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K.VAITHEESWARAN & CO.

Advocates & Tax Consultants

TAX QUEST

A Monthly e-Newsletter from K. Vaitheeswaran & Co., Chennai, India

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INCOME TAX

CBDT Circular and Notifications

⇒ Notification dated 31.12.2020

CBDT vide this notification extended the due date for furnishing Income Tax Returns for FY 2019-20 (AY 2020-21)

(i) ITR for AY 2020-21 for taxpayers who are required to get their accounts audited has been extended to 15.02.2021

(ii) ITR for AY 2020-21 for the taxpayers who are required to furnish report of international/ specified domestic transaction has been further extended to 15.02.2021.

(iii) ITR for AY 2020-21 for other taxpayers has been further extended to 10.01.2021.

(iv) Date for furnishing audit reports under the Act including tax audit report and report in respect of international/ specified domestic transaction for the Assessment Year 2020-21 has been further extended to 15.01.2021.

(v) Last date for making declaration under Vivaad Se Vishwas Scheme has been extended to 31.01.2021.

(vi) Date for passing of orders under Vivaad Se Vishwas Scheme, which are required to be passed by 30.01.2021 has been extended to 31.01.2021.

(vii) Date for passing of orders or issuance of notice by the authorities under the Direct Taxes and Benami Acts which are required to be passed/ issued/ made by 30.03.2021 has also been extended to 31.03.2021.

(viii) The due date for payment of self-assessment tax for small and middle-class tax payers whose tax liability is up to Rs. 1 lakh has been extended to 15.02.2021.

⇒ The CBDT issued protocol for handling breach of information exchanged under the tax treaties as per international standards. The same was approved by the Information Security Committee.

⇒ CBDT issued Order dated 11.01.2021 rejecting all the representations for further extension of the due date for FY 2019-20 for filing of returns under the Income Tax Act, 1961.

⇒ CBDT launched an e-portal vide Press Release dated 12.01.2021 for filing complaints regarding tax evasion/ Benami Properties/ Foreign Undisclosed Assets.

⇒ CBDT vide Notification dated 12.01.2021 launched the Faceless Penalty Scheme, 2021 w.e.f. date of publication in the Official Gazette. CBDT also introduced further amendments vide Notification dated 12.01.2021 in the Income Tax Act, 1961 to further the objectives of the Scheme.

Case Laws

Supreme Court

⇒ Primary Agriculture Credit Societies – Deduction – 80P (4)

The Supreme Court in the case of ***The Mavilayi Service Cooperative Bank Ltd. Vs. CIT Civil Appeal Nos. 7343-7350 of 2019*** has held that Section 80P of the IT Act, being a benevolent provision enacted by Parliament to encourage and promote the credit of the co-operative sector in general must be read liberally and reasonably, and if there is ambiguity, in favour of the assessee. A deduction that is given without any reference to any restriction or limitation cannot be restricted or limited by implication, as is sought to be done by the Revenue in the present case by adding the word "agriculture" into Section 80P(2)(a)(i) when it is not there. Further, section 80P (4) is to be read as a proviso, which proviso now specifically excludes co-operative banks which are co-operative societies engaged in banking business i.e. engaged in lending money to members of the public, which have a licence in this behalf from the RBI. Therefore, once section 80P (4) is out of harm's way, all the assessees in the present case are entitled to the benefit of the deduction contained in section 80P(2)(a)(i), notwithstanding that they may also be giving loans to their members which are not related to agriculture. Also, in case it is found that there are instances of loans being given to non-members, profits attributable to such loans obviously cannot be deducted.

High Court

⇒ Reopening of Assessment – Notice – Validity

The Madras High Court in the case of ***Seshasayee Paper & Boards Vs. Union of India and Ors. [TS-697-HC-2020]*** has held that the material, which was already placed on record and considered in earlier two rounds of litigation can hardly be a reason to reopen the assessment and the attempt of the Department is to reopen a settled issue solely based upon change of opinion. The Department is silent and has not disclosed as to what is the tangible material, which is now available with them more than that which was available in the earlier two rounds of litigation. Therefore, the Court held that what the Department seeks to do is not to reopen the assessment, but to review the earlier orders, which had attained finality. That apart, the tax case appeals filed by the assessee having been allowed by judgment dated 03.12.2013, the decision is binding on the Department and the same reasons, for which, the CIT exercised his power under Section 263 of the Act, cannot be used for issuing the notices for reopening. The Court held that the Department is wholly unjustified in initiating reassessment proceedings in the fact situation prevailing in these cases.

⇒ Amendment to Section 50C – Retrospective

In the case of ***CIT Vs. Vummudi Amarendran (2020) 429 ITR 97 (Mad),*** the agreement to sell was executed in 2012 for a sale consideration of Rs. 19 crores and Rs. 6 crores were received as advance. At the time of registration of the sale deed relevant to the assessment year 2014-15, the guideline value adopted by the State Government was Rs. 27 crores. This was adopted as full value of consideration under Section 50C by the Revenue. The

Madras High Court held that the proviso to Section 50C inserted by Finance Act, 2016 w.e.f. 01.04.2017 is retrospective in nature. The said proviso permits the adoption of the stamp duty valuation on the date of agreement in case the date of registration is different. The Court held that once an amendment is made to remove an undue hardship, it has to be treated as effective from the date on which the law containing such undue hardship was introduced.

⇒ Distinction between Plant and Machinery

The Bombay High Court in the case of ***CIT Vs. Sociedade De Fomento Industrial Pvt. Ltd. (2020) 429 ITR 207*** in the context of Section 10B held that the unit set up by the assessee was a separate, distinct and new one and eligible for the benefit under Section 10B. The permission granted by the development commissioner was valid as he was a delegatee. The Court also observed that plant and machinery are not synonymous. Plant is where machinery is installed. Plant is erected and not installed.

⇒ Minimum Alternate Tax under Section 115JB

The Madras High Court in the case of ***PrCIT Vs. Scope International (2020) 429 ITR 500,*** has held that credit for MAT tax paid would include surcharge and education cess.

The Karnataka High Court in the case of ***CIT Vs. Gokaldas Images Pvt. Ltd. (2020) 429 ITR 526,*** has held that disallowance computed under Section 14A pertains to computation of income under the normal provisions of the Act. The same cannot be read into Section 115JB.

ITAT

⇒ Section 50C – Tolerance Limit – Prospective or Retrospective?

The Mumbai Tribunal in the case of ***Maria Fernandez Cheryl Vs. Income Tax Officer [TS-19-ITAT-2021]*** has held that once legislature very graciously accepts, by introducing the legal amendments in question, that there were lacunas in the provisions of Section 50 C in the sense that even in the cases of genuine variations between the stated consideration and the stamp duty valuation, anti-avoidance provisions under section 50C could be pressed into service, and thus remedied the law, there is no escape from holding that these amendments are effective with effect from the date on which the related provision, i.e., Section 50C, itself was introduced. These amendments are thus held to be retrospective in effect.

⇒ Transfer / Assignment of Share Application Money

The Mumbai ITAT in the case of ***DCIT Vs. Morarjee Realities Ltd. ITA No. 2343/Mum/2009*** has held that loans and share application money would stand on same footing since both are advances in nature. The share application money is nothing but mere advances till the time the shares are allotted and share application money is converted into share capital. This is further fortified by the fact that the provisions of the Companies Act provide for refund of share application money with interest under certain circumstances. The Tribunal held that the share application money as transferred / assigned by the assessee

would constitute a 'Capital Asset' within the meaning of Sec.2(14) of the Act. It does not fall under any of the exclusions.

⇒ Advance – Forfeited – Unmaterialised Property

The Delhi ITAT in the case of ***Meera Goyal Vs. Income Tax Officer ITA No. 8239/ Del/2019*** has held that the provision to section 51 has been inserted by the Finance (No.2) Act 204 with effect from 1.4.2015 and so as the provisions of clause (ix) of sub-section (2) of section 56. However, the Assessing Officer chose to apply the provisions inserted from 01.04.2015 to the assessment year 2013-14 which cannot be held to be legally valid. The pre-amended provisions applicable to the case of the assessee for the instant assessment year directs as to how the advance or other money received is to be treated. As per the provisions in existence, any money or other money received in connection with negotiations of any capital asset and retained by the assessed shall be deducted from the cost for which the asset was acquired in computing the cost of acquisitions while determining the capital gains. The Tribunal held that till the assessment year 2015- 16, the amount of forfeiture is not liable to be taxed but will go only in reducing the value of the asset while computing the taxability of the assessee under the head "capital gains". There is no taxability of the forfeited amount in the current year. The revenue may monitor or keep track of determination of capital gains as and when the asset is finally sold.

INTERNATIONAL

International Notifications/ Reports

⇒ The United States Trade Representative published its Report on India's Digital Services Tax prepared in the investigation under Section 301 of the Trade Act of 1974. The Report stated that India's DST discriminates against US Digital Services Companies. The Report also states that India's DST unreasonably contravenes international tax principles and thirdly, India's DST burdens/ restricts US commerce. USTR concluded that the DST is actionable under Section 301 of the Trade Act of 1974.

⇒ India's through the Press Release dated 07.01.2021 has explained the background and has stated that the Government of India will examine the determination / decision notified by the U.S. in this regard, and would take appropriate action keeping in view the overall interest of the nation.

⇒ The OECD Secretariat has released the updated guidance on COVID – 19 impact on permanent establishment, POEM, dual residency

Case Laws

ITAT

⇒ Foreign Tax Credit - DTAA

The Bangalore Tribunal in the case ***of ITTIAM Systems Pvt. Ltd. Vs. Income Tax Officer ITA No. 2464 & 2465/Bang/2017*** has held that if a resident Indian derives income, which may be taxed in United States, India shall allow as a deduction from the tax on the income of the resident, an amount equal to the tax paid in United States of America, whether directly or by deduction. The conditions mandated in the treaty is that if any 'income derived' and 'tax paid in the United States of America on such income', then tax relief/ credit shall be granted in India on tax paid in United States of America. In respect of Japan and Germany DTAA, the Tribunal held that the provisions are similar to that of USA and FTC is available on taxes paid in these countries. In relation to Korea, the Tribunal held that FTC is limited to taxes payable on such doubly taxed income in India, before any deduction. In other words, FTC is limited to or taxes paid in Korea or India, whichever is less. The Tribunal held that in case of Taiwan FTC is to be computed based on rate of tax applicable in India or Korea, whichever is less, on such doubly taxable income.

⇒ Technical Explanation – US-IRS – Applicability

The Mumbai Tribunal in the case of ***NGC Network Asia LLC Vs. DDIT [TS-705-ITAT-2020]*** has held that technical explanation was issued by the tax authorities of United States of America and the same is not the official protocol or clarification which has been mutually agreed upon between the two countries. Hence, in any case, the said technical explanation would not bind the Tribunal.

GST

CBIC Circulars and Notifications

⇒ Notification No. 92/2020 dated 22.12.2020

CBIC appoints 01.01.2021 as the date on which the provisions of certain Sections of the Finance Act, 2020 shall come into force such as Amendment of Section 10 (Composition Levy), Section 16 (Debit note), Amendment of Section 30 (Revocation of cancellation of Registration), etc.

⇒ Notification No. 93/2020 dated 22.12.2020

CBIC issues notification inserting Proviso waiving late fee payable for delay in furnishing of FORM GSTR - 4 for the Financial Year 2019-20 under Section 47 of the said Act, from the 1st day of November, 2020 till the 31st day of December, 2020 for the registered person whose principal place of business is in the Union Territory of Ladakh.

⇒ Notification No. 94/2020 dated 22.12.2020

The Notification issued makes various amendment to the CGST Rules, 2017. The amendments cover provisions in relation to Aadhar based authentication for the purpose of registration; expanded powers to the proper officer/ GST Department; cancellation of registration consequential to non-filing of GSTR-3B for the stipulated tax period; restriction on the use of the amount available in the electronic credit ledger in certain cases, etc.

⇒ Notification No. 95/2020 dated 30.12.2020

CBIC vide this Notification extended the time limit for furnishing annual returns specified under Section 44 of the Central Goods and Services Tax Act, 2017 read with Rule 80 of the Central Goods and Services Tax Rules, 2017 electronically through the common portal, for the financial year 2019-20 till 28.02.2021.

⇒ Notification No. 01/2021 dated 01.01.2021

CBIC vide this Notification imposes restriction on filing of GSTR-1 if the registered person has not filed GSTR-3B for the preceding tax period.

⇒ Notification No. 02/2021 dated 12.01.2021

CBIC vide this notification modified Notification No. 02/2017 – Central Tax notifying the jurisdiction of the Central Tax Officers.

Case Laws

Supreme Court

⇒ GST on Lottery / Prize Money

The Supreme Court in the case of ***Skill Lotto Solutions Pvt. Ltd. Vs. Union of India (2021) 84 GSTR 1,*** has held that lottery, gambling and betting are well known concepts and have been regulated and taxed by different legislations. When the Parliament has included the above three for the purpose of imposing GST and not taxed other actionable claims, it cannot be said that there is no rationale or reason for taxing the above three and leaving others. Supreme Court also held that there is a statutory provision in Section 15 read with Rule 31A for value of supply. Prize money cannot be abated for determining the value of taxable supply.

High Court

⇒ Limitation Act – Applicability – Tripura State Goods and Services Act, 2017 (TSGST Act)

The Tripura High Court in the case of ***Kiran Enterprise Vs. The State of Tripura and Ors. WP (C) No. 114 of 2020*** has held that It is apparent on the face of the said provision [Section 161 of the TSGST Act] that this is a complete code within itself and it has impliedly excluded the Limitation Act. Moreover, the Limitation Act will not apply automatically unless it is extended to the special statute such as TSGST Act inasmuch as law in this regard is absolutely unambiguous that except in the case of the suit, appeal or application in the court, the limitation of Act will not apply/extend for the local or special statute. Thus, the petitioner's contention in respect of the extension of the Limitation Act stands dismissed. The Court held that It is needless to say that when a legal action is barred by limitation unless that bar is overcome, no decision can be rendered on merit.

⇒ ITC – Investigation – Fake ITC Claims

The Gujarat High Court in the case of ***SS Industries Vs. Union of India [TS-1123-HC-2020]*** has held the following:

(i) The invocation of Rule 86A of the Rules for the purpose of blocking the input tax credit may be justified if the concerned authority or any other authority, empowered in law, is of the prima facie opinion based on some cogent materials that the ITC is sought to be availed based on fraudulent transactions like fake/bogus invoices etc. However, the subjective satisfaction should be based on some credible materials or information and also should be supported by supervening factor. It is not any and every material, howsoever vague and indefinite or distant remote or far-fetching, which would warrant the formation of the belief.

(ii) The power conferred upon the authority under Rule 86A of the Rules for blocking the ITC could be termed as a very drastic and far-reaching power. Such power should be used sparingly and only on subjective weighty grounds and reasons.

(iii) *The power under Rule 86A of the Rules should neither be used as a tool to harass the assessee nor should it be used in a manner which may have an irreversible detrimental effect on the business of the assessee.*

(iv) *The aspect of availing the credit and utilization of credit are two different stages. The utilization of credit is a vested right. No vested right accrues before taking credit.*

(v) *The Government needs to apply its mind for the purpose of laying down some guidelines or procedure for the purpose of invoking Rule 86A of the Rules. In the absence of the same, Rule 86A could be misused and may have an irreversible and detrimental effect on the business of the person concerned. In this regard, the Government needs to act promptly.*

⇒ GST Inquiry – Same set of Facts

The Gujarat High Court in the case of ***GK Trading Company Vs. Union of India and 4 Others [TS-1159-HC-2020]*** has held the following:

(i) The word "inquiry" in Section 70 has a special connotation and a specific purpose to summon any person whose attendance may be considered necessary by the proper officer either to give evidence or to produce a document or any other thing. It cannot be intermixed with some statutory steps which may precede or may ensue upon the making of the inquiry or conclusion of inquiry. The process of inquiry under Section 70 is specific and unified by the very purpose for which provisions of Chapter XIV of the Act confers power upon the proper officer to hold inquiry. The word "inquiry" in Section 70 is not synonymous with the word "proceedings", in Section 6(2)(b) of the U.P.G.S.T. Act/ C.G.S.T. Act.

(ii) The words "any proceeding" on the same "subject-matter" used in Section 6(2)(b) of the Act, which is subject to conditions specified in the notification issued under sub-Section (1); means any proceeding on the same cause of action and for the same dispute involving some adjudication proceedings which may include assessment proceedings, proceedings for penalties etc., proceedings for demands and recovery under Section 73 and 74 etc.

(iii) Section 6(2)(b) of the C.G.S.T. Act prohibits a proper officer under the Act to initiate any proceeding on a subject-matter where on the same subject-matter proceeding by a proper officer under the U.P.G.S.T. Act has been initiated.

(iv) Facts indicate that there is no proceeding by a proper officer against the petitioner on the same subject-matter referable to Section 6(2)(b) of the U.P.G.S.T. Act. It is merely an inquiry by a proper officer under Section 70 of the C.G.S.T. Act.

⇒ Transition – Unutilised Education Cess – Secondary and Higher Education Cess – Krishi Kalyan Cess

The Madras High Court in the case of ***ACCGST Vs. Sutherland Global Services Pvt. Ltd. (2020) 83 GSTR 259,*** has held that the assessee is not entitled to utilise and set off accumulated unutilised amount of Education Cess, Secondary and Higher Education Cess

and Krishi Kalyan cess against output GST. The Cenvat Credit Rules had specifically provided that the credit of such cess shall be utilised only towards payment of such cess. The three cesses in question cannot be considered as eligible duties referred to in explanation 1 to Section 140. Carry forward in electronic ledger and filing of Tran – 1 will not confer any right on the assessee. Transition of unutilised credit to be allowed only in respect of taxes and duties which were subsumed in the new GST law. The three types of cesses were not subsumed in the new GST either by Parliament or by States.

OTHER INDIRECT TAXES

CBIC Circulars and Notifications

⇒ Press Release Dated 31.12.2020 - RoDTEP

The Government has decided to extend the benefit of the Scheme for Remission of Duties and Taxes on exported Products (RoDTEP) to all export goods w.e.f. 01.01.2021. The RoDTEP would refund to the exporters embedded Central, State and Local Duties/ Taxes that were so far not being rebated/ refunded. The refund would be credited in an exporter's ledger account with Customs and used to pay Basic Customs duty on imported goods. The credits can also be transferred to other importers. The exporter will have to indicate in their shipping bill that they intend to avail this benefit. *It is pertinent to note that the rates are yet to be notified.*

⇒ Customs Authority for Advance Ruling Regulations, 2021 notified.

Case Laws

Supreme Court Judgments

⇒ Goods Sold at High Seas – Bill of Entry

The Supreme Court in the case of ***M/s. Vellanki Frame Works Vs. The Commercial Tax Officer, Vishakhapatnam Civil Appeal No. 1322-1323 of 2019*** has held that though the definition of importer includes owner or any person holding out himself as the importer and this definition of importer is not really relevant to the question of title but, that does not mean that a person who holds out himself to be the importer; and who files the bill of entry for home consumption; and who is assessed for customs duty; and whose suggestion about transfer of title to a third person is not established by any reference to any official record, the transfer on high seas may be presumed on mere suggestion about the alleged endorsement of bill of lading.

When all other official documents as also dealings of the appellant clearly establish that the appellant had been the importer, the consequences are bound to follow. It gets perforce reiterated that when the bills of entry recorded the name of the appellant as importer and the appellant alone was assessed to customs duty, the so called second high seas sale agreements never came into operation.

The Court held that once the appellant got released the goods after filing the bill of entry for home consumption, the import stream dried up and the goods got mixed in the local goods. Any movement of the goods thereafter was bound to be a sale under Section 3(a) of the CST Act.

High Court Judgments

⇒ Retrospective Curtailment of Subsidies

The Chhattisgarh High Court in the case of ***Shri Bajrang Power and Ispate Ltd. Vs. State of Chhattisgarh WP(T) No. 3909 of 2011*** held that under the principles of interpretation,

what is to be seen is the most practicable meaning to a term that could be given, an interpretation which is impracticable and which may lead absurdity, has to be avoided. What also has to be considered is looking upon the basic intention of the policy makers. Given the factual circumstances and the purpose, intention and object in providing incentive to investors leads us to an indisputable conclusion that the intention of the policy makers was in providing certain amount of incentives to those persons who would also be investing on captive power plants so as to ensure uninterrupted supply of power so that the investors do not suffer on the production front. It is always a legitimate expectation of an investor of getting certain extra benefit in the course of making huge investment in a particular State. At the same time, the benefit so extended is for giving the booster to the investors by the State Government and while framing the policy, the respondents have not felt that the definition of captive power plant would not be what it is under the Electricity Act or it would be a different interpretation that would be given. Therefore, it was assumed by the petitioner that the meaning would be the same as that is reflected in the Electricity Act and to add with it applying the same interpretation the State authorities at the first instance had issued the eligibility certificate. If the interpretation, as has been given by the State is applied it may lead to a situation where, the very purpose for which the incentive was being provided or offered would become redundant and an inexecutable policy, as it has already been discussed that the power consumption by an industrial establishment would never be static as it may vary from month to month depending upon the requirement of power. The Court held that the withdrawal of the benefit granted to the petitioner by the State level committee through its decision and the order of the State Appellate Forum is illegal and unjustified and is liable to be and is accordingly set aside/quashed with consequences to flow.

⇒ Maintainability of Writ - Questions of Facts and Law

The Madras High Court in the case ***of BGR Energy Systems Ltd. Vs. Addl. Commissioner, GST & CE WA No. 990 and 991/ 2020*** has held that the said question and applicability of Trade Notices and the order passed by the Commissioner of Service Tax in some other cases, are all mixed questions of facts and law and the Assessee ought to have filed regular Appeal under the Act before the first Appellate Authority and thereafter before the learned Tribunal in Second Appeal. Only on the substantial question of law arising in the order of the learned Tribunal, a regular Appeal could have been filed before the High Court.

CESTAT Judgments

⇒ Tolerating an Act – Service Tax

The Delhi Tribunal in the case of ***South Eastern Coalfields Ltd. Vs. Commissioner of CE & ST STA No. 50567 of 2019*** has held that it is not possible to sustain the view taken by the Principal Commissioner that penalty amount, forfeiture of earnest money deposit and liquidated damages have been received by the appellant towards "consideration" for "tolerating" an act leviable to service tax under section 66E(e) of the Finance Act.

⇒ Re-import of Repaired Parts/ Aircrafts into India

The Delhi Tribunal in the case of ***Spice Jet Ltd. Vs. Commissioner of Customs [TS-15-CESTAT-2021]*** has held that the additional duty leviable thereon under Section 3 of the Tariff Act and special duty of customs leviable under section 68(1) of the Finance Act

have been replaced by the integrated tax under section 3(7) and compensation cess under section 3(9) of the Tariff Act. It cannot, therefore, be contended that "duty of customs" referred to in the condition against serial no. 2 of the Exemption Notification would include integrated tax. The inevitable conclusion that follows from the aforesaid discussion is that the absence of mention of integrated tax and compensation cess in column (3) under serial no. 2 of the Exemption Notification would mean that only the basic customs duty on the fair cost of repair charges, freight and insurance charges are payable and integrated tax and compensation cess are wholly exempted. The Court held that the Appellant is entitled to exemption from payment of integrated tax under the Exemption Notification on re-import of repaired parts/ aircrafts into India.

CORPORATE LAWS

Circulars and Notifications

⇒ The MCA vide notification dated 21.12.2020 notified provisions in the Companies (Amendment) Act, 2020 in relation to decriminalisation of certain of offences/ reduction of penalties under Companies Act, 2013.

⇒ The MCA issued notification dated 24.12.2020 notifying the Companies (Incorporation) Third Amendment Rules, 2020 amending the Companies (Incorporation) Rules, 2014. The amendment paves way to extending the reservation of name reserved under Rule 9 by the Registrar by using web service SPICe+ (Simplified Proforma for Incorporating Company Electronically Plus: INC-32) upon payment of fees through the service available at www.mca.gov.in.

⇒ The MCA amended the Companies (Meetings of Board and its Powers) Rules, 2014, extending the date for companies to conduct Board Meetings through Video Conference to 30.06.2021. MCA also permitted the Companies to hold EGMs vide Video Conferencing/ OAVM or transact items through postal ballot in accordance with the framework up to 30.06.2021. The MCA further, on 13.01.2021 has permitted companies whose AGMs were due to be held in the year 2020, or become due in the year 2020 or become due in the year 2021, to conduct the AGMs on or before 31.12.2021 vide Video Conferencing or Other Audio-Visual Means.

⇒ The IBBI issued a Circular instructing the Insolvency Professional to retain certain records in relation to the Corporate Insolvency Resolution Process for a minimum period of 8 years (electronic copy of physical and electronic records) and a physical copy of physical records for a period of 3 years from the date of completion of the CIRP or the conclusion of any proceeding relating to the CIRP, before the Board, the Adjudicating Authority (AA), Appellate Authority or any Court, whichever is later.

⇒ MCA issued Notification dated 24.12.2020 amending the FORM SH-7 under the Companies (Share Capital and Debentures) Rules, 2014, compelling the Companies to provide information regarding cancellation of unissued shares.

⇒ MCA issued Clarification dated 13.01.2021 stating that the spending of CSR funds for COVID-19 is an eligible activity; further clarifies that spending of CSR funds for carrying out awareness campaigns/ programmes or public outreach campaigns on COVID-19 Vaccination programme is an eligible CSR activity under item no. (i), (ii) and (xii) of Schedule VII of the Companies Act, 2013 relating to promotion of healthcare, including preventive health care and sanitation, promoting education, and, disaster management respectively.

⇒ The Companies (Corporate Social Responsibility Policy) Amendment Rules, 2021 have been notified w.e.f. 22.01.2021 unless explicitly provided otherwise.

⇒ The Companies Fresh Start Scheme, 2020 Form CFSS-2020 available from 16.01.2021.

⇒ MCA issues Scheme for Condonation of Delay for Companies restored on the Register of Companies between 01.12.2020 and 31.12.2020 u/s. 252 of the Companies Act, 2013.

⇒ The MCA has notified 22.01.2021 as the date on which 11 provisions of the Companies (Amendment) Act, 2020 will be enforced.

Case Laws

Supreme Court Judgments

⇒ Acceptance - Contracts

The Supreme Court in the case of ***Padia Timber Company (P) Ltd. Vs. The Board of Trustees of Vishakhapatnam Port Trust Civil Appeal No. 7469 of 2008*** has held that an acceptance with a variation is no acceptance. It is, in effect and substance, simply a counter proposal which must be accepted fully by the original proposer, before a contract is made.

High Court Judgments

⇒ RBI Pandemic Regulatory Package - Applicability

The Delhi High Court in the case of ***Amit Khaneja and Ors. Vs. IL & FS Financial Services Ltd. WP(C) 3580/2020*** has held that the petitioners have been in default since 2018. A perusal of the RBI circulars and policy guidelines shows that these are meant for mitigating the burden of debt which may have been brought about due to the COVID-19 pandemic. This Court does not consider the present case as one wherein any disruption took place due to the COVID-19 pandemic. Even prior to the OTS proposal being given by the Petitioners, the Petitioners were already in default. The circulars of the RBI and the guidelines thereunder relate to reliefs to be granted for payments of interest and declaration of accounts as NPAs etc., during the COVID-19 pandemic. These circulars and policy guidelines cannot lend any support to the Petitioners' case where the defaults are prior to the outbreak of the pandemic itself. The legality of the revocation of the OTS in May, 2020 cannot be tested on the benchmark of the recent RBI circulars and the policy guidelines inasmuch as these settlements are independent of the said circulars and guidelines. Moreover, the RBI circular itself make it clear that the same is for "continuity of viable businesses" and not for accounts which are already declared as NPA, as is in the present case. The one-time settlement proposal by IL&FS was in respect of a party which had already defaulted, against whom legal proceedings had been initiated and properties which were mortgaged had already been taken possession of by IL&FS. Thus, much water had flown in respect of the loan transactions after defaults by the Petitioner. This is not a case where some mitigating factors need to be considered or that the pandemic had caused any financial stress on the Petitioners. While there is no doubt that the pandemic did cause disruption to normal business operations and genuine borrowers ought to be given the benefit of the RBI circulars and policy guidelines, the Petitioners do not fall in that category. The defaults by the Petitioners date back to 2018. The defaults continued over a period of two years prior to the outbreak of the pandemic itself. Such cases cannot be those which would be entitled to benefits under the policies of the RBI which are meant to give some relief during the pandemic.

⇒ Approved Resolution Plan – Revenue – Service Tax

The Bombay High Court in the case of ***GGS Infrastructure Private Ltd. Vs. CCGST & CE WP-LD-VC-No. 268 of 2020*** has held that once a resolution plan is approved by the committee of creditors by the requisite percentage of voting and the same is thereafter sanctioned by the adjudicating authority (Tribunal in this case), the same is binding on all the stakeholders including the operational creditors. The Respondent is an Operational Creditor and had lodged claim before the resolution professional. The resolution plan provides for settlement of service tax dues at 5% of the amount of principal dues that would be crystallized upon adjudication, further providing for waiver of interest, penal interest and penalty that may be charged. As we have held above, respondent may be justified in proceeding with the show-cause cum demand notices because that has resulted in crystallization of the total amount of service tax dues i.e., the principal amount payable by the petitioner which is Rs.7,02,20,725.00. The amount of service tax dues having thus crystallized as above, the resolution plan says that the same would be settled at 5% of the principal dues adjudicated. The word used is "adjudicated" and not "adjusted" as sought to be read and applied by the respondent. Therefore, the amount that the petitioner would be required to pay is 5% of Rs.7,02,20,725.00. In so far as the recovered amount i.e. Rs.6,23,82,214.00 is concerned, the same is part of the total demand determined i.e. Rs.7,02,20,725.00. After retaining 5% of Rs.7,02,20,725.00, respondent would be duty bound to refund the balance amount to the petitioner which will not only be in terms of the resolution plan and thus in accordance with law but will also be a step in the right direction for revival of the petitioner which is the key objective of the Code.

⇒ Arbitrability – Trusts Act

The Delhi High Court in the case of ***Dr. Bina Modi Vs. Lalit Kumar Modi & Ors. [LSI-4-HC-2020]*** has held that the principles of autonomy of arbitration and kompetenz-kompetenz did not prima facie arise in the present case, since the disputes themselves are not capable of being submitted to arbitration. The Court held that disputes relating to Trusts fall squarely within the ambit of the provisions of Section 2(3) of the Arbitration Act. Disputes arising under the Trusts Act, are not arbitrable, by necessary implication. The provisions of Section 2(3) of the Arbitration Act, exclude the applicability thereof to the present case, as the disputes that have arisen under the Trusts Act, are in our considered view non-arbitrable disputes. inherent and substantive rights enure to the benefit of the Appellants, to urge that the disputes between the parties in relation to the Trust Deed were not arbitrable and that consequently, they were duly entitled to prosecute their claim for the substantive relief of declaration and permanent injunction.

Articles and Presentations

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(ii) The ITC conundrum in GST – The Hindu Business Line

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