposed in the draft assessment order. Therefore, while passing the final assessment order, the A.O cannot go beyond what is proposed in the draft assessment order. If the submissions made on behalf of the Revenue are accepted that the A.O. while passing the final assessment order can also go beyond the variation proposed in the draft assessment order, then in that case, it can be said that the assessee shall not be given any opportunity to raise objections against such additions or disallowances which were not even proposed in the draft assessment order. Therefore, the same can be considered to be in breach of the principles of natural justice. Under the circumstances, the Tribunal has not committed any error in deleting the disallowance made by the AO with respect to the claim of the assessee under s. 10AA, as the same was not proposed by the AO in the draft assessment order and for which, no opportunity was given to the assessee to submit the objections against such disallowance.

74 Sec. 263 : Order of A.O. erroneous Principal CIT v/s. Krishak Bharti Co-Operative Ltd, (2017) 295 CTR 181 (Del), 395 ITR 0572 (Del)

Issue :

When can an order of Assessing Officer be considered to be erroneous, so as to apply provisions of Sec. 263?

Held :

"The first question which this Court addresses itself to is the order under s. 263 as to the issues which were not covered by the show cause notice issued to the assessee. On this CIT v/s. Ashil Rajpal (2009) 23 DTR (Del) 266: (2010) 320 ITR 674 (Del) is categorical. Besides, the assessee is also justified in complaining that the CIT could not have branded the AO's order as erroneous in the facts and circumstances of this case. In the earlier year, the A.O. had finalized the scrutiny assessment, considered the impact of arts. 11 and 25 of the Indo Omani DTAA, and issued pointed queries on the issue of dividends earned. He had also considered whether a PE had earned dividend income. In such circumstances, the CIT could not have stated that another view rendered the AO's plausible view erroneous. In the facts of this case, neither did the AO overlook the relevant facts, nor did he not make inquire. In fact the queries were specifically with respect to dividend income, the exemption etc. and had also considered the explanation of the Omani authorities on the subject. Therefore, the CIT's view that the assessment orders were erroneous requiring revision was not sustainable in law."

75 Stay of Demand on payment of 15% of demand : Reconsideration not permitted. Telenor (India) Communications (P) Ltd. v/s. Asstt. CIT (2017) 295 ITR 202, 394 ITR 153 (Del)

Issue :

Whether Assessing Officer can revise his order of payment of further tax, once stay has been granted and Court's order was to see if further relief was granted?

Held :

A.O. having granted the facility of paying only 15 per cent of the outstanding demand in his first order and allowed stay of remaining demand during the pendency of its appeal, and the Court on the assessee's writ petition, having directed the AO to consider whether further relief could be granted, the AO could not have revisited the matter in

entirety; impugned order passed by the AO to the extent it reviewed the previous order and directed payment of additional amount, was set aside.

76 I.T.A.T. Power to admit additional Ground of Appeal

V.M.T. Spinning Co. Ltd. v/s. CIT and Anr. (2017) 295 CTR 306 (P& H), 389 ITR 0326 (P & H)

Issue :

What is the power of I.T.A.T. to admit additional Ground of Appeal and how the same to be exercised?

Held :

The usage of the words "pass such orders thereon as it thinks fit" in s. 254(1) gives very wide powers to the Tribunal and such powers are not limited to adjudicate upon only the issues arising from the order appealed from. Any interpretation to the contrary would go against the basic purpose for which the appellate powers are given to the Tribunal under s. 254 which is to determine the correct tax liability of the assessee. Rules 11 and 29 of the ITAT Rules, 1963 are also indicative that the powers of the Tribunal, while considering an appeal under s. 254(1) are not restricted only to the issues raised before it. A harmonious reading of s. 254(1) and rr. 11 and 29 coupled with basic purpose underlying the appellate powers of the Tribunal which is to ascertain the correct tax liability of the assessee leaves no manner of doubt that the Tribunal while exercising its appellate jurisdiction would have the discretion to allow to be raised before it new additional questions of law arising out of the record before it. What cannot be done is examination of new sources of income for which separate remedies are provided to the Revenue under the Act.

77 Reopening : Change of Opinion : Voluminous Details

Principal CIT v/s. Sun Pharmaceutical Industries Ltd. (2017) 295 CTR 323 (Guj), 241 Taxman 0332 (Guj)

Issue :

Submission of voluminous details by assessee and where no comment is made by Assessing Officer passing original order, whether reopening on ground of voluminous details is change of opinion?

Held :

AO who made the original assessment having not faced any difficulty in proceeding with the material produced by assessee, successor AO was not justified in reopening the assessment on the ground that voluminous details furnished by assessee were very confusing or presented in such a manner that it would not be easily understood by AO; further, order of AO merged with the appellate order and was no more available to successor AO for reopening on the ground that deduction was wrongly claimed by assessee.

78 Sec. 244 A(1)(b) and Interest on Interest

Preeti N. Aggarwala v/s. Chief CIT (2017) 295 CTR 349 (Del), 248 Taxman 0261 (Del)

Issue :

Whether interest on refund of interest waived is payable to assessee?

Held :

Even if there is no express statutory provision for payment of interest, the Government cannot avoid its obligation to reimburse the lawful monies "together with accrued interest" for the period of "undue retention". Once it is clear that a 244A(1)(b) which talks of "any other case" does not have to be interpreted restrictively and can include situations like in the present case, then it is evident that there is nothing in the provision of s. 244A which prohibits the payment of interest on an amount of refund due to the assessee as a result of the waiver of interest under s. 220(2A). The sum found refundable to the assessees as a result of the waiver of interest order passed by the Chief CIT is a definite sum that was wrongly deducted from the assessee as interest. Payment of interest on that sum by the Revenue cannot be characterized as payment of 'interest on interest'.

There is nothing in the provision of s. 244A which prohibits the payment of interest on an amount of refund due to the assessee as a result of the waiver of interest under s. 220(2A).

79 Search : No incriminating materials found : No reopening allowed.

CIT v/s. Lancy Constructions (2017) 295 CTR 454 (Kar), 237 Taxman 0728 (Kar)

Issue :

When in the course of original assessment books (audited) are accepted and when no incriminating material is found in the course of search, whether the reopening of the assessment is permitted?

Held :

There is a specific finding of fact recorded by the Tribunal, as well as the CIT(A), that there were no incrimination documents found during the course of search, on the basis of which the additions have been made by the AO and that the accounts which were submitted by the assessee at the time of regular assessment were duly verified during the course of such assessment and accepted by the AO and in the absence of any incriminating documents having been found, the same accounts of the assessee were reassessed by making further investigations, which is impermissible, as the same would amount to reopening of a concluded assessment, without there being any additional material found at the time of search. Additions could not have been made by the AO without rejecting the books of account of the assessee, and also without there being any adverse comment made by the AO with regard to the books of account that were maintained by the assessee, which were duly audited if assessment is allowed to be reopened on the basis of search, in which no incriminating material had been found, and merely on the basis of further investigating the books of accounts which had been already submitted by the assessee and accepted by the AO at the time of regular assessment, the same would amount to the Revenue getting a second opportunity to reopen the concluded assessment, which is not permissible under the law. Merely because a search is conducted in the premises of the assessee, would not entitle the Revenue to initiate the process of reassessment, for which there is a separate procedure prescribed in the statute. It is only when the conditions prescribed for reassessment are fulfilled that a concluded assessment can be reopened.

80 Income Tax Department valuer v/s. Inspector of Survey and land records.

CIT v/s. K.R.N. Prabhakaran (HUF) (2017 393 ITR 175 (Mad)

Issue :

Between the Valuer of I.T. Department and Valuer (Inspector) of Revenue Department whose report is to be believed?

Held :

Revenue Department and survey authorities were competent to measure the land and issue appropriate certificates, and these could not be ignored by the Assessing Officer, by relying on the report of the investigation wing. In such matters, it would be appropriate, to take the assistance of the survey authorities to arrive at the conclusion. On the facts and circumstances of the case, in the matter giving weightage to the evidence adduced in this regard, report of the Departmental Inspector vis-à-vis certificate of the Revenue authorities, produced before the Assessing Officer, the latter ought to be given weightage and accepted, unless the contrary was proved. The Tribunal was justified in holding that the land was agricultural. No substantial question of law arose from the order of the Tribunal.

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Tribunal News

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43 Dr. Rajiv I. Modi vs.DCIT 86 taxmann.com 253 (Ahd) Assessment Year: 2010-11 Order dated: 21st September, 2017

Basic Facts

The assessee, a salaried individual was a director in a pharmaceutical company. In the return of income for the said year, the assessee claimed a credit for the taxes paid by him in US against his India tax liability. The AO disallowed the claim for credit of taxes on the ground that Article 2 of DTAA covers only the Federal income tax paid in US. The assessee appealed before the CIT(A) and relied on the decision of Tata Sons Limited wherein it was held that since section 91 of Act does not discriminate between state and federal taxes, assessee is entitled to take tax credits in respect of state income taxes paid abroad. The CIT(A) refused the appeal of the assessee on the ground that it is pending before the High Court and upheld the order of the AO. Aggrieved by the order of CIT(A), assessee preferred an appeal before the ITAT.

Issue

Whether the disallowance made by AO and sustained by CIT(A) for state taxes paid by the assesse in US was correct in law?

Held

Section 90(2) of the Income Tax Act provides that when a DTAA has been entered into with any country, the provisions of the Act shall apply to the extent they are more beneficial to the assessee. The provisions of Section 91 of the Act are to be treated as general in application and can yield to the treaty provisions only to the extent the provisions of the treaty are beneficial to the assessee. Even though the assessee was covered by the scope of the India-US DTAA, so far as tax credits in respect of state taxes paid for in the US are concerned, the provisions of section 91 of the Act, being beneficial to the assessee would apply. Since section 91 of the Act does not discriminate between state and federal taxes, and in effect provides for both these types of income taxes to be taken into account for the purpose of tax credits against Indian income tax liability, the assessee is entitled to tax credits in respect of state income taxes paid abroad. Accordingly, the plea of the assessee in respect of credit for the state taxes paid is allowed.

44 Shri Akulu Nagaraj Gupta Subbaraju 86 taxmann.com 38 (Bang) Assessment Year: 2005-06 to 2009-10 Order Dated: 31st August, 2017

Basic Facts

The assessee had borrowed from KSFC to acquire a house property at higher rate of interest and subsequently the assessee borrowed from SBI at lower rate of interest to repay the loan from KSFC and to spend for the alteration, furnishing, cabling, networking civil work and partition, etc. as per the requirement of the tenant. The AO disallowed the interest paid to SBI on the basis that the assessee has not utilized the loan for the purpose of construction and repair of the house. The CIT(A)

upheld the order of the AO. Aggrieved, assessee appealed before the ITAT.

Issue

Whether the interest paid on loan taken from SBI to repay the loan from KSFC be allowed under section 24(b)?

Held

The Hon'ble ITAT held that the claim of the assessee that the loan from SBI is for repayment of housing loan earlier borrowed from KSFC is not disputed by the AO in the assessment order. On the basis of the decision cited by the assessee in the case of Sunil Kumar Agarwal, the ITAT held that interest on subsequent loan to repay the earlier housing loan is allowable on the condition that the assessee has to establish that the subsequent loan is to repay the earlier housing loan and such deduction on interest is allowable only to the extent of interest on earlier loan used for acquiring or constructing the housing property and not on the unpaid interest on such earlier housing loan or subsequent housing loan to repay the earlier housing loan. Thus, the ITAT directed the CIT(A) to adjudicate the matter afresh for all the five assessment years.

45 Future Corporate Resources Limited vs.DCIT85 taxmann.com 190 (Mum) Assessment Year: 2011-12 Order Dated: 26th July, 2017

Basic Facts

During assessment proceedings, the AO noticed that the assessee was holding investments at the beginning of the year and at the end of the year, income from which does not or was not forming part of total income. Therefore, the assessee was asked to furnish the details of his investment and to show cause as to why disallowance u/s 14A should not be made in accordance with the provisions of Rule 8D. In response to the show cause notice, the assessee submitted that it has made investments in various subsidiary companies as a promoter and also as part of strategic investment but not to earn dividend income. The AO took a view that company cannot earn dividend without incurring expenditure and thus disallowed 0.5% of average value of investments u/s 14A r.w.r. 8D of IT Rules, 1962. The CIT(A) confirmed the said disallowance. Aggrieved, the assessee preferred an appeal before the ITAT.

Issue

Whether section 14A disallowance can be attracted when assessee has made investment in subsidiary as a promoter?

Held

The Hon'ble ITAT held that the sum and substance of the argument of the assessee is that there shall be no disallowance u/s 14A towards expenditure as its investments are strategic investments in group companies and also the shares are held by way of amalgamation. If at all any disallowance is warranted, then the computation made by the AO by taking market value of shares held by amalgamation needs to be corrected. The ITAT relying on the decision of Godrej and Boyce Mfg. Co. Ltd. held that disallowance u/s 14A r.w.r. 8D is applicable, the moment assessee is having exempt income. On facts the Tribunal held that the assesse had investments not only in subsidiaries but also in mutual funds and hence concluded that assessee failed to prove its claim that it had investments only in subsidiary companies as strategic investment. Further, the ITAT noted that the AO has disallowed an amount which exceeds exempt income and held

that disallowance u/s 14A cannot exceed the exempt income earned. Thus, the ITAT directed the AO to restrict disallowance u/s 14A to the extent of exempt income earned by the assessee. Resultantly, the appeal was partially allowed.

46 M/s. Tavant Technologies India Pvt Ltd vs. DCIT83 taxmann.com 105 (Bang) Assessment Year: 2008-09 Order Dated: 31st May, 2017

Basic Facts

The assessee had claimed the adjustment on account of under-utilisation of capacity due to business recession and unavoidable circumstances. Further it was contended that cost of employees and cost of rental due to under utilisation of capacity was also required to be considered for adjustment. But it was submitted by the assessee that it was not feasible for the assessee to give all the details of the comparable companies regarding capacity utilization. The TPO had not given the adjustment of under-utilisation of capacity.

Issue

Whether adjustment on account of capacity utilization could be disallowed in absence of adequate information?

Held

The Hon'ble ITAT held that the assessee has not given the proper details as well as evidences to show the level of capacity of utilization of the assessee as well as comparable companies. The assessee had submitted that it was not feasible for the assessee to give all the details of the comparable companies regarding utilisation. The ITAT hence did not find any merits in assessee's case when the assessee failed to produce the relevant details regarding the level of capacity utilization of each and every comparable company in comparison to the assessee's capacity utilization. The Tribunal therefore in absence of necessary details and evidence rejected the ground of appeal.

47 DCIT Vs. Ochoa Laboratories Ltd 85 taxmann.com 168 (DEL) Assessment Year: 2007-08. Order dated: 25th August,2017

Basic Facts

The assessee was engaged in the business of trading of pharmaceutical products. During the year under consideration, the assessee had claimed depreciation on UPS, rack, switch and battery@ 60% considering the same as computer. The A.O. had disallowed on the basis that the same do not form part of computer peripherals and hence are eligible for depreciation @15% falling in the block of Plant & Machinery. On appeal, the assessee relied on the decision of the Hon'ble Delhi High Court in the case of BSES Yamuna Powers Ltd. *(40 taxmann.com 108)*. However, the CIT(A) upheld the order of the AO relying on the decision of the Delhi ITAT in the case of Nestle India Ltd. *(27 SOT 9)* Aggrieved, the assessee preferred an appeal before the ITAT.

Issue

Whether UPS, rack, switch and battery being computer peripherals form an integral part of the computer system and therefore eligible for depreciation @60%?

Held

Before the Hon'ble ITAT, the Ld. Counsel of assessee relied on the decision of the Delhi ITAT

in the case of Steel Authority of India (SAIL) where depreciation @60% was allowed on computer peripherals. The ITAT held that the Tribunal's judgement relied by the CIT(A) in the case of Nestle India Ltd. (supra) was very old as compared to the decision of Hon'ble Delhi HC relied by the assessee in the case of BSES Yamuna Powers Ltd. The Tribunal in case of SAIL held that computer peripherals such as UPS system/inverters are essentially part of computer system and computers in the modern age cannot work independently without these basic peripherals. Therefore, respectfully following the ITAT's decision in the case of SAIL, ITAT reversed the CIT(A)'s order holding that the given items were entitled to depreciation @ 60% applicable to computers. Accordingly the cross objection of the assessee was allowed.

48 ACIT Vs. Sunil Shinde85 taxmann.com 297(Bang) Assessment Year: 2011-12 Order dated: 31st August, 2017

Basic Facts

The assessee was an employee of Fidelity Business Services India Pvt. Ltd. He was transferred to Fidelity, USA. In the relevant year, the assessee was present in India for more than 182 days and therefore the assessee was an ordinary resident in India. The assessee filed return of income and claimed credit for federal tax amount as relief under section 90 read with provisions of Indo- US DTAA. The AO has considered the Federal Tax withheld in USA as a benefit and added the same to the total income of the assessee. The CIT(A) confirmed the said order. Aggrieved, the assessee preferred an appeal before the ITAT.

Issue

Whether federal tax withheld in USA should be added to the total income of the assessee?

Held

Based on the Madhya Pradesh High Court decision in case of CIT V Yawar Rashid 218 ITR 699 wherein it was held section 5(1)(c) makes clear that what is actual income accrues or arises from outside India shall be counted, i.e. the gross income in clause (c) is not to be counted but actual income which is received at the hands of the assessee is to be counted. Accordingly the Hon'ble ITAT held that as per Section 5(1)(c), grossing up of income is not required and only net income after TDS is to be taxed in India but for granting the benefit of federal tax withheld in USA, the same has to be quantified as per Article 25 of the Indo USA DTAA. The ITAT set aside the Order of CIT(A) and remanded the issue to go back to AO's file for a fresh decision with a direction that the tax withheld in USA (Federal and state tax) should not be added back to quantify the income taxable in India. Further, the ITAT held that after providing the assessee with adequate opportunity of being heard, amount of foreign tax credit needs to be quantified afresh as per Article 25 of Indo-USA DTAA because such credit cannot exceed that part of income tax (as computed before the deduction is given) which is attributable to income taxed which may be taxed in United States. Thus, the appeal was allowed for statistical purposes.

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Unreported Judgements

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In this issue we are giving gist of Hon'ble Rajkot Bench of ITAT decision in the case of Ajanta Manufacturing Ltd. wherein the Hon'ble Tribunal decided following issues in favour of assessee.

i) Whether Excise Duty / VAT incentive on sale and purchase are capital receipt not chargeable to tax or revenue receipt ; and

ii) Whether A.O. is empowered to make adjustment in the book profits relating to incentive by way of subsidy being capital receipt in nature for computing book profit u/s 115JB of the Act.

Since the second issue is more important, we have discussed facts relating to second issue in the Gist.

We hope the readers would find the same useful.

In the Income Tax Appellate Tribunal Rajkot Bench, Rajkot

(Conducted Through E-Court at Ahmedabad)

Before Shri Mahavir Prasad, Judicial Member

and

Shri Manish Borad, Accountant Member

ITA Nos. 263 & 264/Rjt/2013
Asst. Years : 2008-09 & 2009-10

ACIT	Vs	M/s Ajanta Mfg. Ltd.
Circle-1		Orpat Industrial Estate
Rajkot		Rajkot Morbi Highway
		Morbi, Dist. Rajkot
		PAN : AAECA6115B
(Applicant)		(Responent)

Revenue by : Shri Yogesh Pandey, CIT, DR
Assessee by: Shri Vimal Desai, AR

Date of Hearing: 15/05/2017
Date of Pronouncement : 03/08/2017

Gist Only

1. From perusal of the grounds raised for A.Ys 2008-09 and 2009-10, following two common issues are raised by Revenue :-

   i) Whether Excise Duty/VAT incentive on sale and purchase are capital receipt not chargeable to tax or Revenue receipt ;

   ii) Whether learned A.O. is empowered to make adjustment in the books profits relating to incentive by way of subsidy being capital receipt in nature for computing book profit u/s 115JB of the Act.

   Since decision relating to second issue is more important, facts and contentions relating to it are discussed hereinafter.

2. Brief facts relating to this issue are that for A.Y. 2008-09 in the audited financial statement for Excise Duty and Sales Tax incentive received were shown in the profit and loss accounts and MAT calculated u/s 115JB of the Act on the book profit even though, assessee at a later stage during the course of assessment proceedings, revised/corrected computation of book profit u/s 115JB of the Act wherein Excise/VAT incentive on sales and VAT incentive purchases were reduced from net profit being capital receipt wrongly shown in the profit and loss accounts. However, A.O. did not accept the revised working of book profit and assessed book profit as shown in the Audited Financial Statement. Whereas in A.Y. 2009-10 the Sales Tax and Excise Duty incentive were directly added to the capital reserve and there was no effect in the profit and loss accounts, but A.O. while finalizing the assessment, added impugned capital receipt to the book profit for calculating MAT u/s 115JB of the Act. When the issues came up before the CIT(A), he decided in favour of

assessee with a direction to calculate book profit after excluding the capital receipt in the nature of Excise/VAT incentive and Excise Duty exemption in case they are shown in the Audited profit and loss account in A.Y. 2008-09 and deleted the addition for A.Y. 2009-10.

3. The Learned DR contended that the order passed by the CIT(A) in favour of the assessee is against the provisions of law and contended as under :

   i) The decision of the CIT(A) to change the net profit as approved by the auditor in the profit and loss account as laid before the company in its AGM is incorrect.

   ii) CIT(A) has incorrectly applied Accounting Standard-12 (AS-12) in holding that the crediting of government subsidies to the profit and loss account instead of capital reserve is not correct in terms of AS-12.

   iii) Crediting of government subsidies to profit and loss account is mandated by section 349(2) of the Companies Act. Therefore, it is impossible to say that the assessee adopted an incorrect accounting policy while constructing the profit and loss account under part-II of Schedule-VI of the Companies Act.

   iv) For immediate earlier A.Y. 2008-09, the profit and loss account submitted by the assessee includes government subsidies in the net profit. Assessee cannot have different accounting policy of crediting profit and loss account with government subsidies while preparing the profit and loss account and crediting the capital reserve while determining the book profit u/s 115JB (2) of the Act.

   v) The profit & loss account itself and the accounting policy, accounting standard & method and rate of depreciation in determining the net profit under Companies Act should be the same as they are while determining book profit u/s 115JB. There is no reference to the determination by the A.O. of the correctness of the method and rate of depreciation in determining the net profit under Companies Act. He relied on the decision CIT v/s HCL Comnet Systems & Services Ltd. 305 ITR 409 (SC) and Apollo Tyres Ltd. v/s CIT 255 ITR 273.

4. The assessee submitted that the pleas of the learned DR fails for A.Y. 2009-10 because in this year ,the learned A.O. himself has disturbed the book profit and added the impugned capital receipt to the book profit so as to calculate MAT u/s 115JB of the Act. The Tribunal after considering rival submissions held as under :

"19. We have heard the rival contention and perused the record placed before us. Examining the ground raised by Revenue referred above for both the assessment year in light of our decision that Excise Duty incentive, excise duty refund and sales tax, refund/exemption benefit are capital receipt in nature and not chargeable to tax, we find that the genesis of the issues raised in these grounds are linked to the book profit shown in the audited financial statement prepared as per Schedule-VI of the Company Act. For F.Y. 2007-08 the impugned capital receipt have been shown in the profit and loss accounts even though they were not chargeable to tax which resulted in escalating the book profit. During the assessment proceedings for A.Y. 2008-09, assessee corrected its mistake by filing revised computation of book profit and submitted that impugned capital receipts which were actually required to be added to the capital reserve have been wrongly shown in the profit and loss account. However, A.O. ignored this submission and took the basis of net profit shown in the audited profit and loss accounts for calculating MAT u/s 115JB of the Act.

20. Whereas for assessment year 2009-10 even when the impugned capital receipt

which were not chargeable to tax and were shown under the head capital reserve in the balance sheet still A.O. while computing the book profit added the impugned capital receipt in order to calculate book profit u/s 115JB of the Act.

21. *Regarding the issue whether A.O. is empowered to disturb book profit shown in the audited profit and loss accounts prepared as per Schedule-VI of the Company Act for calculating book profit, detailed submission has been made by Ld. DR relying on various judgment but they were limited only for A.Y. 2008-09 and during the course of hearing Ld. DR conceded that he is not against the "Ld. CIT (A)" findings for A.Y. 2009-10. Therefore, as far as 2009-10 is concerned Ld. DR has no objection to the findings of "Ld. CIT(A)", hence the issue for A.Y. 2009-10 reaches to the finality.*

22. *As regards to assessment year 2008-09, we observe that "Ld. CIT(A)" directed the A.O. to reduce impugned capital receipt from the net profit shown in the audited profit and loss accounts and to calculate MAT u/s 115J of the Act on the remaining amount by observing as follows in his appellate order:*

"The first issue to be decided is as to whether incentives received by the appellant should form part of the book profit in terms of section 115JB of the Act or not. Secondly, in case it is held that the incentives received by the appellant have been wrongly / inadvertently credited to the P&L A/c instead of crediting the same to the "Capital Reserve", the issue that needs to be dealt with is as to whether AO is well within his jurisdiction to make the necessary adjustment in the 'Net Profit' for computing book profit u/s 115JB of the Act.

So far as the first issue is concerned, the computation of book profit u/s 115JB is a separate code by itself. Section 115JB (2) mandates the preparation of the profit & Loss A/c in accordance with the Provisions of Parts II & III of Schedule –VI to the Companies Act, 1956. As per the 1st proviso to section 115JB, the further requirement is that while preparing the accounts it should be ensured that accounting policies and accounting standard etc., adopted for preparing the accounts shall be the same as per the accounts laid down before the company in its annual general meeting in accordance with the provisions of section 210 of the Companies Act, 1956. The starting point for computation of book profit u/s 115JB is 'net profit' as per P&L A/c computed in accordance with the provisions of Parts II & III of Schedule – VI to the Companies Act, 1956. Such net profit is subject to necessary adjustments as prescribed in the Explanation to section 115JB itself. The moot question that needs to be decided in the present case is whether Parts II & III of Schedule – VI of the Companies Act permit the exclusion of the incentives received by the appellant from the Profit & Loss A/c or not.

As per Part III of Schedule – VI of the Companies Act, 1956, the expression 'Capital Reserve" shall not include any amount regarded as free for distribution through the profit and loss account; and the expression 'revenue reserve' shall mean any reserve other than a capital reserve, Therefore, if an item of receipt is required to be credited to 'Capital Reserve' which is not available for distribution through the profit and loss account, and the same has not been credited to 'Capital Reserve' and has instead been credited to P&L A/c, this would amount to preparation of accounts which are not in accordance with Parts II/ III of the Companies Act. It is the contention of the appellant that incentives / subsidy received from the government should have been credited to 'capital Reserve' only."

5. The learned CIT then referring to section 211 (3A) of the Companies Act and also referring AS-12 held that the profit and loss account as per Companies Act is to be prepared in accordance with the various accounting

standards issued by ICAI. The proviso to section 115JB of the Act also makes it mandatory for accounts to be complied with the accounting standards. It is submitted that the appellant company has rectified the mistake and transferred the amount received as subsidy as capital reserve in the year ended on 31/3/2009 and to that extent free reserve has been reduced. Considering the above, CIT(A) held that government subsidy/incentive received by the appellant should have been credited to capital reserve instead of profit and loss account.

The next issue, the CIT(A) decided was as to whether net profit as per profit and loss account which is not prepared in accordance with provisions of parts II & III of Schedule-VI of the Companies Act can be suitably adjusted by A.O. for book profit u/s 115JB. The CIT(A) in this regard distinguished the decision of Hon'ble Supreme Court in the case of Apollo Tyres Ltd. and observed that this decision was given in the context of section 115J of the Act, wherein the requirement of compliance with the accounting standards as mandated u/s 115JB in terms of first proviso was not on the statute. He held that there are large number of cases wherein it has been held that A.,O. has the power to rework book profit u/s 115JB of the Act by recasting the accounts to make them compliance with Parts II & III of the Schedule-VI of the Companies Act. He relied on the decisions of Bombay High Court in the case of Veekaylal Investment Co. 249 ITR 597 and the Hon'ble Supreme Court decision in the case of DCIT v/s Bombay Diamond Co. Ltd. 33 DTR 59 in this regard. He also relied on the decision of ITAT Special Bench, Hyderabad in the case of Rain Commodities Ltd. v/s DCIT 40 SOT 265, Jaipur ITAT in the case of Shree Cement Ltd. in ITA No. 614/615 / 2010 and Mumbai Tribunal in the case of Sumer Builders Pvt. Ltd. v/s DCIT in ITA No. 2512, 2513 and 2514 of 2009 decided on 13/1/2012 which clearly held that when the capital gain / profit on sale of investments are directly credited to capital reserve, A.O. is empowered to make necessary adjustment for computation of book profit since accounts are not in accordance with the Parts II & III of the Schedule-VI of the Companies Act. Considering the entire facts and circumstances of the case, CIT(A) held that crediting the incentives by way of subsidy from the government to the profit & loss account instead of capital reserves in terms of AS-12, has made the accounts so prepared not in accordance with Parts II & III of Schedule-VI and therefore A.O. is empowered to make necessary adjustment in the book profit to be computed u/s 115JB by excluding the amount of subsidy so received which is held to be a capital receipt.

6. The Tribunal ultimately confirmed above findings of CIT(A) and held vide para 23 as under :

"23. We therefore in the given facts and circumstance of the case are of the view that A.O. is duty bound to compute the correct income as well as correct book profit in order to calculate the tax liability of the assessee. In case there is a mistake on the part of person preparing financial statement in showing particular receipt as Revenue even though they are capital receipt not chargeable to tax, then the assessee could not be denied the benefit of reducing the book profit to that extent because correct minimum alternative tax is to be calculated. We further find no force in the contention of Ld.DR comparing the facts of the case in these two appeals with those adjudicated by Hon'ble Apex Court. In the case of Apollo Tyres v/s CIT (supra) it was held that A.O. cannot disturb the profit and loss account which have been correctly prepared as per Schedule-VI of the Company Act. However for A.Y. 2008-09 there was a evident mistake in preparation of profit and loss account because the capital receipt which were required to be shown under the head capital reserve were wrongly shown in the profit and loss accounts. We therefore find no reason to interfere in the findings of "Ld. CIT (A)" for A.Y. 2009-10 and uphold the same. In the result grounds No.2 and 3 raised by the Revenue in A.Ys 2008-09 and 2009-10 are dismissed.

24. In the result appeal of the Revenue is dismissed".

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Controversies

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Expenditure incurred for increase in authorized capital.

Issue:-

Whether expenditure incurred for increase in authorized capital can be claimed as revenue expenditure?

Proposition:-

When expenditure incurred for increase in authorized capital it can be claimed as revenue expenditure as there is no flow of additional funds to the company on account of increase in equity capital, it has not resulted in availability of additional funds in the hands of the company and as such as per the decision of their lordships of Supreme Court in the case of India Cement 60 ITR 52 when expenditure is incurred for obtaining share capital can only be treated as capital expenditure.

View in favour of the Proposition:-

It is submitted that if the authorized capital is increased for the purpose of expansion of business and meeting the need for working capital funds for the company. The expenditure so incurred has to be treated as revenue expenditure.

Why increase in authorized capital should not be disallowed as capital expenditure. In this connection we humbly submit as under:

a) **In CIT v. Kisenchand Chellaram (India) P. Ltd. [1981] 130 ITR 385**, the Madras High Court took the view that the assessee paid fees for raising the capital of the company to the Registrar of Companies and claimed the amount paid as a revenue expenditure which was negative by the Income-tax Officer, but it was allowed by the Appellate Assistant Commissioner and the same was upheld by the Tribunal. On a reference, the court held that without capital a company cannot carry on its business and hence the expenses incurred for increasing the capital were bound up with the functioning and financing of the business. It is clear from the pronouncement of the Supreme Court in **India Cements Ltd. v. CIT** that it is the nature or character of the expenditure that determines the allowability. Just as the expenditure on money borrowed for a capital purpose did not affect the allowance, similarly, the fact that the expenditure contributed to the increase in capital should not make a difference to its allowability, if it was otherwise not capital expenditure. Accordingly, the assessee's claim for deduction was allowable.

b) In **Warner Hindustan Ltd. v. CIT [1988] 171 ITR 224 (AP)**, their Lordships dissenting from the view expressed by the Bombay High Court, the Himachal Pradesh High Court and the Delhi High Court, agreed with the view of the Madras High Court and made a, reference to the decision of the Supreme Court given in **Empire Jute Co. Ltd. v. CIT [1980] 124 ITR 1**. It was held that amount was spent by the assessee by way of fees to the Register of Companies for increasing its authorised capital. The increase in the authorised capital does not by itself result in expending the capital base or the fixed capital company. This expenditure is more in the nature of expenditure laid out for facilitating the assessee's operations and to enable it to carry on its business more efficiently

and profitably. This was done with a view to facilitate a better conduct of the assessee's business. We may again point out that by merely obtaining an authorization for increasing the authorised capital, the fixed capital of the company was not enhanced or enlarged. In this connection, we may refer to the annual report of the assessee for the year 1972, which shows that while the authorised capital rose from Rs. 1.5 crores in the previous year to Rs. 3 crores in this year, the issued and subscribed capital remained the same at Rs. 30 lakhs (5% non-cumulative redeemable preference shares of Rs. 10 each) and Rs. 98 lakhs (enquiry shares of Rs. 10 each fully paid-up). This aspect shows that on account of the increase in the authorised capital, the fixed capital or share capital of the company remained unaltered. Similarly, in **Hindustan Machine Tools Ltd. (No. 3) v. CIT [1989] 175 ITR 220 (Kar)**, a sum of Rs. 75,600 incurred by way of filing fee paid to the Registrar of Companies in respect of enhancement of the authorized share capital of the company was held deductible as revenue expenditure.

We would like to refer to the decision of Supreme Court in **Brooke bond India Ltd. Vs. CIT (1997) 225 ITR 798, 801** which had indicated a possible exception in cases where such expansion was for purposes of meeting the need for working funds of the assessee company. It is respectfully submitted that the authorized capital is increased for the expansion of business for meeting the need of working funds of the company.

With the above facts and the cases being quoted we could see that it is all about interpretations which have been different of different high courts. Some relied on the earlier judgments and some based their opinion based upon the definitions that have come up overtime of what exactly is capital expenditure. Every case had to be decided on its own canvass keeping in mind the broad picture of the whole operation in respect of which the expenditure has been incurred. The decided cases have, from time to time, evolved various tests for distinguishing between capital and revenue expenditure but no test is paramount or conclusive. There is no all-embracing formula which can provide a ready solution to the problem; no touchstone has been devised. Every case has to be decided on its own facts keeping in mind the broad picture of the whole operation in respect of which the expenditure has been incurred. The treatment that practitioners generally carry on is of the majority judgments i.e. treating this particular fee as capital expenditure relying on high-profile judgments and probably saving the assessees from going deep into further litigations in the future.

Without prejudice it is respectfully submitted that by chance if your honour decides to disallow the expenditure in question then please consider allow-ability of deduction u/s. 35D of the I.T. Act 1961.

View against the Proposition:

The Hon'ble Supreme Court of India has in the case of Brooke Bond India Ltd. [225 (ITR) 798] held as under:

"Though the increase in capital results in expansion of the capital base of the company and incidentally that would help in the business of the company and may also help in profit making, the expenses incurred in that connection still retains the character of a capital expenditure since the expenditure is directly related to the expansion of the capital base of the company. Hence, expenditure incurred is capital expenditure."

Judgment has a possible exception where such increase of capital is for expansion of Business.It is also pertinent to mention here that, it has been held by judicial decisions that any increase in the authorized share capital has an enduring benefit to

the assessee and therefore the expenditure is of a capital nature rather than that of revenue, reliance is placed upon the following decisions:

- Vazir Sultan Tobacco Co. Ltd. Vs. CIT[1998] 174 ITR 689
- Metro General Credits Ltd. Vs. CIT[1996] 80 ITR 415
- Punjab State Industrial Development Corporation Vs. CIT[1997] 225 ITR 792
- Mohan MeakinBrowerics Ltd. Vs. CIT[1979] 117 ITR 505

Summation:

In CIT v. KisenchandChellaram (India) P. Ltd. [1981] 130 ITR 385, the Madras High Court took the view that the assessee paid fees for raising the capital of the company to the Registrar of Companies and claimed the amount paid as a revenue expenditure which was negative by the Income-tax Officer, but it was allowed by the Appellate Assistant Commissioner and the same was upheld by the Tribunal. On a reference, the court held that without capital a company cannot carry on its business and hence the expenses incurred for increasing the capital were bound up with the functioning and financing of the business. . It is clear from the pronouncement of the Supreme Court in **India Cements Ltd. v. CIT** that it is the nature or character of the expenditure that determines the allowability. Just as the expenditure on money borrowed for a capital purpose did not affect the allowance, similarly, the fact that the expenditure contributed to the increase in capital should not make a difference to its allowability, if it was otherwise not capital expenditure. Accordingly, the assessee's claim for deduction was allowable. In **Warner Hindustan Ltd. v. CIT [1988] 171 ITR 224 (AP)**, their Lordships dissenting from the view expressed by the Bombay High Court, the Himachal Pradesh High Court and the Delhi High Court, agreed with the view of the Madras High Court and made a, reference to the decision of the Supreme Court given in**Empire Jute Co. Ltd. v. CIT [1980] 124 ITR 1**. It was held that amount was spent by the assessee by way of fees to the Register of Companies for increasing its authorized capital. The increase in the authorized capital does not by itself result in expending the capital base or the fixed capital company. This expenditure is more in the nature of expenditure laid out for facilitating the assessee's operations and to enable it to carry on its business more efficiently and profitably. This was done with a view to facilitate a better conduct of the assessee's business. We may again point out that by merely obtaining an authorization for increasing the authorized capital, the fixed capital of the company was not enhanced or enlarged. In this connection, we may refer to the annual report of the assessee for the year 1972, which shows that while the authorized capital rose from Rs. 1.5 crores in the previous year to Rs. 3 crores in this year, the issued and subscribed capital remained the same at Rs. 30 lakhs (5% non-cumulative redeemable preference shares of Rs. 10 each) and Rs. 98 lakhs (enquiry shares of Rs. 10 each fully paid-up). This aspect shows that on account of the increase in the authorized capital, the fixed capital or share capital of the company remained unaltered. Similarly, in **Hindustan Machine Tools Ltd. (No. 3) v. CIT [1989] 175 ITR 220 (Kar)**, a sum of Rs. 75,600 incurred by way of filing fee paid to the Registrar of Companies in respect of enhancement of the authorized share capital of the company was held deductible as revenue expenditure.

It is submitted that the principle of Capital vs. revenue in-connection with expenditure incurred on equity share is very clear. If company increases authorized capital or issues shares including right shares as held by Supreme Court in India Cement the expenditure incurred has to be treated as capital

expenditure. However, different situation arise when company issues or company incurres expenditure on buy back of shares it does not obtained any advantage of enduring nature as company does not receive any funds whatsoever and hence, the expenditure has to be treated as revenue expenditure. The payment is made as a normal business activity in order to maintain good and cordial relationship with the share holders and at the same time safeguarding the interest of existence share holders. Thus, it is an expenditure incurred wholly and exclusively for the purpose of business and should be allowed as business expenditure.

Further, it is submitted that Bombay Burma Trading Corporation Ltd. vs. CIT 145 ITR 793 (Bom), the Bombay High Court has held that expenses on issue of Bonus Shares are allowable as revenue expenditure on the ground that :

> "expenses cannot be said to have been incurred for the purposes of raising any additional capital. These are expenses which have been incurred in the normal course of business and merely because the printing was done in connection with bonus shares or the stationery was utilized probably for printing in one way or other, related to the declaration of bonus shares, it is not necessary for us to treat these expenses as being of a capital nature."

The Hon. Supreme Court in the case of CIT vs. General Insurance Corporation 286 ITR 232 held that expenses by way of stamp duty and registration of issue of bonus shares is revenue expenditure. Though this expenses are incurred in-connection with the capital base of the Assessee Company. The Apex Court held that since there is no flow of hands of increase in the capital employed it cannot be said that the company had acquired benefit or advantage of enduing nature.

It would be interesting to note that the decision of Supreme Court in the case of Brooke Bond India Ltd. V. CIT (1917) 225 ITR 798 and Punjab State Industrial Development Corporation Ltd. vs. CIT [1997] 225 ITR 792 are distinguishable judgements as these cases related to the issue of fresh shares which led to an inflow of fresh funds into the company which expense or edds to its capital employed in the Company resulting in the expansion of its profit making apparatus. The expenditure incurred for the purpose of increasing the company share capital buy the issue of fresh shares would be treated as capital expenditure as held in this cases.

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Judicial Analysis

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Gujarat High Court lays down important Principles of Law under the VAT Act which can also be useful under the Income Tax Act.

Futura Ceramics Pvt. Ltd. Vs. State of Gujarat (SCA No. 6500 of 2012, dated 20th December, 2012)

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The petitioner has challenged the impugned order passed in re-assessment proceedings on the ground that only on the basis of show cause notice issued by the Excise Department, additions are made. Counsel submitted that this would be wholly impermissible. On the other hand, Department has contended that the order is appealable and this Court therefore, should not interfered at this stage in the present case.

We may reproduce entire order of re-assessment which is rather brief and reads as under :-

"The regular assessment under section 34 of Gujarat Value Added Tax Act of the Trader is completed on 2/6/2009. At place of business of Trader is of Trader Inspection of place was held on 17/1/2008 by Directorate General of Central Excise Department, Ahmedabad. Regarding this inspection show cause notice was given vide No. F. No. DGCEI/AZU/12 (4) 131/2008-09 dated 19.10.2010. Show cause notice in inquiry and statement obtained in context of inquiry and on perusing evidences, in assessment year 2006-07 you have shown Rs. 5,97,82,816/= sell less in turnover of total taxable sell. In this regard on 12/3/2010 Show Cause Notice was given to you. Regarding above Show Cause Notice your written submission dated 23/3/2012 considered. In your case at the time of assessment in taxable turnover of sell turnover stated in above show cause is not included. Therefore, from here by taking decision of re-assessment under Section 35 of the Gujarat Value Added Tax order is passed. Order of assessment and notice of demand to be served to Trader."

From the above, it can be seen that the assessment which was previously concluded was re-opened on the premise that during the Excise raid, it was revealed that the petitioner had clandestinely removed goods without payment of excise duty. The Sales Tax Department, therefore, formed a belief that the value of goods plus excise duty evaded should form part of the turnover of the assessee for the purpose of tax under the Value Added Tax Act.

It may be that the raid carried out by the Excise duty and the material collected during such proceedings culminating into issuance of a Show Cause Notice for recovery of unpaid excise duty and penalty in a given case sufficient to re-open previously closed assessment. In this case, however, we are not called upon to judge this issue and would therefore not give any definite opinion. The question, however, is whether on a mere show cause issued by the Excise Department, the Sales tax Department can make additions for the purpose of collecting tax under the Gujarat Value Added Tax Act without any further inquiry. If the Assistant Commissioner of Commercial Tax has utilized the material collected by the Excise Department; including the statements of the petitioner and other relevant witnesses and had come to an independent opinion that there was in fact evasion of excise duty by clandestine removal of goods, he would have been justified in making additions for the purpose of VAT Act. In the present case, however, no such exercise was undertaken. All that the Assessing Officer did was to rely on the show cause notice issued by the Excise Department. Nowhere did he conclude that there was a case of clandestine removal of goods without payment of tax under the VAT Act. Merely because the Excise Department issued a show cause notice, that cannot be aground to

presume and conclude that there was evasion of excise duty implying thereby that there was also evasion of tax under the VAT Act. It is not even the case of the Department that such show cause notice proceedings has culminated into any final order against the petitioner. We wonder what would happen to the order of re-assessment, if ultimately the Excise Department were to drop the proceedings without levying any duty or penalty from the petitioner. All in all, the Asstt. Commissioner has acted in a mechanical manner and passed final order of assessment merely on the premise that the Excise Department has issued a show cause notice alleging clandestine removal of the goods. Such order, therefore, cannot be sustained and is accordingly quashed. When the order is ex facie illegal and wholly untenable in law, mere availability of alternative remedy would not preclude us from interfering at this stage in a writ petition.

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Ravi Electronics vs. Asst. Commercial Tax Commissioner (SCA No. 3832 of 2012, dated 26th December, 2012)

In all these writ petitions, the petitioners have challenged notices issued by the competent officer of the Sales Tax Department of the State of Gujarat for the purpose of reopening of previously closed assessments. Such notices are challenged on two grounds – Firstly, that the same were time barred, and further that the authority issuing such notices had no reason to believe that the dealer has concealed any sales, or purchases, or provided inaccurate and incorrect declaration or return. In other words, the second limb of the argument of the petitioners is that the notices for reopening are invalid for want of necessary satisfaction required under the law.

We have recorded facts as arising in Special Civil Application No. 3832 of 2012 for the purpose of deciding these writ petitions. The petitioner is a Dealer and duly registered under the Gujarat Value Added Tax Act, 2003 [“VAT Act” for short]. For the Financial Year 200304, the petitioner had filed its return under the then prevailing Gujarat Sales Tax Act, 1969 [“Sales Tax Act” for short]. Long thereafter, the Sales Tax Officer issued impugned notice dated 5th March 2012 indicating that for the period between 1st April 2003 to 31st March 2004, he proposed to reopen the assessment and that therefore, the petitioner should remain present with all accounts and documents. In such notice, he indicated that turnover of Rs. 24.07 lakhs [rounded off] had escaped assessment. Though along with such notice, no reasons why officer intended to reopen the assessment were supplied, from the affidavit in reply dated 23rd April 2012 filed by the respondents, we gather that according to the authorities, the petitioner had not produced “D” form either along with returns filed or even thereafter. This appears to be the principle reason why the assessment previously farmed is sought to be reopened.

We may notice that the Sales Tax Act contained certain provisions permitting reassessment under certain circumstances. Section 44 of the Act in particular clothed the Commissioner with the power of reassessment when the turnover had escaped assessment. If such escapement of assessment was for the reason of the dealer having concealed the sales or purchases, or any material particulars relating thereto, or knowingly furnished incorrect declaration or returns, the limitation for reopening such assessment was eight years from the end of the period to which such turnover related. In other cases, shorter period of limitation of five years was prescribed under the said Act. To some of the provisions pertaining to assessment and reassessment contained in the Sales Tax Act, we would advert to at a later stage. At this stage, we may notice that the Legislature framed the Gujarat Value Added Tax Act (“VAT Act” for short) and in the process, repealed the Gujarat Sales Tax Act, 1969. The Gujarat Value Added Tax Act, 2003 was introduced with effect from 1st April 2006. In the VAT Act also, powers of the Commissioner to carryout reassessment were preserved, however, with significant changes. Under Section 35 of the VAT Act, the Commissioner now has the power to reassess the turnover of any dealer where he has a reason to believe that the whole, or any part of the taxable turnover of such dealer has escaped

assessment, or he has been under assessed, or has been assessed at a rate lower than the rate at which it is assessable, or wrongly been allowed any deduction there from, or wrongly been allowed any credit. Subsection (2) of Section 35 of the VAT Act, however, provides that no order shall be made under subsection (1) after the expiry of five years from the end of the year in respect of which or part of which the tax is assessable.

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The Gujarat Sales Tax Act, 1969 was replaced by the Gujarat Value Added Tax Act, 2003 with effect from 1st April 2006. In the VAT Act, Chapter V pertains to Returns, Payment of Tax, Assessment, Recovery of Tax and Refund. Here also, similar provisions have been made for filing of returns and scrutiny of such returns. Section 35 pertains to turnover escaping assessment and reads as under:"

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From the above it can be seen that in the successor Act also, provision for reassessment of previously closed assessment was retained. This, however, came with significant changes. Firstly, the graded time limit of eight years for cases of concealment of material particulars etc. and five years for rest of the cases was done away with. Uniformly, for all cases an outer time limit of five years was prescribed. More importantly, such time limit pertains not for issuance of notice for reassessment but for passing of final order on turnover escaping assessment.

The central question is whether such modified time limit would apply to all cases which were not instituted by the time the Sales Tax Act was repealed and the VAT Act was enacted. Section 100 of the VAT Act provides for "Repeal and Savings" and reads as under:

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It is undoubtedly true that the provisions containing period of limitation are construed as procedural in nature, and therefore, any changes made in the statute regarding the period of limitation is ordinarily applied to all pending and future cases. In other words, amendments in the period of limitation are ordinarily considered retrospective in nature.

In case of C. Beepathuma & Ors. vs. Velasari Shankaranarayana Kadamboliathaya & Ors., reported in AIR 1965 SC 241, it was observed that there is no doubt that the law of limitation is a procedural law and the provisions existing on the date of the suit would apply to it.

One well recognized exception, however, is when in the earlier statute, as per the previous statutory provision, a cause had become barred by limitation, the same would not be revived by amendments, providing for larger period of limitation. In case of J.P Jani, Income Tax Officer, Circle IV, Ward G, Ahmedabad & Anr. vs. Induprasad Devshanker Bhatt [Supra], the Supreme Court considered the effect of introduction of Income Tax Act, 1961 replacing the old Income Tax Act, 1922, on the power of reopening of assessment. When it was found that such right in the old law was barred by limitation, introduction of Section 148 of the Income Tax Act, 1961 providing longer period of limitation cannot be resorted to for reopening the assessment. In case of S.S Gadgil v. Messrs. Lal & Company, reported in AIR 1965 SC 171 also, the Apex Court held that when the period of one year for issuing notice had expired, subsequent amendment enlarging the period of limitation would not revive the cause.

Statute of limitation is thus ordinarily made applicable with retrospective effect to apply to legal proceedings brought to the Court after the operation of such amendments, even for causes which might have accrued earlier. In cases where the cause had become barred by limitation by the time longer period of limitation is prescribed by amendment would however not be revived. There would still be some doubt whether, if the statute provides for shorter period of limitation by amendment, the same would have an effect of extinguishing right of action subsisting on the date of such amendment. Had this been the only angle, we would have further probed the legal position in this respect. In the present case, however, the situation is somewhat different. It is not a simple case of a statutory provision being amended by a subsequent legislation providing for a shorter period of limitation, as compared to the earlier statute. This is a case where the entire

machinery provision has undergone significant changes.

To recall, in the Sales Tax Act, 1969, reopening of assessment was permissible when the Commissioner had a reason to believe that any turnover of sales, or turnover of purchases of goods chargeable to tax has escaped assessment, or has been under assessed, or assessed at a lower rate. In such cases, if there was any element of concealment of sales, etc., he could issue a notice for reassessment of the escaped turnover within eight years from the end of the period to which such turnover related. In other cases, he could issue such a notice within five years from the said date and not later. The entire Sales Tax Act was repealed by the VAT Act. In the VAT Act, provision for reassessment made significant changes. Under Section 35(1), reassessment is permissible in cases of escapement of assessment or under assessment, or application of lower rate, etc. Subsection (2) of Section 35 of the VAT Act, however, provides that no order shall be made under subsection (1) after the expiry of five years from the end of the year in respect of which or part of which the tax is assessable.

Two significant changes thus in the old Act and the successor Act are that distinction between the cases of concealment of particulars, etc. providing for larger period of eight years of limitation and in other cases of five years was completely done away in the later Act. Secondly, the point of reference was shifted from the issuance of notice within the time prescribed to passing of the final order of reassessment.

This is thus not a plain case of period of limitation being substituted by the successor Act. This is a case where entire machinery is replaced by a new provision, making significant changes in the Legislative approach. We have therefore to ascertain the legislative intent to gather to what extent the previous provision was sought to be saved. In this context, one shall have to necessarily rely on and refer to Section 100 of the VAT Act which makes "Repeal & Savings" provisions.

It is well recognized that upon repeal of the Statute, all actions pending on the date of repeal do not survive. To obviate such unpleasant consequences, the successor statute ordinarily provides for "Repeal & Savings" clauses. In any case, Section 6 of the General Clauses Act contains a plenary provision of saving an action taken under the repealed statute, unless different intention appears.

In case of State of Punjab v. Mohar Singh Pratap Singh [Supra], the Apex Court observed that whenever there is a repeal of an enactment, the consequences laid down in Section 6 of the General Clauses Act will follow unless, as the section itself says, a different intention appears. In the case of a simple repeal, there is scarcely any room for expression of a contrary opinion. But, when the repeal is followed by a fresh legislation on the same subject, the Court would undoubtedly have to look to the provisions of the new Act, but only for the purpose of determining whether they indicate a different intention. The line of inquiry would be not whether the new Act expressly keeps alive old rights and liabilities but whether it manifests an intention to destroy them.

In case of Keshavan Madhava Menon v. State of Bombay, reported in AIR 1951 SC 128, the Constitution Bench of the Supreme Court in the context of effect of Article 13 (1) of the Constitution held that the same can have no retrospective operation but is wholly prospective. If an act was done before the commencement of the Constitution in contravention of the provisions of any law which after the constitution become void, with respect to the exercise of any of the fundamental right, the inconsistent law is not wiped out so far as the past act is concerned.

In case of Gujraj Singh etc. vs. The State Transport Appellate Tribunal & Ors., reported in AIR 1997 SC 412, the Apex Court held and observed that effect of repeal of the Act would be that the repealed Act stands completely obliterated from the record of the Parliament; except for actions past and closed or those which are saved. It was observed as under:

"23. Whenever an Act is repealed it must be considered; except as to transactions past and closed, as if it had never existed. The effect thereof is to obliterate the Act completely from the record of the Parliament as if it had never

been passed it, it never existed except for the purpose of those actions which were commenced, prosecuted and concluded while it was existing law. Legal fiction is one which is not an actual reality and which the law recognizes and the Court accepts as a reality. Therefore, in case of legal fiction the Court believes something to exist which in reality does not exist. It is nothing but a presumption of the existence of the state of affairs which in actuality is non-existent. The effect of such a legal fiction is that a position which otherwise would not obtain is deemed to obtain under the circumstances. Therefore, when section 217 (1) of the Act repealed Act 4 of 1993 w.e.f. July 1, 1989, the law in Act 4 of 1939 in effect came to be non-existent except as regards the transactions, past and closed are saved."

From the above what emerges is that ordinarily period of limitation is considered as a procedural provision and any change in the period of limitation by an amendment in the Act or by enactment of a new statute repealing the original one, is made applicable also retrospectively. This is of course subject to the exception that if under the repealed provision, the cause of action had become time barred as per the period of limitation prescribed any subsequent change or extension in period of limitation would not revive such a cause. Another area where the Courts have taken slightly different view is where in the successor statute, a shorter period of limitation is prescribed and by virtue of the existing provisions of the earlier Act, the limitation has not yet expired but by application of the shorter period of limitation prescribed in the successor Act, the cause would stand barred by limitation. In such cases, the question would arise whether the period of limitation of the successor Act should be applied thereby taking away the right of the party to file proceedings for asserting his right.

Had the effect of VAT Act been only to modify the period of limitation, the different set of considerations would apply. In the present case, however, the entire provision for reopening of previously closed assessment has undergone significant changes. In the predecessor Act i.e., the Gujarat Sales Tax Act, 1969, reassessment was permitted by issuance of a notice within eight years, if the same was based on any suppression, etc. For other class of cases, such notice could be issued within five years from the relevant date. In the successor Act ie., the Gujarat Value Added Tax Act, 2003, the period that is prescribed is uniformly of five years obliterating any distinction between the reopening being based on misrepresentation, etc., or for any other reason, of a case of turnover escaping assessment. More significantly the terminal point was shifted from issuing of notice to passing of the final order. In other words under the VAT Act, it was not enough to issue notice for reassessment within five years but that the entire reassessment had to be completed within the said period.

Thus, the replaced statute did not only make changes in the period of limitation but made significant other changes as well. In that view of the matter, it would be of considerable importance for us to ascertain what the repeal and savings provision of the VAT Act provides. Under subsection (1) of Section 100 of the VAT Act, as already noted, the Sales Tax Act was repealed Proviso to Section 100 of the VAT Act however makes certain provisions for saving and provides that such repeal shall not affect the previous operation of the said Act or any right, title, obligation or liability already acquired, accrued or incurred there under and subject thereto, anything done or any action taken including any appointment, notification, notice, order, rule, form or certificate in exercise of any powers conferred by or under the said Act shall be deemed to have been done or taken in exercise of the powers conferred by or under the VAT Act.

In the present case, it would therefore be necessary to ascertain for ourselves whether it can be stated that by the time VAT Act was enacted, the petitioners had under the Sales Tax Act acquired, accrued or incurred any obligation or liabilities. If the case of the petitioners fall within such expression, the Department would be justified in pursuing such cases under the VAT Act with reference to period of limitation contained in the Sales Tax Act despite repeal of the Sales Tax Act.

We may recall that the petitioners had filed the returns at the relevant time under the Sales Tax Act. Such returns were also processed as per the provisions of the said Act. Till the Sales Tax Act was repealed by the VAT Act, no further action was taken by the Department. To be precise, no notices for reopening such assessment were issued till the Sales Tax Act was repealed. It is true that the Sales Tax Act permitted period of eight years from the end of the period to which such turnover related for issuance of notice of reassessment, if the Commissioner had reason to believe that the dealer had concealed such sales or any material particulars thereof or knowingly furnished incorrect declaration or returns. However, in our opinion, mere right to issue notice within the said period cannot be equated with accrual or incurring of any obligation or liability. If notices were already issued, it may have been possible for the Department to contend that the assessee having already been visited with such notices, their liability to be so reassessed having already accrued, any repeal of the Sales Tax Act would not obliterate such liabilities by virtue of proviso to subsection (1) of Section 100 of the VAT Act.

In case of Kanaiya Ram & Ors. Vs. Rajender K. Kumar & Ors. Reported in AIR 1985 SC 371, the Apex Court had an occasion to interpret the term "acquiring of " or "accrual of " a right. It was the case wherein the original landholder had purportedly made an oral sale of the land in favour of his near relatives. Such sale not being registered, did not create any right or title in favour of the transferees. The tenant of the land filed application under Section 18 of the T. P. Act for purchase of their holdings. Application of the tenant was allowed by the Assistant Collector but the said order was reversed in appeal. In the meantime, the landlord had expired. His legal representatives filed a suit for declaration of title and for the declaration that the transfer was benami. Such suit was decreed. In that context, the Supreme Court observed that when the tenant made an application under Section 18, he had a mere "hope of " or "expectation of liberty to apply for acquiring a right" and not a "right acquired or accrued". It was observed that ever since the leading case of Abbot Vs. Minister for Lands, 1895 AC 425 that a mere right to take advantage of the provisions of an Act is not an "accrued right".

In case of Hunger Ford Investment Trust Limited V. Haridas Mundhra & Ors., reported in AIR 1972 SC 1826, the Apex Court once again had an occasioned to consider what is an "accrued" or "acquired" right. It was observed that:

19. "We do not think that the appellant had an accrued right for the rescission of the contract or the decree for specific performance under Section 35 of the Specific Relief Act, 1877, when the Act was repealed by the Specific Relief Act, 1963, on March 1, 1964. It may be recalled that the decree in suit NO. 600 of 1961 was passed on February 25, 1964 and that the application for rescission of the decree was filed on March 21, 1967. Section 35 of the Specific Relief Act, 1877, so far a it is material for the purpose of this case provided that where a decree for specific performance of a contract of sale or of a contract to take a lease has been made and the purchaser or lessee makes default in payment of the purchase money, which the Court has ordered him to pay, the decree may be rescinded as regards the party in default either by a suit or by an application. The right to rescind the decree under the section can arise only if the purchaser makes default in paying the purchase money ordered to be paid under the decree. Before the lapse of a reasonable time from the date of the decree, the appellant could have no right to have the decree rescinded on the ground of default of the purchaser. To put it in other words, the right of the appellant to have the decree rescinded was dependent upon the default of the purchaser in paying the purchase money. Such a default had not occurred when the Specific Relief Act, 1877, was repealed, as a reasonable time for the performance of the obligation under the decree had not elapsed from the date of the decree. The more important reason why there was no default in this case was that the execution of the decree in suit No.600 of 1961 was stayed

by orders of the trial and appellate Court till August 26, 1964. We, therefore, agree with the finding of the Division Bench that appellant had not accrued right on the date of the repeal to file an application under Section 35 of the Specific Relief Act, 1877, which was saved under Section 6 of the General Clauses Act 1897. The mere right to take advantage of the provisions of an Act is not an accrued right (See Abbott v. The Minister for Lands, 1895 AC 425)".

From the above, it can be seen that a mere right to take advantage of the provisions of a Act is not an "accrued right". In the present case, it may be that when the Sales Tax Act was in operation, it was open for the authorities to reopen an assessment previously framed within eight years from the end of the period to which the escaped turnover related, if the commissioner had reason to believe that the dealer had concealed such sales, etc. However, mere right to issue such a notice to reopen the assessment cannot be equated with any accrued or acquired right. Correspondingly, it cannot be said that in absence of any notice having been issued, the assessees had any obligation or liability which they acquired, accrued or incurred for being subjected to reopening of the assessment as per the old provisions. Their cases therefore were, necessarily in absence of any notices having been issued when the Sales Tax was in operation to be governed by the provisions made for such purpose in the successor Act i.e. the VAT Act. We are fortified in our view by the decision of with this view in case of Kumagai Skanska Hcc Itochu Group Vs. The Commissioner of Value Added Tax & Another decided on 22.05.2012, wherein the Devision Bench of Delhi High Court was considering the effect of enactment of Delhi Value Added Tax Act, 2004 replacing the Delhi Sales Tax Act, 1975. In such Successor Act also, similar provisions of repeal and savings were made. The Court was confronted directly with the issue of effect of shorter period of limitation prescribed in the successor Act for taking orders of assessment in revision. It was held and observed as under:

26. "First of all, once the provisions of Section 46 of the Delhi Sales Tax Act, 1975 were repealed and replaced by the provisions of Section 74A of the DVAT Act qua revision, it would be the latter provision which would apply on and from 01.04.2005. Secondly, the power of revision under Section 46 of the Delhi Sales Tax Act, 1975 and that under Section 74A of the DVAT Act do not co-exist. Because, the two cannot have simultaneous existence. The death of one (Section 46 of the Delhi Sales Tax Act, 1975) has ushered in the birth of the other (Section 74A of the DVAT Act). Thirdly, in view of Section 106(2) and (3) of the DVAT Act as interpreted by the Full Bench, an order of assessment passed under the Delhi Sales Tax Act, 1975 shall be deemed to be an order under the DVAT Act. Thus, after the repeal of the Delhi Sales Tax Act, 1975 and introduction of the DVAT Act, it is the power of revision encapsulated in Section 74A thereof which holds the field. It the power of revisions invoked, it has to be under Section 74A of the DVAT Act and in terms thereof. The provisions of Section 46 cannot be applied to post 01.04.2005 revisions". "Sixthly, the legislature consciously altered the limitation clause insofar as the power of revision is concerned. Having expressly provided for a different scheme in Section 74A(2)(b), it could not have been the intention of the legislature to continue the operation of the proviso to Section 46 of the Delhi Sales Tax Act, 1975".

Considering the discussion above, we hold that in the present group of cases for reopening the assessment, provisions contained in the VAT Act and in particular Section 35 thereof, would apply. Admittedly, when such provisions do not permit reopening beyond the period of five years from the end of the period to which the sales relate, and admittedly when no notices much less final orders were passed, the action of the authorities must be held to be lacking jurisdiction. All the cases of reassessment are, therefore, declared invalid.

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Indian Tax Administration relaxes norms for MAP and bilateral APAs

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1. Executive summary

The Indian Government previously had taken the position that the Mutual Agreement Procedure (MAP) for transfer pricing (TP) disputes and bilateral Advanced Pricing Agreements (APAs) could not be permitted where Article 9(2) or an equivalent article was not present in the double tax avoidance agreement (DTAA) with the other country (the jurisdiction of the group entity having transactions with India).

Now, through a press release issued on 27 November 2017, the Indian Government has stated that the MAP for TP disputes and the bilateral APA process would be available to taxpayers even where Article 9(2) or the equivalent is not present in the DTAA with the taxpayer's jurisdiction.

We have summarized below the key considerations and implications of this revised approach.

2. Detailed Discussion

India previously had taken a view that in the absence of a correlative adjustment clause in a DTAA [equivalent of Article 9(2) of the Organisation for Economic Co-operation and Development (OECD) / United Nations Model Convention], it would not consider a MAP for TP disputes or a bilateral APA for transactions with that DTAA partner.

The OECD Model Tax Convention on Income and Capital 2014 recommends use of Article 25(3) [allowing MAP for double taxation or taxation not as per DTAA matters] for allowing a correlative adjustment even where Article 9(2) is not available. However, India did not agree with this mechanism. Accordingly, this approach denied access to MAP for TP disputes and bilateral APAs to taxpayers located in some of India's larger trading partners such as France, Germany and Italy.

Further, with the signing of the Multilateral Instrument (MLI) by India, it was expected that access to MAP would be available, however this would be subject to the other country notifying the DTAA with India and ratification which would be completed in 2018 or 2019.

With the 27 November press release, for the first time MAP for TP disputes and bilateral APAs are now possible with Germany, France and Italy, among other countries.

3. Timelines

3.1 MAP

Typically, the limitation period to invoke MAP would be prescribed in the DTAA with India, for example, the Indian DTAAs with both Germany and France, respectively, prescribe a timeline of 3 years from the date of receipt of notice of the action which gives rise to taxation not in accordance with the DTAA. The Indian Government generally considers the start of such period from the date of receipt of the final tax audit order.

To illustrate, assuming the MAP limitation period prescribed in the DTAA is three

years and the first appeal in India against the adjustment was before the alternate dispute resolution panel, the latest coverage period/MAP filing deadline would be:

Financial year	Last date for final audit prescribed under the Indian Law (for normal audit)	MAP Filing date
2008-09	31 January 2014	31 January 2017
2009-10	31 March 2015	31 January 2018

The above table illustrates the latest date to invoke MAP for disputes under regular tax audit. However, taxpayers may need to consider the actual date of receipt of the tax audit order to identify the MAP filing deadline.

3.2 APA

The taxpayer can cover five prospective years:

- For an ongoing transaction the period starts following the year in which the APA application is filed
- For a new transaction the period starts from the date of the transaction where the APA is filed before such date

Further, a roll back for the immediately preceding four years for similar transactions is also available, thereby obtaining certainty through the APA for a maximum period of nine years.

4. Implications

Generally multinational enterprises (MNEs) with a presence in India have faced TP disputes during tax audits. While India has a full-fledged appeal mechanism, it often takes several years to resolve the disputes under the traditional litigation route.

In relation to MAPs filed in other countries for tax disputes with India, there has been reasonable movement in resolving such disputes with 100+ MAPs with the US alone being resolved in 2016. Further, India introduced the APA program in 2012 and has already signed 186 APAs with fairly reasonable outcomes.

MNEs with a presence in India should identify transactions either subject to a TP dispute or which may be challenged and consider a MAP and APA (as relevant) to resolve such disputes bilaterally.

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FEMA Updates

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15 Risk Management and Inter-Bank Dealings – Simplified Hedging Facility

The circular refers to Foreign Exchange Management (Foreign Exchange Derivative Contracts) Regulations, 2000 dated May 3, 2000 (Notification No.FEMA. 25/RB-2000 dated May 3, 2000) issued under clause (h) of sub-section (2) of Section 47 of FEMA, 1999 (Act 42 of 1999), as amended from time to time, the Master Direction - Risk Management and Inter-Bank Dealings dated July 5, 2016, as amended from time to time, and the announcement made in the Statement on Developmental and Regulatory Policies Reserve Bank of India dated August 02, 2017 (para 7) on the simplified hedging facility

2. The scheme of simplified hedging facility was first announced by the RBI in August 2016 and the draft scheme was released on April 12, 2017. The facility is being introduced with a view to simplify the process for hedging exchange rate risk by reducing documentation requirements, avoiding prescriptive stipulations regarding products, purpose and hedging flexibility, and to encourage a more dynamic and efficient hedging culture.
3. Necessary amendments (Notification No. FEMA 388/2017-RB dated October 24, 2017) to Foreign Exchange Management (Foreign Exchange Derivatives Contracts) Regulations, 2000 (Notification No. FEMA.25/RB-2000 dated May 3, 2000) (Regulations) have been notified in the Official Gazette vide G.S.R.No.1324 (E) dated October 24, 2017 a copy of which is given in the Annex II to this circular. These regulations have been issued under clause (h) of sub-section (2) of Section 47 of FEMA, 1999 (42 of 1999). The Master Direction on Risk Management & Interbank dealings dated July 5, 2016, as amended from time to time, has been updated accordingly.
4. The guidelines of this facility are given in Annex I to this circular and this facility will be effective from January 01, 2018.

[Annex I to A.P. (DIR Series) Circular No. 11 dated November 09, 2017]

Simplified Hedging Facility Guidelines

Users: Resident and non-resident entities, other than individuals.

Purpose: To hedge exchange rate risk on transactions, contracted or anticipated, permissible under Foreign Exchange Management Act (FEMA), 1999[1].

Products: Any Over the Counter (OTC) derivative or Exchange Traded Currency Derivative (ETCD) permitted under FEMA, 1999.

Cap on Outstanding Contracts: USD 30 million, or its equivalent, on a gross basis.

Designated Bank: Any Authorised Dealer Category-I (AD Cat-I) bank designated as such by the user.

Operational Guidelines, Terms and Conditions

i. The user shall appoint an AD Cat-I bank as its "Designated Bank". The designated bank will assess the hedging requirement of the user and set a limit up to the stipulated cap on the outstanding contracts.
ii. If hedging requirement of the user exceeds the limit in course of time, the designated bank may re-assess and, at its discretion, extend the limit up to 150% of the stipulated cap.
iii. Hedge contracts in OTC market can be booked with any AD Cat-I bank, provided the

underlying cash flow takes place with the same bank.

iv. Cost reduction structures can be booked by users provided that resident unlisted companies can use such structures only if they have a minimum net worth of Rs.200 crores

v. Users are not required to furnish any documentary evidence for establishing underlying exposure under this facility. Users may, however, provide basic details of the underlying transaction in a standardised format[2], only in the case of OTC hedge contracts.

vi. Cancelled contracts may be freely rebooked with the same bank.

vii. In case of hedge contracts booked in OTC market, while losses will be recovered from the user, net gains i.e. gains in excess of cumulative losses, if any, will be transferred at the time of delivery of the underlying cash flow. In case of part delivery, net gains will be transferred on a pro-rata basis.

viii. For hedge contracts on underlying capital account transactions, gains/losses may be transferred to the user as and when they accrue if the underlying asset/liability is already in existence.

ix. On full utilisation of the limit or in case of breach of limit, user shall not book new contracts under this facility. In such a case, contracts booked earlier under this facility will be allowed to continue till they expire or are closed. Any further hedging requirements thereafter may be booked under other available hedging facilities.

x. Users booking contracts under this facility shall not book contracts under any other facility in OTC or ETCD market except as provided in para (ix).

xi. At the end of each financial year, the user will provide the designated bank with a statement signed by the head of finance or the head of the entity, to the effect that, a. Hedge contracts booked in both OTC and ETCD market, under this facility, are backed by underlying exchange rate exposures, either contracted or anticipated. b. The exposures underlying the hedge contracts booked under this facility are not hedged under any other facility.

xii. On being appointed, the designated bank shall report the details of the users and limits granted to the Trade Repository (TR). On a request by the TR, the exchanges shall report all contracts booked by such users to the TR on a daily basis.

xiii. The TR will compute user wise outstanding position (across OTC and ETCD market) and provide this information to the designated bank for monitoring. If the outstanding contracts of a user exceeds the limit (or the extended limit, if applicable) the designated bank shall advise the user to stop booking new contracts under this facility.

xiv. When user migrates to other available facilities, the designated bank shall report this information to the TR. The TR shall update this information in its records and notify the recognized stock exchanges to stop reporting data for the user concerned.

xv. Banks shall have an internal policy regarding the time limit up to which a hedge contract for a given underlying can be rolled-over or rebooked by the user.

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[1] Rupee denominated bonds issued overseas may be hedged provided it is permitted under contracted exposure hedging.

[2] Standardized format will be devised by Foreign Exchange Dealers Association of India (FEDAI) and will include details like transaction type, i.e. current account (import, export) or capital account (ECB, FPI, FDI etc.), amount, currency and tenor.

A.P. (DIR Series) Circular No. 11, 09 November, 2017

For Full Text refer to https://www.rbi.org.in/Scripts/BS_CircularIndexDisplay.aspx?Id=11162

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GST Updates

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GST Notifications

Sr No	Issued Under	Notification No.	Essence of Notification
1	(IGST)	Notification No. 10/2017 – Integrated Tax dated 13/10/2017	Seeks to exempt persons making inter-State supplies of taxable services from registration under section 23(2)
2	(IGST)	Notification No. 11/2017 – Integrated Tax dated 13/10/2017	Seeks to cross-empower State Tax officers for processing and grant of refund
3	(IGST)	Notification No.12/2017– Integrated Tax dated 15/11/2017	Apportionment of IGST with respect to advertisement services under section 12 (14) of the IGST Act, 2017.
4	(CGST)	Notification No. 37/2017– Central Tax dated 04/10/2017	Notification on extension of facility of LUT to all exporters issued.
5	(CGST)	Notification No. 38/2017– Central TaxDated 13/10/2017	Seeks to amend notification no. 32/2017-CT dated 15.09.2017 so as to add certain items to the list of "handicrafts goods"
6	(CGST)	Notification No. 39/2017– Central Tax dated 13/10/2017	Seeks to cross-empower State Tax officers for processing and grant of refund.
7	(CGST)	Notification No. 40/2017– Central Tax dated 13/10/2017	Seeks to make payment of tax on issuance of invoice by registered persons having aggregate turnover less than Rs 1.5 crores.
8	(CGST)	Notification No. 41/2017– Central Tax dated 13/10/2017	Seeks to extend the time limit for filing of FORM GSTR-4 for the quarter July to September, 2017 till the 15th day of November, 2017.
9	(CGST)	Notification No. 44/2017– Central Tax dated 13/10/2017	Seeks to extend the time limit for submission of FORM GST ITC-01 by the registered persons, who have become eligible during the months of July, 2017, August, 2017 and September, 2017 till the 31st day of October, 2017.
10	(CGST)	Notification No. 50/2017– Central Tax dated 24/10/2017	Seeks to waive late fee payable for delayed filing of FORM GSTR-3B for Aug & Sep, 2017
11	(CGST)	Notification No. 56/2017– Central Tax dated 15/11/2017	Seeks to mandate the furnishing of return in FORM GSTR-3B till March, 2018.

12	(CGST)	Notification No. 57/2017– Central Tax dated 15/11/2017	Seeks to prescribe quarterly furnishing of FORM GSTR-1 for those taxpayers with aggregate turnover of upto Rs.1.5 crore.
13	(CGST)	Notification No. 58/2017– Central Tax dated 15/11/2017	Seeks to extend the due dates for the furnishing of FORM GSTR-1 for those taxpayers with aggregate turnover of more than Rs.1.5 crores
14	(CGST)	Notification No. 59/2017– Central Tax dated 15/11/2017	Seeks to extend the time limit for filing of FORM GSTR-4 for the quarter July to September, 2017 till the 24th day of December, 2017.
15	(CGST)	Notification No. 60/2017– Central Tax dated 15/11/2017	Seeks to extend the time limit for furnishing the return in FORM GSTR-5, for the months of July to October, 2017 till the 11th day of December, 2017.
16	(CGST)	Notification No. 61/2017– Central Tax dated 15/11/2017	Seeks to extend the time limit for filing of FORM GSTR-5A for the month of July, 2017, August, 2017 and September, 2017 till the 15th day of December, 2017.
17	(CGST)	Notification No. 62/2017– Central Tax dated 15/11/2017	Seeks to extend the time limit for filing of FORM GSTR-6 for the months of July, 2017, August, 2017 and September, 2017 till the 31st day of December, 2017.
18	(CGST)	Notification No. 63/2017– Central Tax dated 15/11/2017	Seeks to extend the due date for submission of details in FORM GST-ITC-04 from 30th day of November, 2017 to 31st day of December, 2017.
19	(CGST)	Notification No. 64/2017– Central Tax dated 15/11/2017	Seeks to limit the maximum late fee payable for delayed filing of return in FORM GSTR-3B from October, 2017 onwards.
20	(CGST)	Notification No. 65/2017– Central Tax dated 15/11/2017	Seeks to exempt suppliers of services through an e-commerce platform from obtaining compulsory registration.
21	(CGST)	Notification No. 66/2017– Central Tax dated 15/11/2017	Seeks to exempt all taxpayers from payment of tax on advances received in case of supply of goods.

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GST & VAT Judgments / Updates

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Important Judgments:

[1] Hon. Gujarat High Court in the case of Manan Autolink Pvt. Ltd.

Issue:

As per the Department's circular, any payment of tax dues are pending 'C' Form cannot be issued. This circular is not legal and not supported by the Rules.

Held:

It was held that the appellant that the appellant is allowed to generate 'C' Form without payment of tax.

The important paragraphs of the judgment are reproduced hereunder for the benefit of the readers.

As a registered dealer, the Petitioner would make purchases of the vehicles from outside State and sell vehicles within the state. For the sales in the nature of inter-state sales, the first purchase by the petitioner would invite reduced tax at the rate of 2% in terms of sub-section (1) of Section 8 of the CST Act as long as the petitioner could provide to the sellers a declaration of inter-state sale in 'C' Form. The petitioner's sale of the vehicles within the state would invite the Value Added Tax under the Vat Act which we are informed presently is @ 15%.

The petitioner's returns for the assessment years 2009-10 to 2011-12 are in dispute. As per the latest position, the Value Added Tax Tribunal has set aside the order passed by the appellate authority and remanded the proceedings for fresh consideration by the State Authority. We are, however, not directly concerned with these disputed tax dues of the petitioner. The dispute is with respect to the petitioner's undisputed tax dues and the mode of recovery thereof. The department alleges and the petitioner does not seriously dispute that for the period between 01.04.2015 to 31.03.2016, the petitioner had collected vat on its local sales from the customers but had not deposited the same with the government revenue even as per the petitioner's own self assessment of the tax liability. In these words, according to the department, the petitioner has not discharged its self assessed tax liability for the said period which comes to more than Rs. 8 Crores.

Under such circumstances, when the petitioner tried to generate the 'C' Form on the department's portal, the system did not permit to generate the same. According to the department, the manual filing of the declarations and authentication of such declarations by the state authorities of the 'C' forms have been done away with since the year 2008. This has been replaced by an online system as per which the dealer would be in a position to generate his own 'C' forms as long as he fulfills the conditions prescribed by the state authorities. According to the respondents, one of the conditions contained a circular dated 16.11.2009 is that the dealer should have filed his periodical quarterly returns and should have paid the self assessed tax as per such returns and generated a computerized receipt for the same. The department explains that since the petitioner had not fulfilled the essential condition of payment of self assessed tax, the online system of the department would not permit the petitioner to obtain 'C' form declarations.

On the other hand, the learned Asst. Government Pleader opposed the petition contending that the circular of the Government dated 16.11.2009 is abundantly clear. The

department switched over from manual filing of the returns and issuance of 'C' forms to computerized system as per the circular. Since the petitioner had not discharged his tax liabilities, he was not allowed to generate the 'C' form. In his case, the liabilities are not disputed. They arise out of self assessment. Thus, the petitioner has collected the tax from the customers which he has not deposited in the government revenue. Facts as noted are not in dispute. The petitioner having made local sales of the vehicles purchased from outside state, has not deposited the self assessed tax with the government authorities. In such ground, the department does not permit the petitioner to generate the 'C' form. Since this is one of the requirements contained in the circular dated 16.11.2009, the short question is 'Is it legally permissible'?

None of these rules prescribe that before the purchasing dealer can generate a request for authentication of 'C' form by the appropriate authority, the dealer must have discharged its full liability of the Vat. As noted in the Vat Act, detailed provisions have been made for assessment and collection of tax. In absence of a specific rule requiring depositing of full tax before obtaining 'C' form authentication, such a requirement cannot be introduced by the State Government. Ld. Asst. Government Pleader would, however, contend that section 13 of the Central Sales Tax Act gives wide powers to the State Government of framing rules. Our attention was drawn to sub-rule (3) and sub-rule (4) thereof. As noted, sub-section (3) empowers the State Government to make rules not inconsistent with the provisions of the Act and the rules made under sub-section (1) of section 13 by the Central Government to carry out the purposes of the Act. Sub-section (4) provides that without prejudice to the powers under sub-section (3) if the government of the State could make rules for all or any of the purposes contained in various clauses including clause (e) which pertains to the authority from whom, the conditions subject to which and fees subject to payment of which if any form of certificate prescribed inter alia under sub-section (4) of the CST Act can be obtained and the manner in which such forms shall be kept in custody and records relating thereto maintained.

Under the circumstances, the Hon. Gujarat High Court hold that the action of the respondents in not allowing the petitioner to generate 'C' form solely on the ground that the petitioner had not paid the self assessed tax for the relevant period under the Vat Act is illegal. The respondents shall allow the petitioner to generate 'C' form subject to other conditions being fulfilled. This may be done latest by 31.08.2017. Petition is disposed of accordingly.

[2] Hon. GVAT Tribunal in case of M/s. Ashima Ltd.

Issue:

Proportionate Tax Credit is allowable in case of manufacturing of main goods is Tax Free, however, the by-product is taxable.

Held:

The appellant is entitled to tax credit in proportionate to sales of taxable bye-products i.e. yarn waste.

The Ld. Deputy Commissioner of Commercial Tax, Circle-2, Ahmedabad, hereinafter referred to as the revisional authority had noticed that though the applicant had purchased raw materials with an intention to manufacture tax free goods i.e. fabrics, the assessing authority had wrong granted proportionate tax credit considering sales of taxable goods of wastages the applicant had made. The Ld. revisional authority framed the view from this Tribunal Judgment in case of Jayant Agro Organics Ltd. v. State of Gujarat SA No.804 of 2010 that the proportionate ITC in proportion to taxable sales of wastage is not allowable when the raw materials were purchased with an intention to manufacture tax free goods. In other words, when main products tax free and by-product (waste) is taxable the dealer is not entitled to claim tax credit in proportion to taxable sales.

Revisional Authority therefore, revised the assessment order under section 75 and raised the demand as under.

Particulars	2007-08	2008-09
Tax	3384834	1382630
Interest	1085719	493987
Penalty	1175647	534903
Paid	2601069	1673415
Net Total Demand	3045131	738105

The Ld. Revisional authority has mentioned in its order that the business of the applicant was of manufacturing of fabrics from the purchases of cotton and cotton yarn. During manufacturing process of fabrics some cotton waste emerges as by-product and hence the applicant being manufacturer of tax free goods was not entitled to claim tax credit. Therefore, proportionate allowance of tax credit, in proportion to sales of taxable goods i.e. waste was not allowable. The Revisional authority considering it as irregularity/illegality in the assessment, revised the orders of assessment.

The Ld. Advocate appearing for the appellant strongly submitted that the main product being tax free goods it cannot be said that the applicant had no intention to manufacture taxable goods i.e. by- product cotton waste. He also argued that if the revision order is upheld than applicant would not be treated as dealer of taxable goods and no tax would be required to be levied on sales of wastage. According to him sales of wastage of covered under the meaning of business sale, therefore, the applicant is entitled to claim to tax credit on proportion to taxable sales.

On other hand, the Ld. Government representative appearing for the opponent first submitted that judgment of this tribunal in case Arya Lumbers Pvt Ltd. has been reversed in Tax Appeal No. 216 of 2015, he further submitted that the judgment of this tribunal in case of the applicant (SA 910 of 2015) would also not be helpful to him as the said judgment was based on the judgment of Arya lumbers P. Ltd. (supra). He further submitted that in both the cases the Hon. Gujarat high court has observed of taxable that purchase were fully used for the specified purpose i.e. in the manufacture of taxable goods. Whereas, in present case the applicant has used entire raw material in the manufacture of fabrics tax free goods therefore, the applicant was not entitled to claim tax credit. And when goods is fully used in the manufacture of tax goods proportionate tax credit in proportion to sales of taxable by-product is also not allowable under the proviso to section 11(3).

In the case of Arya Lumbers the Hon. High court was of the view that in a case where by-product is exempted, denial of tax credit is contrary to the legislative intention regarding tax credit. Here in present case, the main product is exempted and by-product is taxable. If we deny the tax credit on by-product, than taxable by-product will carry tax amount to the extent tax paid at the time of purchase of raw material, and it would amount to double taxation to that extent. Looking to scheme of the and specific provision made under section 41 to remit the tax in case of double taxation, obviously the applicant is entitled to tax credit in proportion to sales taxable goods of by-product, even the main product is tax-free. It is settled principle in interpretation that taxation status should not be interpreted insulation; entire scheme is required to be considered. This tribunal therefore, Is of the view that the application is entitled to tax credit in proportion to sales of taxable by-product i.e. yarn waste and other waste.

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Corporate Law Update

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MCA Updates:

1. **Companies (Accounts) Amendment Rules, 2017:**

   Following changes have been made under The Companies (Accounts) Amendment Rules, 2017.

   In the Companies (Accounts) Rules, 2014, in Annexure, for form AOC-4, the following Form shall be substituted:-

   By inserting clause relating to *Details of Specified Bank Notes (SBN) held and transacted during the period from 8th November, 2016 to 30th December, 2016 as provided in the Table below :-

Particulars	SBNs	Other denomination notes	Total
Closing cash in hand as on 08.11.2016			
(+) Permitted receipts			
(-) Permitted payments			
(-) Amount deposited in Banks			
Closing cash in hand as on 30.12.2016			

*Whether the auditors have reported as to whether company had provided requisite disclosures in its financial statements as to holdings as well as dealings in Specified Bank Notes during the period from 8th November, 2016 to 30th December, 2016 and if so, whether these are in accordance with the books of accounts maintained by the company.

[F. No. 1/19/2013- CL-V dated 07/11/2017]

2. **Companies (Filing of Documents and Forms in Extensible Business Reporting Language), Amendment, Rules, 2017:**

   Following changes have been made under the Companies (Filing of Documents and Forms in Extensible Business Reporting Language), Amendment, Rules, 2017.

1. In the Companies (Filing of Documents and Forms in Extensible Business Reporting Language) Rules, 2015 (hereinafter referred to as the principal rules), for rule 3, the following rule shall be substituted, namely:—

   "3. Filing of financial statements with Registrar.- The following class of companies shall file their financial statements and other documents under section 137 of the Act with the Registrar in e-form AOC-4 XBRL:

i. companies listed with stock exchanges in India and their Indian subsidiaries;
ii. companies having paid up capital of five crores rupees or above;
iii. companies having turnover of one hundred crores rupees or above;
iv. all companies which are required to prepare their financial statements in accordance with Companies (Indian Accounting Standards) Rules, 2015:

Provided that the companies preparing their financial statements under the Companies (Accounting Standards) Rules, 2006 shall file the statements using the Taxonomy provided in Annexure-II and companies preparing their financial statements under Companies (Indian Accounting Standards) Rules, 2015, shall file the statements using the Taxonomy.

Provided further that non-banking financial companies, housing finance companies and companies engaged in the business of banking and insurance sector are exempted from filing of financial statements under these rules."

[F. No. 1/19/2013- CL-V dated 07/11/2017]

3. **The Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) (Third Amendment) Regulations, 2017:**

   The amendments to regulations empower the Committee of Creditors to carry out the due diligence by making provision for the required disclosures in the resolution plan.

   According to the amendments, a resolution plan shall disclose details of the resolution applicant and other connected persons to enable the Committee of Creditors to assess credibility of such applicant and other connected persons to take a prudent decision while considering the resolution plan for its approval. The resolution plan shall disclose the details in respect of the resolution applicant, persons who are promoters or in management or control of the resolution applicant; persons who will be promoters or in management or control of the business of the corporate debtor during the implementation of the resolution plan; and their holding companies, subsidiary companies, associate companies and related parties, if any. It shall disclose details of convictions, pending criminal proceedings, disqualifications under the Companies Act, 2013, orders or directions issued by SEBI, categorization as a willful defaulter, etc.

   Further, the resolution professional shall submit to the Committee of Creditors all resolution plans which comply with the requirements of the Code and regulations made thereunder, along with details of preferential transactions under section 43, undervalued transactions under section 45, extortionate credit transactions under section 50, and fraudulent transactions under section 66 of the Insolvency and Bankruptcy Code, 2016 noticed by him.

   [No. IBBI/2017-18/GN/REG019 dated 07.11.2017]

4. **Ordinance to amend the Insolvency and Bankruptcy Code, 2016:**

   The Ordinance amends Sections 2, 5, 25, 30, 35 and 240 of the Code, and inserts new Sections 29A and 235A in the Code. Gist of the amendments is given below:

   (i) Clause (e) of Section 2 of the Code has been substituted with three Clauses. This would facilitate the commencement of Part III of the Code relating to individuals and partnership firms in phases.

   (ii) Clause (25) and (26) of Section 5 of the Code which define “Resolution Plan” and “Resolution Applicant” are amended to provide clarity.

   (iii) Section 25(2)(h) of the Code is amended to enable the Resolution Professional, with the approval of the Committee of Creditors (CoC), to specify eligibility conditions while inviting Resolution Plans from prospective Resolution Applicants keeping in view the scale and complexity of operations of business of the Corporate Debtor to avoid frivolous applicants.

   (iv) Section 29A is a new Section that makes certain persons ineligible to be a Resolution Applicant. Those being made ineligible inter alia include:

   - Willful Defaulters,
   - Those who have their accounts classified as Non-Performing Assets (NPAs) for one year or more and are unable to settle their overdue amounts include interest thereon and charges relating to the account before submission of the Resolution Plan,
   - Those who have executed an enforceable guarantee in favour of a creditor, in respect of a Corporate Debtor undergoing a Corporate Insolvency Resolution Process or Liquidation Process under the Code
   - and connected persons to the above, such as those who are Promoters or in management of control of the Resolution Applicant, or will be Promoters or in management of control of Corporate Debtor during the

implementation of the Resolution Plan, the holding company, subsidiary company, associate company or related party of the above referred persons.

(v) It has also been specifically provided that CoC shall reject a Resolution Plan, which is submitted before the commencement of the Ordinance but is yet to be approved, and where the Resolution Applicant is not eligible as per the new Section 29A. In such cases, on account of the rejection, where there is no other plan available with the CoC, it may invite fresh resolution plans.

(vi) Section 30(4) is amended to explicitly obligate the CoC to consider feasibility and viability of the Resolution Plan in addition to such conditions as may be specified by IBBI, before according its approval.

(vii) The Sale of Property to a person who is ineligible to be a Resolution Applicant under Section 29A has been barred through the amendment in Section 35(1)(f).

(viii) In order to ensure that the provisions of the Code and the Rules and Regulations prescribed thereunder are enforced effectively, the new Section 235A provides for punishment for contravention of the provisions where no specific penalty or punishment is provided. The punishment is fine which shall not be less than one lakh rupees but which may extend to two crore rupees.

(ix) Consequential amendments in Section 240 of the Code, which provides for power to make Regulations by IBBI, have been made for regulating making powers under Section 25(2)(h) and 30(4).

[Press Release dated 23.11.2017]

SEBI Updates:

5. Online registration mechanism and filing system for clearing corporations:

The SEBI has introduced a digital platform for online filings related to Clearing Corporations. All applicants desirous of seeking registration / renewal as a Clearing Corporation in terms of Regulation 4 and 12 of the Securities Contracts (Regulation) (Stock Exchanges and Clearing Corporations) Regulations, 2012, shall now submit their applications online only, through SEBI Intermediary Portal at https://siportal.sebi.gov.in.

Further, all other filings including Annual Financial Statements and Returns, Monthly Development Report, Rules, Bye-laws, etc., shall also be submitted online.

[SEBI/HO/MRD/DRMNP/CIR/P/2017/119 dated 03.11.2017]

6. Amendment in Securities and Exchange Board of India (International Financial Services Centres) Guidelines, 2015:

The definition of 'issuer' as given in Clause 2 (1) (i) has been changed and now the term "issuer" shall mean:

i. any entity incorporated in India seeking to raise capital in foreign currency other than Indian rupee which has obtained requisite approval under Foreign Exchange Management Act, 1999 (FEMA) or exchange control regulations as may be applicable; or

ii. an entity incorporated in a foreign jurisdiction, provided such entity is permitted to issue securities outside the country of its incorporation or establishment or place of business as per the laws and regulations of its country of incorporation, jurisdiction or its constitution, or

iii. any supranational, multilateral or statutory organization/institution/agency provided such organization/institution/agency is permitted to issue securities as per its constitution.

[SEBI/HO/MRD/DRMNP/CIR/P/2017/120 dated 14.11.2017]

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Allied Laws Corner

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Rejection of Regular Bail Application on being arrested for offence u/s 3 and 4 of the Prevention of Money Laundering Act.

Where the accused person failed to explain source from where he had acquired huge amount of demonetized currency recovered from him, his bail was rightly rejected on being arrested for offence u/s 3 and 4 of Prevention of Money Laundering Act. The fact that the Appellant has made declaration in the Income tax returns and paid tax as per law does not extricate the appellant from disclosing the source of its receipt. No provision in the taxation laws has been brought to notice which grants immunity to the appellant from prosecution for an offence of money-laundering.

Recently, the Apex Court in the case of **Rohit Tondon vs. Enforcement Directorate** reported in **87 taxmann.com 260** while confirming the view of the Session Court and the High Court in rejecting regular bail application held that (a) the fact that no limit for deposit was specified, would not extricate the appellant from explaining the source from where such huge amount has been acquired, possessed or used by him; (b) the volume of demonetized currency recovered from the office and residential premises of the appellant, including the bank drafts in favour of fictitious persons and also the new currency notes for huge amount, leave no manner of doubt that it was the outcome of some process or activity connected with the proceeds of crime projecting the property as untainted property; (c) no explanation has been offered by the appellant to dispel the legal presumption of the property being proceeds of crime; (d) Similarly, **the fact that the appellant has made declaration in the Income Tax Returns and paid tax as per law does not extricate the appellant from disclosing the source of its receipt; (f) no provision in the taxation laws has been brought to notice which grants immunity to the appellant from prosecution for an offence of money-laundering;** (g) the possession of such huge quantum of demonetized currency and new currency in the form of Rs.2000/- notes, without disclosing the source from where it is received and the purpose for which it is received, the appellant has failed to dispel the legal presumption that he was involved in money-laundering and the property was proceeds of crime.

A. Facts of the case :

1. From the relevant materials including the CDR analysis of Mobile number of Ashish Kumar, Branch Manager, Kotak Mahindra Bank, K.G. Marg Branch, Kamal Jain, CA of Rohit Tandon (hereinafter referred to as "appellant"), Dinesh Bhola, Raj Kumar Goel; the statements of Kamal Jain, Dinesh Bhola and Ashish Kumar, recorded under Section 50 of the Act of 2002; and analysis of bank statements of stated companies, it was reveal that Ashish Kumar conspired with other persons to get deposited Rs.38.53 Crore in cash of demonetized currency into bank accounts of companies and got demand drafts issued in fictitious names with intention of getting them cancelled and thereby converting the demonetized currency into monetized currency on commission basis. Further, the investigation also revealed that the entire cash was collected on the instructions of the appellant herein, by Ashish Kumar, Raj Kumar Goel and others through Dinesh Bhola, an employee of the appellant. According to the prosecution, all the associates of the appellant acted on instructions of the appellant for getting issued the demand drafts against cash deposit with the help of Ashish Kumar, Branch Manager of Kotak Mahindra Bank

and others, to the tune of Rs.34.93 Crore from Kotak Mahindra Bank, K.G. Marg Branch. It was also noted that the demand drafts of Rs.3.60 Crore were issued in fictitious names on the instructions of Bank Manager Ashish Kumar in lieu of commission received by him in old cash currency. The demand drafts amounting to Rs.38 Crore were issued in favour of Dinesh Kumar and Sunil Kumar which were recovered from the custody of Kamal Jain who had kept the same on the instructions of the appellant. Out of the said amount, the demand drafts of other banks, apart from Kotak Mahindra Bank Limited, were also recovered. The prosecution suspected that there could be other dubious transactions made by the appellant in other banks and that Ashish Kumar, Bank Manager and others were acting on the instructions of the appellant for executing the crime.

B. Findings of the Session Court while rejecting Regular Bail Application :

1. The Session Court held as under :

"21. Pursuant to registration of FIR No.205/2016 under section 420, 406, 409, 468, 471, 188, 120-B IPC by Crime Branch, the matter was taken up by ED and ECIR No.18/16 was opened for investigation. Transaction statements of accounts in Kotak Mahindra Bank in FIR No.205/16 in respect of companies i.e. Delhi Training Company, Kwality Tading Company, Mahalaxmi Industries, R.K. International, Sapna Trading Company, Shree Ganesh Enterprises, Swastik Trading Company arid Virgo International were sought and scrutinized, Huge cash deposits in the said accounts were identified during November, 2016, post demonetization announcement it was found that demand drafts were issued in fictitious names like Dinesh Kumar, Sunil Kumar, Abhilasha Dubey, Madan Kumar, Madan Saini, Satya Narain Dagdi and Seema Bai.

*22. **Statement of Ashish Kumar, accused named in FIR No.205/16, Branch Manager, Kotak Mahindra Bank, K.G. Marg branch was recorded under section 50 of PMLA which revealed that Kamal Jain, CA of accused Rohit Tandon contacted him to get the demonetized currency on behalf of accused/applicant, converted into monetized currency on commission basis.** The commission of Ashish Kumar was decided @ 35%, who in turn contacted one Yogesh Mittal and Rajesh Kumar Goel, accused in FIR No.205/16 to carry out the criminal design of getting the demonetized cash converted into monetized 7 valuable form. Demonetized currency was deposited in different accounts of companies pertaining to Raj Kumar Goel besides others through Raj Kumar Goel with the help of Ashish Kumar in different bank accounts of Kotak Mahindra Bank and DDs were issued in fictitious names. The illegal conversion of demonetized currency, getting the same deposited and issuance of demand drafts is corroborated through CDR analysis of relevant persons for the relevant period. Dinesh Bhola and Kamal Jain, in their statements recorded under section 50 of PMLA have also confirmed and reiterated the facts as stated by Ashish Kumar, the Branch Manager. **The statements of persons recorded under section 50 of PMLA, which has evidentiary value under section 50(4) of PMLA, have confirmed that the old demonetized currency pertains to accused Rohit Tandon and the conspiracy was executed on his instructions.***

23. Lastly, it was submitted by learned senior counsel for accused that accused fully cooperated with the investigating agency and there was no need to arrest him in this case. He further submitted that the actions of Accused persons as mentioned in the FIR attract implications and as such

the correct authority to investigate into the same is the Income Tax Department and not the ED. Per contra, learned Special Prosecutor for ED submitted that accused only cooperated in the investigation in ECIR No.14/16 and not in ECIR No. 1 8/ 16. ***He further submitted that as sufficient material surfaced on record against the present accused and he did not cooperate in the investigation in the present case, therefore, accused Rohit Tandon was arrested in this case.*** *He submitted that he does not dispute the jurisdiction of Income Tax Department so far as other aspects of the matter are concerned.*

24. As per section 45 of PMLA, while considering grant of bail to accused, the court has to satisfy that:-

i. There are reasonable grounds for believing that accused is not guilty of such offence and that

ii. He is not likely to commit any offence, while on bail.

25. ***In the present case, accused has failed to satisfy this court that he is not guilty of alleged offence punishable under section 3 of PMLA. He has not been able to discharge the burden as contemplated under section 24 of the Act.***

26. Accused is alleged to have been found involved in a white collar crime. The alleged offence was committed by accused in conspiracy with other co-accused persons in a well planned and thoughtful manner. It has been observed in a catena of decisions by Hon'ble Superior Courts that economic offences constitute a class apart and need to be visited with a different approach in the matter of bail. The economic offence having deep rooted conspiracies and involving huge loss of public, funds needs to be viewed seriously and considered as grave offences affecting the economy of the country as a whole and thereby posing serious threat to the financial health of the country."

(emphasis supplied)

2. **The Session Court formed the opinion and noticed that the investigation was at the initial and crucial stage and that the source of funds of proceeds of crime was yet to be ascertained till then and that the recovery of balance proceeds of crime was in the process, the question of enlarging the appellant on bail does not arise, more so, when there was every possibility that he may tamper with the evidence and influence the material prosecution witnesses. Accordingly, the bail application was rejected by the Sessions Court vide judgment and order dated 7th January, 2017.**

C. Findings of the High Court :

1. **Aggrieved with the order of the Session Court, the Appellant moved regular bail application to the High Court, which was also rejected.** The High Court opined that keeping in mind the rigors of Section 45 of the Act of 2002 for the release of the accused charged under Part A of the Schedule, on bail, coupled with the antecedents of the appellant of being involved in other similar crime registered as FIR No.197/2016, for offence under Section 420, 409, 188, 120B of IPC dated 14th December, 2016 by Crime Branch and ECIR No.14/DZ/II/2016 registered on 16th December, 2016 by Enforcement Directorate for offences under Sections 3/ 4 of the Act of 2002. Further, **during a raid conducted jointly by the Crime Branch and Income Tax Department on 10th December, 2016 at around 10.00 P.M. at the office premises of the appellant, currency of Rs.13.62 Crore was recovered including new currency in the denomination of Rs. 2000/- amounting to Rs.2.62 Crore. In addition, the appellant had surrendered Rs.128**

Crore during the raid conducted by the Income Tax Department on 6/8 October, 2016 in his office and residential premises. No reliable and credible documents were forthcoming from the appellant about the source from where he had obtained such a huge quantity of cash. The possibility of the same being proceeds of crime cannot be ruled out. Hence, it noted that the question of granting bail did not arise, taking into consideration the serious allegations against the appellant and other facts including severity of the punishment prescribed by law. Accordingly, the bail application of the appellant came to be rejected. As a consequence, the pending application which was considered along with the bail application was also disposed of by the impugned judgment and order dated 5th May, 2017 passed by the High Court.

D. Findings of the Supreme Court :

1. The consistent view taken by this Court is that economic offences having deep-rooted conspiracies and involving huge loss of public funds need to be viewed seriously and considered as grave offences affecting the economy of the country as a whole and thereby posing serious threat to the financial health of the country. Further, when attempt is made to project the proceeds of crime as untainted money and also that the allegations may not ultimately be established, but having been made, the burden of proof that the monies were not the proceeds of crime and were not, therefore, tainted shifts on the accused persons under Section 24 of the Act of 2002.

2. It is not necessary to multiply the authorities on the sweep of Section 45 of the Act of 2002 which, as aforementioned, is no more res integra. The decision in the case of Ranjitsing Brahmajeetsing Sharma v. State of Maharashtra and Anr., [2005] 5 SCC 294 and State of Maharashtra v. Vishwanath Maranna Shetty, [2012] 10 SCC 561 dealt with an analogous provision in the Maharashtra Control of Organised Crime Act, 1999. It has been expounded that the Court at the stage of considering the application for grant of bail, shall consider the question from the angle as to whether the accused was possessed of the requisite mens rea. The Court is not required to record a positive finding that the accused had not committed an offence under the Act. The Court ought to maintain a delicate balance between a judgment of acquittal and conviction and an order granting bail much before commencement of trial. The duty of the Court at this stage is not to weigh the evidence meticulously but to arrive at a finding on the basis of broad probabilities.

3. It is not necessary to multiply the authorities on the sweep of Section 45 of the Act of 2002 which, as aforementioned, is no more res integra. The decision in the case of Ranjitsing Brahmajeetsing Sharma v. State of Maharashtra and Anr., [2005] 5 SCC 294 and State of Maharashtra v. Vishwanath Maranna Shetty, [2012] 10 SCC 561 dealt with an analogous provision in the Maharashtra Control of Organised Crime Act, 1999. It has been expounded that the Court at the stage of considering the application for grant of bail, shall consider the question from the angle as to whether the accused was possessed of the requisite mens rea. The Court is not required to record a positive finding that the accused had not committed an offence under the Act. The Court ought to maintain a delicate balance between a judgment of acquittal and conviction and an order granting bail much before commencement of trial. The duty of the Court at this stage is not to weigh the evidence meticulously but to arrive at a finding on the basis of broad probabilities. Further, the Court is required

to record a finding as to the possibility of the accused committing a crime which is an offence under the Act after grant of bail. In Ranjitsing Brahmajeetsing Sharma (supra), in paragraphs 44 to 46 of the said decision, this Court observed thus:

"44. The wording of Section 21(4), in our opinion, does not lead to the conclusion that the Court must arrive at a positive finding that the applicant for bail has not committed an offence under the Act. If such a construction is placed, the court intending to grant bail must arrive at a finding that the applicant has not committed such an offence. In such an event, it will be impossible for the prosecution to obtain a judgment of conviction of the applicant. Such cannot be the intention of the Legislature. Section 21(4) of MCOCA, therefore, must be construed reasonably. It must be so construed that the Court is able to maintain a delicate balance between a judgment of acquittal and conviction and an order granting bail much before commencement of trial. Similarly, the Court will be required to record a finding as to the possibility of his committing a crime after grant of bail. However, such an offence in futuro must be an offence under the Act and not any other offence. Since it is difficult to predict the future conduct of an accused, the court must necessarily consider this aspect of the matter having regard to the antecedents of the accused, his propensities and the nature and manner in which he is alleged to have committed the offence.

45. It is, furthermore, trite that for the purpose of considering an application for grant of bail, although detailed reasons are not necessary to be assigned, the order granting bail must demonstrate application of mind at least in serious cases as to why the applicant has been granted or denied the privilege of bail.

46. The duty of the court at this stage is not to weigh the evidence meticulously but to arrive at a finding on the basis of broad probabilities. However, while dealing with a special statute like MCOCA having regard to the provisions contained in Sub-section (4) of Section 21 of the Act, the Court may have to probe into the matter deeper so as to enable it to arrive at a finding that the materials collected against the accused during the investigation may not justify a judgment of conviction. The findings recorded by the Court while granting or refusing bail undoubtedly would be tentative in nature, which may not have any bearing on the merit of the case and the trial court would, thus, be free to decide the case on the basis of evidence adduced at the trial, without in any manner being prejudiced thereby."

4. Reverting to the decision in the case of *Manoranjana Sinh* v. *Central Bureau of Investigation* [2017] 5 SCC 218 , the Supreme Court held that the same is on the facts of that case. Even in the said decision, the Court has noted that the grant or denial of bail is regulated to a large extent by the facts and circumstances of each case. In the case of *Sanjay Chandra* v. *Central Bureau of Investigation* [2012] 1 SCC 40, the Court was not called upon to consider the efficacy of Section 45 of the Act of 2002 which is a special enactment.

5. Keeping in mind the dictum in the aforesaid decisions, the Apex Court held that "we find no difficulty in upholding the opinion recorded by the Sessions Court as well as the High Court in this regard. In our opinion, both the Courts have carefully analysed the allegations and the materials on record indicating the complicity of the appellant in the commission of crime punishable under Section 3/4 of the Act of 2002. The Courts have maintained the delicate balance between the judgment of acquittal and conviction and order granting

bail before commencement of trial. The material on record does not commend us to take a contrary view".

6. Realizing this position, the learned counsel appearing for the appellant would contend that even if the allegations against the appellant are taken at its face value, the incriminating material recovered from the appellant or referred to in the complaint, by no stretch of imagination, would take the colour of proceeds of crime. In fact, there is no allegation in the charge-sheet filed in the scheduled offence case or in the prosecution complaint that the unaccounted cash deposited by the appellant is as a result of criminal activity. Absent this basic ingredient, the property derived or obtained by the appellant would not become proceeds of crime. To examine this contention, it would be useful to advert to Sections 3 and 4 of the Act of 2002. The same read thus:

*"**3. Offence of money-laundering.-** Whosoever directly or indirectly attempts to indulge or knowingly assists or knowingly is a party or is actually involved in any process or activity connected proceeds of crime including its concealment, possession, acquisition or use and projecting or claiming it as untainted property shall be guilty of offence of money-laundering.*

4. Punishment for money-laundering.- *Whoever commits the offence of money-laundering shall be punishable with rigorous imprisonment for a term which shall not be less than three years but which may extend to seven years and shall also be liable to fine.*

Provided that where the proceeds of crime involved in money-laundering relates to any offence specified under paragraph 2 of Part A of the Schedule, the provisions of this section shall have effect as if for the words "which may extend to seven years", the words "which may extend to ten years" had been substituted."

7. As the fulcrum of Section 3 quoted above, is expression 'proceeds of crime', the dictionary clause in the form of Section 2(1)(u) is of some relevance. The same reads thus:

"2(1)(u) *'proceeds of crime' means any property derived or obtained, directly or indirectly, by any person as a result of criminal activity relating to a scheduled offence or the value of any such property or where such property is taken or held outside the country, then the property equivalent in value held within the country;"*

It will be useful to advert to the meaning of expression "property" as predicated in Section 2(1)(v). The same reads thus:

*"*2(1)(v) *"property" means any property or assets of every description, whether corporeal or incorporeal, movable or immovable, tangible or intangible and includes deeds and instruments evidencing title to, or interest in, such property or assets, wherever located;*

The expression 'scheduled offence' has been defined in Section 2(1)(y) of the Act of 2002. The same reads thus:

"2(1)(y) *'scheduled offence' means-*

(i) *the offences specified under Part A of the Schedule; or*

(ii) *the offences specified under Part B of the Schedule if the total value involved in such offences is one crore rupees or more; or*

(iii) *the offences specified under Part C of the Schedule;"*

8. Indisputably, the predicate offence is included in Part A in paragraph 1 of the Schedule in the Act of 2002, in particular Sections 420, 467, 471 and 120B of IPC. Indeed, the expression "criminal activity"

has not been defined. By its very nature the alleged activities of the accused referred to in the predicate offence are criminal activities. The possession of demonetized currency in one sense, ostensibly, may appear to be only a facet of unaccounted money in reference to the provisions of the Income Tax Act or other taxation laws. However, the stated activity allegedly indulged into by the accused named in the commission of predicate offence is replete with mens rea. In that, the concealment, possession, acquisition or use of the property by projecting or claiming it as untainted property and converting the same by bank drafts, would certainly come within the sweep of criminal activity relating to a scheduled offence. That would come within the meaning of Section 3 and punishable under Section 4 of the Act, being a case of money-laundering. The expression 'money-laundering' is defined thus:

"2(1)(p) *"money-laundering" has the meaning assigned to it in section 3;*

9. The appellant then relies upon the decision in the case of *Gorav Kathuria* v. *Union of India*, (2016 SCC Online P & H 3428 of the Punjab and Haryana High Court which has taken the view that Section 45(1) of the Act of 2002 requires to be read down to apply only to those scheduled offences which were included prior to the amendment in 2013 in the Schedule. It is contended that the offence, in particular, under Sections 420, 467 and 471 of IPC, may not be treated as having been included in the scheduled offences for the purpose of the Act of 2002. Further, if any other view was to be taken, the provision would be rendered *ultra vires*. We are in agreement with the stand taken by the respondents that the appellant cannot be permitted to raise the grounds urged in the writ petition, hearing whereof has been deferred on the request of the appellant. In other words, the appellant should be in a position to persuade the Court that the allegations in the complaint and the materials on record taken at its face value do not constitute the offence under Section 3 read with the schedule of the Act of 2002 as in force.

10. It has been brought to our notice that the decision in *Gorav Kathuria* (*supra*) was challenged before this Court by way of Criminal Appeal No.737 of 2016, which has already been dismissed on 12th August, 2016. The order originally passed on the said criminal appeal reads thus:

"Though the High Court has granted certificate to appeal, after arguing the matter for some time, learned counsel for the petitioner concedes that the impugned judgment of the High Court is correct.

This appeal is, accordingly, dismissed."

11. However, that order has been subsequently revised which reads thus:

"Though the High Court has granted certificate to appeal, we have heard the learned counsel for some time and are of the opinion that the impugned judgment of the High Court is correct.

This appeal is, accordingly, dismissed."

12. At the same time the respondents have drawn our attention to a chart contained in their written submissions pointing out that other High Courts have disagreed with the principle expounded in ***Gorav Kathuria's*** case. The said chart reads thus:

(i) Crl. Misc. Application (for Regular Bail) No.7970/17 Jignesh Kishorebhai Bajiawala v. *Stateof Gujarat & Ors.**Manu/GJ/1035/20 17*** *High Court of Gujarat*

(ii) Crl. Petition No.366/2017 SC Jayachandra v. *Enforcement Directorate, Bangalore* ***2017 (349) ELT 392 KAR*** *High Court of Karnataka at Bengaluru*

(iii) *WP[Crl.] No.333 of 2015 Kishin S. Loungani* v.. *UOI & ors.[2017] 1 KHC 355 High Court of Kerala at Ernakulam*

(iv) *Crl. Mic. Application (for Regular Bail) No.30674/16 Pradeep Nirankarnath Sharma vs Directorate of Enforcement* ***2017 (350) ELT 449 (GUJ)*** *High Court Gujarat at Ahmedabad*

(v) *Crl. Writ Petition No.3931/2016 Chhagan Chandrakant Bhujbal* v. *Union of India & Ors.****2016 SCC Online Bom 9983*** *High Court of Bombay*

13. For the time being, it is not necessary for us to examine the issues arising from the decision of the Punjab and Haryana High Court or the rejection of criminal appeal by this Court against that decision. The constitutional validity of Section 45 of the Act of 2002 will have to be examined by this Court in the writ petition on its own merits. The summary dismissal of criminal appeal will not come in the way of considering the correctness of the decision of the Punjab and Haryana High Court in view of the conflict of opinion with the other High Courts.

14. Suffice it to observe that the appellant has not succeeded in persuading us about the inapplicability of the threshold stipulation under Section 45 of the Act. In the facts of the present case, we are in agreement with the view taken by the Sessions Court and by the High Court. We have independently examined the materials relied upon by the prosecution and also noted the inexplicable silence or reluctance of the appellant in disclosing the source from where such huge value of demonetized currency and also new currency has been acquired by him. The prosecution is relying on statements of witnesses/accused already recorded, out of which 7 were considered by the Delhi High Court. These statements are admissible in evidence, in view of Section 50 of the Act of 2002. The same makes out a formidable case about the involvement of the appellant in commission of a serious offence of money-laundering. It is, therefore, not possible for us to record satisfaction that there are reasonable grounds for believing that the appellant is not guilty of such offence. Further, the Courts below have justly adverted to the antecedents of the appellant for considering the prayer for bail and concluded that it is not possible to hold that the appellant is not likely to commit any offence ascribable to the Act of 2002 while on bail. Since the threshold stipulation predicated in Section 45 has not been overcome, the question of considering the efficacy of other points urged by the appellant to persuade the Court to favour the appellant with the relief of regular bail will be of no avail. In other words, the fact that the investigation in the predicate offence instituted in terms of FIR No.205/2016 or that the investigation qua the appellant in the complaint CC No.700/2017 is completed; and that the proceeds of crime is already in possession of the investigating agency and provisional attachment order in relation thereto passed on 13th February, 2017 has been confirmed; or that charge-sheet has been filed in FIR No.205/2016 against the appellant without his arrest; that the appellant has been lodged in judicial custody since 2nd January, 2017 and has not been interrogated or examined by the Enforcement Directorate thereafter; all these will be of no consequence.

15. **It was urged on behalf of the appellant that Demonetization Notification dated 8th November, 2016 imposes no limit in KYC compliant accounts on the quantum of deposit and no restrictions on non-cash transactions. The relevant portion of the said notification reads thus:**

"*(iii) there shall not be any limit on the quantity or value of specified bank notes to be credited to the account maintained with the bank by a person, where the specified bank notes are tendered; however, where compliance with extant Know Your Customer (KYC) norms is not complete in an account, the maximum value of specified bank notes as may be deposited shall be Rs. 50,000/-;*

(vii) there shall be no restriction on the use of any non-cash method of operating the account of a person including cheques, demand drafts, credit or debit cards, mobile wallets and electronic fund transfer mechanisms or the like;"

16. **We fail to understand as to how this argument can be countenanced. The fact that no limit for deposit was specified, would not extricate the appellant from explaining the source from where such huge amount has been acquired, possessed or used by him. The volume of demonetized currency recovered from the office and residential premises of the appellant, including the bank drafts in favour of fictitious persons and also the new currency notes for huge amount, leave no manner of doubt that it was the outcome of some process or activity connected with the proceeds of crime projecting the property as untainted property. No explanation has been offered by the appellant to dispel the legal presumption of the property being proceeds of crime. Similarly, the fact that the appellant has made declaration in the Income Tax Returns and paid tax as per law does not extricate the appellant from disclosing the source of its receipt. No provision in the taxation laws has been brought to our notice which grants immunity to the appellant from prosecution for an offence of money-laundering. In other words, the property derived or obtained by the appellant was the result of criminal activity relating to a scheduled offence. The argument of the appellant that there is no allegation in the charge-sheet filed in the scheduled offence case or in the prosecution complaint that the unaccounted cash deposited by the appellant is the result of criminal activity, will not come to the aid of the appellant. That will have to be negatived in light of the materials already on record. The possession of such huge quantum of demonetized currency and new currency in the form of Rs.2000/- notes, without disclosing the source from where it is received and the purpose for which it is received, the appellant has failed to dispel the legal presumption that he was involved in money-laundering and the property was proceeds of crime.**

17. **Taking overall view of the matter, therefore, we are not inclined to interfere with the well considered opinion of the Sessions Court and the High Court rejecting the prayer for grant of regular bail to the appellant. However, considering the fact that the appellant is in custody since 28th December, 2016 and the offence is punishable with imprisonment for a term extending to seven years only, but not less than three years, the Trial Court will be well advised to proceed with the trial on day-to-day basis expeditiously. We clarify that the Trial Court must examine the evidence/ material brought on record during the trial on its own merit and not be influenced by the observations in this decision which are limited for considering the prayer for grant of regular bail.**

❋ ❋ ❋

From Published Accounts

CA. Pamil H. Shah
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Accounting Standard 22 – Taxes on Income Tax
Annual Report 2016-17

Advanced Enzyme Technologies Ltd

I. Income Tax

Income tax expense comprises current tax (i.e. amount of tax for the period determined in accordance with the income tax law), deferred tax charge or credit (reflecting the effects or timing differences between accounting income and taxable income for the period) and Minimum Alternate Tax (MAT) credit entitlement.

Current Tax

Current tax is computed and provided for in accordance with the applicable provisions of the Income Tax Act, 1961.

Deferred tax

Deferred tax is recognized on timing differences, being the difference between the taxable income and the accounting income that originate in one period and are capable of reversal in one or more subsequent periods. Deferred tax is measured based on the tax rates and the tax law enacted or substantively enacted at the balance sheet date. Deferred tax assets are recognized only to the extent that there is a reasonable certainty that sufficient future taxable income will be available against which such deferred tax assets can be realized. If the Company has unabsorbed depreciation or carry forward tax losses, differed tax assets are recognized only if there is a virtual certainty supported by convincing evidence that such deferred tax assets can be realized against future taxable profits.

At each balance sheet date the company re-assesses unrecognized deferred tax assets. It recognizes unrecognized deferred tax assets to the extent that it has become reasonably certain or virtually certain, as the case may be that sufficient future taxable income will be available against which such deferred tax assets can be realized.

Minimum Alternate Tax

Minimum Alternate Tax (MAT) under the provision of Income Tax Act, 1961 is recognised as current tax in the Statement of Profit and Loss. The credit available under the Act, in respect of MAT paid is recognised as an asset only when and to the extent there is convincing evidence that the company will pay normal income tax during the period for which the MAT credit can be carried forward for set off against the normal tax liability. MAT Credit recognised as an asset is reviewed at each balance sheet date and written down to the extent the aforesaid convincing evidence no longer exists.

Claris Lifesciences Ltd.

Current Tax

Current income tax assets and liabilities are measured at the amount expected to be recovered from or paid to the taxation authorities. The tax rate and tax laws used to compute the amount are those that are enacted or substantively enacted, at the reporting date.

Current income tax relating to items recognised in correlation to the underlying transaction either in OCI or directly in equity. The management periodically evaluates positions taken in the tax returns with respect to situations in which applicable tax regulations are subject to interpretation and establishes provisions where appropriate.

Deferred taxes

Deferred tax is provided using the balance sheet method on temporary differences between the tax bases of assets and liabilities and their carrying amounts for financial reporting purposes at the reporting date.

Deferred tax liabilities are recognised for all taxable temporary differences except when the deferred tax liability arises from the initial recognition of goodwill or an asset or liability in a transaction that is not a business combination and at the time of the transaction, affects neither the accounting profit nor taxable profit or loss.

Deferred tax assets are recognised for all deductible temporary differences, the carry forward of unused tax credit and any unused tax losses. Deferred tax assets are recognised to the extent that it is probable that taxable profit will be available against which the deductible temporary differences, and the carry forward of unused tax credits and unused tax losses can be utilised, expect when the deferred tax assets relating to the deductible temporary deference arises from the initial recognition of an asset or liability in a transaction that s not a business combination and, at the time of the transaction, affects neither the accounting profit nor taxable profit or loss.

The company recognizes tax credits in the nature of MAT credit as an asset only to the extent that there is convincing evidence that the company will pay normal income tax during the specified period, i.e., the period for which tax credit is allowed to be carried forward. In the year in which the company recognizes tax credits as an asset, the said asset is created by way of tax credit to the statement of profit and loss. The company reviews such tax credit asset at each reporting date and writes down the asset to the extent the company does not have convincing evidence that it will pay normal tax during the specified periods. Deferred tax includes mat tax credit.

The carrying amount of deferred tax assets is reviewed at each reporting date and reduced to the extent that is no longer probable that sufficient taxable profit will be available to allow all or part of the deferred tax asset to be utilized. Unrecognised deferred tax assets are reassessed at each reporting date and are recognised to the extent that it has become probable that future taxable profit will be allow the deferred tax asset to be recovered.

Deferred tax assets and liabilities are measured at the tax rates that are expected to apply in the year when the asset is realized or the liability is settled, based on tax rates (and tax laws) that have been enacted or substantively enacted at the reporting date.

Deferred tax relating to items recognized outside profit or loss is recognized outside profit or loss (either in other comprehensive income or in equity). Deferred tax items are recognized in correlation to the underlying transaction either in OCI or directly in equity.

Deferred tax assets and deferred tax liabilities are offset, if a legally enforceable right exists to set-off current tax assets against current tax liabilities and the deferred taxes relate to the same taxable entity and the same taxation authority.

Prestige Estates Projects Ltd

2.10 Income Taxes

Income tax expense represents the sum of the tax currently payable and deferred tax.

a. Current Tax

Current tax assets and liabilities are measured at the amount expected to be recovered from or paid to the taxation authorities. The tax rate and tax laws used to compute the amount are those that are enacted or substantively enacted, at the reporting date. Current tax relating to items recognised outside statement of profit and loss is recognised outside statement of profit and loss (either in other comprehensive income or in equity). Current tax items are recognised in correlation to the underlying transaction either in OCI or directly in equity.

b. Deferred Tax

Deferred tax recognized on temporary differences arising between the tax bases of assets and liabilities and their carrying amounts in the financial Statement. However, deferred tax liabilities are not recognized if they arise from the initial recognition of goodwill.

Deferred tax is also not accounted for if it arises from initial recognition of an asset or liability in a transaction other then a business combination that at the time of the transaction affects neither the accounting profit nor taxable profit(tax loss).

Deferred tax is determined using tax rates (and Laws) that have been enacted or subsequently enacted by the end of the reporting period and are expected to apply when the related deferred tax asset is realized or the deferred tax liability is settled.

Deferred tax assets are recognized for all deductible temporary differences and unused tax losses only if it is probable that future taxable amounts will be available to utilize those temporary differences and losses.

Deferred tax assets and liabilities are offset when there is a legally enforceable right to offset when the deferred tax balances relate to the same taxation authority. Current tax assets and tax liabilities are offset where the entity has a legally enforceable right to offset and intends either to settle on a net basis, or to realise the asset and settle the liability simultaneously.

Current tax and deferred tax is recognised in statement of profit and loss, except to the extent that it relates to items recognised in other comprehensive income or directly in equity. In this case, the tax is also recognised in other comprehensive income or directly in equity, respectively.

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From the Government

CA. Kunal A. Shah
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Income Tax

1. **Clarification on Cash sale of agricultural produce by cultivators/agriculturist**

   In this context, it is stated that the provisions of section 40A (3) of the Income-tax Act, 1961 ('the Act') provides for the disallowances of expenditure exceeding Rs. 10000 made otherwise than by an account payee cheque/ draft or use of electronic clearing system through a bank account. However, rule 6DD of the Income-tax Rules, 1962 ('IT Rules') carves out certain exceptions from application of the provisions of section 40A (3) in some specific cases and circumstances, which inter alia include payments made for purchase of agricultural produce to the cultivators of such produce. Therefore, no disallowance under section 40A (3) of the Act can be made if the trader makes cash purchases of agricultural produce from the cultivator.

3. Further, section 269ST, subject to certain exceptions, prohibits receipt of Rs. 2 lakh or more otherwise than by an account payee cheque/draft or by use of electronic clearing system through a bank account from a person in a day or in respect of a single transaction or in respect of transactions relating to an event or occasion from a person. Therefore, any cash sale of an amount of Rs. 2 lakh or more by a cultivator of agricultural produce is prohibited under section 269ST of the Act.

4. Further also the provisions relating to quoting of PAN or furnishing of Form No.60 under rule 114B of the IT Rules do not apply to the sale transaction of Rs. 2 Lakh or less.

5. In view of the. above, it is clarified that cash sale of the agricultural produce by its cultivator to the trader for an amount less than Rs 2 Lakh will not:-

   a) result in any disallowance of expenditure under section 40A (3) of the Act in the case of trader.

   b) attract prohibition under section 269ST of the Act in the case of the cultivator; and

   c) require the cultivator to quote his PAN/ or furnish Form No.60.

   (Circular No. 27/2017, dated 03/11/2017)

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Association News

CA. Riken J. Patel
Hon. Secretary

CA. Maulik S. Desai
Hon. Secretary

1 **Forthcoming Programmes**

Date/Day	Time	Programmes	Venue
30.12.2017	8.30 a.m. Onwards	Cricket Match - CA Association Vs. IT Bar Association	Sardar Patel Stadium, Navrangpura, Ahmedabad
21.01.2018	9.00 a.m. Onwards	Cricket Match - CA Association Vs. Baroda Branch of WIRC of ICAI	M.S. University Ground at Baroda

Glimpses of Past Events

15.12.2017 – CAA Foundation Day Celebration with Walkathon

15.12.2017 - Lecture meeting on "Current Issues in GST and Latest Judicial Decisions under Income Tax" organised by Memorial Lecture (Late Shri K T Thakor& C F Patel) Committee

25.11.2017 – Cricket Match with Rajkot Branch of WIRC of ICAI – AT Rajkot

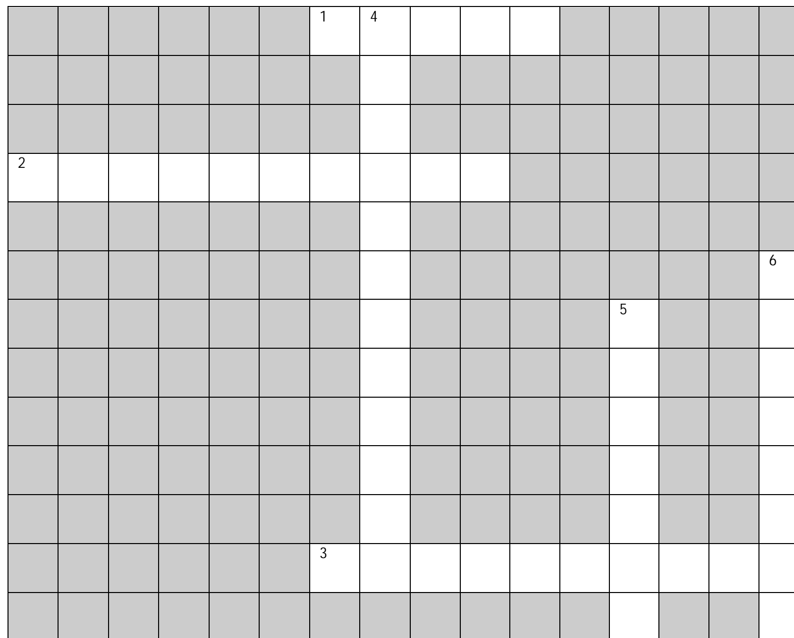
ACAJ Crossword Contest # 43

Across

1. All taxpayers would file return in FORM GSTR-3B along with payment of tax by 20th of the succeeding month till _________ 2018.
2. Failure comes only when we forget our ideals and objectives and ______.
3. The term Intellectual property was initially termed as ____________ property under the Paris Convention.

Down

4. We are a beautiful _____________ of words, flesh, thoughts, blood, and energy, but it does not entirely belong to us.
5. ___________ means any treatment or process undertaken by a person on goods belonging to another registered person.
6. The action of reopening of assessment can be resorted to by the Assessing Officer only if he has __________ material at his command.



Notes:

1. The Crossword puzzle is based on previous issue of ACA Journal.
2. Two lucky winners on the basis of a draw will be awarded prizes.
3. The contest is open only for the members of Chartered Accountants Association and no member is allowed to submit more than one entry.
4. Members may submit their reply either physically at the office of the Association or by email at caaahmedabad@gmail.com on or before 01/01/2018.
5. The decision of Journal Committee shall be final and binding.

Winners of ACAJ Crossword Contest # 42
1. CA. Mohan Akalkotkar
2. CA. Bhadresh Mehta

ACAJ Crossword Contest # 42 - Solution

Across

1. Supply
2. Purusartha
3. One

Down

4. Speculative
5. Corpus
6. Ratnamani

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