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From the Editor's Desk

My Brothers and Sisters,

"There is more to life than increasing its speed" – **Mahatma Gandhi**

As I start this communication on Gandhi Jayanti, I am conscious of the fact that the news and indeed, the social media platforms, have been full of reports about not only young professionals but also other employees of corporates, having been reported to be succumbing to workplace stress and the resultant ignition of the debate that the workplace atmosphere being more 'toxic' than these individuals, who sadly are no longer with us, possibly could have handled. The call to employers to have measures in place to create an environment for the younger employees in particular, that equips them to deal with workplace stress, also resonates loud and clear.

I would like to express my deepest condolences to the bereaved families of these bright young talented persons. At the same time, I must bring to our attention, the challenges that the fast pace of life, in general, brings to us. We professionals constantly struggle to meet one deadline or another, be it statutory or otherwise. We are always working against the clock to complete our task. This pressure does transcend to our teams and at times, the younger members are not able to cope with it. Yes, if we do want to progress, we must work hard to keep pace with the rapidly changing environment around us. That, however does not mean we ignore our physical and mental well being and that of our team members, especially the younger ones, who often, in the eagerness to make their mark, leave the comfort of their homes in smaller towns and come to us in the cities, to earn their so called 'stripes'. Not only is it up to the employees to learn to manage workplace stress, but it is also incumbent upon us professionals to pay the requisite attention and our clients and our workload better, to have the fortitude to say 'No' to clients, if they come to us at the last moment. In these times, the wise words of our elders, who have time and again reminded us that life's pace has be altered to suit us and not we having to alter our pace to manage our life, become paramount to implement, to the extent possible.

Another incident, which was in the news for a brief period, but lost steam quickly, which left a deep impression on me, was the incident of the businessman from Coimbatore who complained about the challenges of GST and having apologised for doing so. It does beg the question of whether, in a democracy, a citizen, airing his grievances about challenges he faces in doing his daily activity, due to Government policy, should be given a patient ear; or could the reaction

of a 'mature' administration, who has been in office for more than the past decade, have been more empathetic? Some food for thought for all of us…

The third major change that I have seen which stands out, is the role the National Financial Reporting Authority (NFRA) starting to play in the regulation of the accountancy profession. The role of the Institute of Chartered Accountants of India (ICAI) in this changed scenario does become crucial. The institute will probably need to deeply introspect as to how, in this changing scenario, it may have to navigate through situations that its founding fathers did not ever envisage. The carrying on of the proud legacy of the profession and working with the Government to reinforce the confidence of the stakeholders in the professionals and the process of audits should be looked at as paramount.

The Central Board of Direct Taxes (CBDT) has extended the due dates for uploading of the Tax Audit Reports to 7th October 2024, recognizing the last minute rush and the challenges faced by the professionals. The move must be complimented. A word of caution to all of us professionals, though. The last date of filing of returns will also consequently stand extended to 7th November, which will extend beyond Diwali. I urge professionals to work with their clients to plan around this, to be able to celebrate Diwali without any work related challenges.

Navratri is around the corner, heralding the beginning of the festive season which will continue for the month of October, with Diwali being on 1st November this year. I take this opportunity to wish everyone, the very best for this festive season.

This issue of the journal deals with the very important topic of "Family Arrangements and Settlements'. The live cases of some of the large family owned industrial houses have generated greater interest in this topic. I must compliment the Journal Committee for coming out with this timely issue. I would like to express my gratitude to the learned authors for their articles and to CA Jiger Saiya, CA Rohan Umranikar and CA Amber Bhavsar for their contribution in bringing this issue out.

Just as we are about to send this issue for printing, the sad news of the passing away of Shri Ratan Tata has cast a pallor of gloom over the nation. Padma Vibhushan Shri Ratan Tata was an icon yet a simple and humble human being. The Chamber expresses deep respect for the departed soul.

I end this communication with another quote from Swami Vivekananda:

"The more we grow in love, virtue, and holiness,
the more we see love, virtue, and holiness outside."

ANISH M. THACKER
Editor

From the President

Dear Members,

Just as this issue was being finally sent for printing, we learnt about the tragic demise of Padma Vibhushan Shri Ratan Tata. Shri Ratan Tata not only was a man with great vision but also a genuine and caring person for both his fellow humans as well as a great animal lover. India has lost an icon and his shoes will not be easy to fill. The Chamber expresses heartfelt condolences on his sad loss.

October marks the birth anniversaries of three iconic Indian leaders: Shri Mahatma Gandhi and Shri Lal Bahadur Shastri on October 2, and Shri Vallabhbhai Patel on October 31. We pay tribute to these visionaries, who have instilled patriotism and unity in our nation.

I hope that you all have successfully come through filing various Audit Reports under the Income Tax Act by extended due date of 7th October, 2024 and all set to complete ITR & Transfer Pricing Reports by 31st October, 2024.

The recent ruling of the Honorable Supreme Court on re-assessment will have significant implications. The Vivad Se Vishwas Scheme, 2024 has been notified with effect from 1st October, 2024 to settle the Tax Disputes/Appeals pending as on 22nd July, 2024. Some of the Tax Proposals are being made effective with effect from 1st October, 2024. The Chamber is planning to organize various webinars/lecture meetings to understand the implications of the above provisions. The details of the same will be announced soon.

Organizing a joint event with any organization is always a matter of pride & pleasure for the Chamber. The Chamber of Tax Consultants and other professional sister organizations viz. WIRC of the Institute of Chartered Accountants of India, All India Federation of Tax Practitioners (Western Zone) (AIFTP, WZ), Bombay Chartered Accountants' Society (BCAS), Malad Chamber of Tax Consultants (MCTC) and The Goods & Service Tax Practitioners' Association of Maharashtra (GSTPM) have jointly organized "TAXCON 2024" on 15th & 16th November at ICAI Tower, BKC, Mumbai. This will be a unique opportunity of not only knowledge sharing, but also witnessing fellowship amongst of all the professional organizations. Members are requested to attend this in large numbers and make the event a grand success.

The E-Certificate Course on “Practical Income Tax & Litigation” in collaboration with the Government Law College, Mumbai, which commenced in the month of August, is coming to its concluding part. I congratulate and thank all the participants across the country, who attended this course with their overwhelming response. We have received enrolments from the states like Uttarakhand, Chhattisgarh and also from Eastern State Manipur apart from mainstream states. I welcome all the participants on the Chamber’s platform of education. I acknowledge the great support from Dr. Asmita Vaidya, Principal, Government Law College, Mumbai. I also heartily thank all the distinguished faculty members for sparing their valuable time for the cause of spreading education.

The announcements of much awaited two RRCs of the Chamber viz, 13th Indirect Tax RRC at Bengaluru in January, 2025 & 48th Direct Tax RRC at Raipur in March, 2025 have been rolled out during September. I am glad to see the overwhelming response from the members and non-members for enrolment for both these RRCs. I urge the members, who have not yet enrolled for these RRCs to enroll at the earliest.

This month’s Journal is comprising of the special story on the subject **“Family Arrandgements & Settlements"**. CA Ameya Kunte, Chairman of the Journal committee and his team have selected this unique topic very aptly for the benefit of the readers. I thank all the authors for their interesting contributions.

We have various festivals going on like Navratri in Western India and Durga Puja in Eastern India, followed by Dussera, which marks the victory of good or evil. Dussera is also the day of worship of “Astra” (Equipments), “Shastra” (Weapons) and “Vaajintra” (Musical Instruments). This is followed by Diwali and New Year, wherein we professional worship our books of accounts and also study books. My Best wishes to everyone and their family members a Very Happy Diwali & a Prosperous New Year.

Jai Hind

VIJAY BHATT
President

Understanding Family Settlements

Dr. Anup P. Shah

Overview

This Article explains what is a family settlement/arrangement and some of its important concepts and principles. The Article also highlights some key family settlements which have taken place in India and at the same time give some international instances. It lays down the key factors to consider and also highlights some examples which have held not to be bona fide. The Article also throws light on some prevention strategies which could help mitigate disputes. It explains the issues with involving companies under the family settlement. Lastly, it explains some of the challenges faced under global environment with family settlements in the form of inheritance taxes/forced heirship.

Introduction

> ***"Govern a Family as you would Cook a Small Fish... Very Gently!"***
>
> *- AC Grayling, British Author*

The above proverb summarises all there is to family governance ~ One must be gentle but at the same time ensure that it is not under cooked/under governed. Too little or too much would lead either to anarchy/chaos or disharmony and disputes. Most disputes take place within family members rather than among strangers. Family fights are something which India has witnessed right from the times of the Mahabharata. Corporate India too has witnessed a rash of family feuds in almost all major corporate houses. One research shows that about 80% of Indian businesses are family owned and over 90% of the listed companies are family owned, yet very few plan for it early.

What is a Family Settlement/Arrangement?

A family arrangement is one of the oldest alternative dispute resolution mechanisms which is known. The classic treatise on English Common Law, ***Halsbury's Laws of England*** lays down some important principles in this respect:

> *"The agreement may be implied from a long course of dealing, but it is more usual to embody or to effectuate the agreement in a deed to which the term "family arrangement" is applied. Family arrangements are governed by principles which are not applicable to dealings between strangers. The Court, when deciding the rights of parties under family arrangements or claims to upset*

> *such arrangements, considers what in the broadest view of the matter is most appropriate for the interest of families, and has regard to consideration which, in dealing with transactions between persons not members of the same family, would not be taken into account. Matters which would be fatal to the validity of similar transactions between strangers are not objections to the binding effect of family arrangements.*"

The terms family arrangement and settlement are often used inter changeably and mostly mean the same. ***Black's Law Dictionary, 6th Edition, West*** defines a family settlement as "an agreement between members of the same family settling the distribution of family property among them – ***Fitzgerald vs. Nelson, 159 Or. 264 79 P2d 254*** … *A term of practically the same significance as "family arrangement""*. This view has also been held by Indian decisions, such as, ***Dulal Chandra Chatterjee vs, Moni Mohan Mukherjee, 2005 (2) CHN 563*** ~ "*Family arrangement/ settlement is accepted as a transfer of interest in the property in favour of a person between whom the family arrangement or settlement is made. The family settlement conceives of a pre-condition of interest or title in the property amongst the members participating in the settlement or the arrangement.*"

The most exhaustive description of a family settlement/arrangement has been given by the Supreme Court in the ***landmark case of Kale vs. Dy. Director of Consolidation, (1976) 3 SCC 119***. It held that by virtue of a family settlement or arrangement, members of a family descending from a common ancestor or a near relation, seek to sink their differences and disputes, settle and resolve their conflicting claims or disputed titles once for all in order to buy peace of mind and bring about complete harmony and goodwill in the family.

In the last about 60 years, a good part of the law relating to Family Arrangement/ Settlement is well settled through numerous Court decisions including several decisions of the Supreme Court. It is ironic that in a country where a substantial part of businesses is run and owned by joint families, there is no legislation which governs or regulates such family settlements or arrangements. Hence, the entire law in this respect is judge-made law.

India not Unique

The scope of a family arrangement/settlement is extremely wide and is recognised even in ancient English Law. This is because the world over, Courts lean in favour of peace and amity within the family rather than family disputes. Almost all nations, be it the USA, UK, South Korea, etc., have witnessed some form or other of a family settlement/arrangement. One prominent case is of the Gucci family drama over the ownership of the flagship Italian Company, Guccio Gucci S.p.A.

The current brewing family dispute between the Rupert Murdoch family is an example of a high-profile US family dispute. The heart of the dispute lies on which of his first 4 children control the family trust, which in turn, owns significant stakes in Fox News, Wall Street Journal and other media outlets. Out of the 8 votes at the trust level, Rupert Murdoch has 4 whereas each of his 4 children have 1 each. He is understood to be trying to increase the votes of his eldest son Lachlan over those of his other children.

One example of a bitter family split has played out recently in the Royal Family of UK. In January 2020, Prince Harry, the Duke of Sussex announced that he would step back

as a senior royal and would work to become financially independent. Asian Countries have also witnessed acrimonious family feuds. The $10 billion, LG Group of South Korea is witnessing a fight between the widow and daughters of the Founder Chairman on one side and his adopted son (who is his nephew) on the other side. The Chairman died without a Will and LG being governed by the principle of male primogeniture, which means, male heirs have preference, conferred ownership, which means that the nephew these rights. The women are now claiming their rights in the Group.

The French fashion brand Lacoste saw Sophie Lacoste-Dournel pitted against her father Michel Lacoste in which he lost control of the company to his daughter. The Board elected her Chairperson whereas her father wanted his niece to run the company.

In Hong Kong/China, the 13 children of the late Hong Kong billionaire Henry Fok reached a family settlement, on how to divide his estate worth over $1.45 billion consisting of assets in Hong Kong and mainland China.

Concepts and principles of family arrangements/settlement

It is important to analyse the basic principles governing family settlement involving properties held mainly by individuals. Various Courts, including the Supreme Court of India, have laid down the basic principles relating to family arrangements (these decisions would be dealt with in this Special Story by other Articles). Some of the important principles are summarised below:

(a) A family arrangement is an agreement between members of the same family intended to be generally and reasonably for the benefit of the family either by compromising doubtful or disputed rights or by preserving the family property or the peace and security of the family by avoiding litigation or by saving its honour. No specific form or format is necessary for a family arrangement. In the case of ***Rajiv Sanghvi vs. Pradip R Kamdar, 2023 (1) AIR Bom R 187***, even the Minutes of Discussion between family members which divided businesses was held to be a contract in the nature of a family settlement.

(b) If the arrangement of compromise is one under which a person, having an absolute title to the property, transfers his title in some of the items thereof to the others, the formalities presented by law have to be complied with since, the transferees derive their respective title through the transferor. If, on the other hand, the parties set up competing titles and differences are resolved by the compromise, there is no question of one deriving title from the other and, therefore, the arrangement does not fall within the mischief of s. 17 read with s. 49 of the Registration Act, as no interest in property is created or declared by the document for the first time.

(c) A compromise or family arrangement is based on the assumption that there is an antecedent title of some sort in the parties and the agreement acknowledges and defines what that title is, each party relinquishing all claims to property other than that falling to his share and recognising the right of the others, as they had previously asserted it, to the portions allotted to them respectively.

(d) The term "family" has to be understood in a wider sense so as to include within its fold not only close relations or legal heirs but even those persons who may have some sort of antecedent title, a semblance of a claim or even if they have a Spes successions.

(e) Courts have made every attempt to sustain a family arrangement rather than to avoid it, having regard to the broadest considerations of family peace and security.

(f) It is not necessary that there must exist a dispute, actual or possible in the future, in respect of each and every item of property and amongst all members arrayed one against the other.

(g) The consideration for such a settlement, if one may put it that way, is the expectation that such a settlement will result in establishing or ensuring amity and goodwill amongst persons bearing relationship with one another.

(h) The family arrangement's aim is to preserve amity and goodwill within the family and avoid bad blood.

(i) A family settlement is not within the exclusive purview of Hindus, but applies equally to various other communities also, such as Parsis, Christians, Muslims, etc.

Must be a *bona fide* settlement

However, it is very vital that the family settlement must be a bona fide one so as to resolve family disputes by an equitable division of assets to family members. For example, in one case compensation received by a person from certain relatives for her property usurped by these relatives, she contended that it was under a family settlement and hence, there was no transfer liable to tax. The Court held that there was no pre-existing right of the persons who had usurped the property. It held that merely because a dispute involved some family members and such dispute was ultimately settled by filing consent terms, the same could not be styled as a family arrangement - ***P. P. Mahatme vs. ACIT [2021] 126 taxmann.com 176 (SC)***.

Similarly, in another case, a person had borrowed loans from his family and failed to repay them. Under a compromise decree he gave 3/4th share in his property to those lenders and claimed it was a family settlement and not a taxable gift. The High Court held that there was no antecedent title, claim or interest of the family members in the property, in the absence of which there could be no family settlement. The family settlement was not bona fide and the same was made up with a view to avoid taxes - ***Banarsi Lal Aggarwal vs. CGT, [1998] 230 ITR 114 (Pun)***.

What properties can be covered?

From the various principles laid down regarding valid family arrangements, it is clear that valid family arrangements can relate to self-acquired properties, or other properties of the family. It is neither a pre-requisite nor even a necessary condition that a valid family arrangement must relate to ancestral property only.

Some Examples in Corporate India

Whilst India Inc. is replete with examples of family splits some of the prominent ones have been highlighted below:

(a) ***Reliance Group*** – In June 2005, the family reached a settlement under which the Mukesh Ambani Group

got control of the flagship Reliance Industries Ltd with interests in petrochemicals, oil and gas exploration, refining and textiles. The Anil Ambani Group was allotted companies engaged in the telecom, power, entertainment and financial services sectors. The split was engineered by way of a demerger of the companies going to the Anil Ambani group from Reliance Industries Ltd. It was also accompanied by a non-compete agreement between the brothers.

(b) ***Bajaj Group*** – In February 2008, a trifurcation of Bajaj Auto Ltd took place from 1 listed company to 3 listed companies via a demerger. While the demerger did not expressly mention that it was done pursuant to a family settlement between the 2 Bajaj Brothers – Rajiv and Sanjiv, it did succinctly addressed those issues. Bajaj Auto Ltd was split into 3 companies – Bajaj Auto Ltd the auto company run by Rajiv Bajaj; Bajaj FinServ Limited, the NBFC/insurance businesses run by Sanjiv Bajaj and Bajaj Holdings & Investment Limited the Holding Company with stakes in both these companies. Thus, 1 shareholder of Bajaj Auto Ltd received shares in both the other companies.

(c) ***Godrej Group*** – The most recent family split has been that of the over 125-year-old Godrej Group. Adi Godrej and his brother Nadir have got control of the listed company Godrej Industries Ltd which in turn, has stakes in 4 other listed entities – Godrej Consumer Products, Godrej Properties, Godrej Agrovet and Astec Lifesciences. On the other hand, their cousins, Jamshyd and Smita Godrej have got control of the unlisted company, Godrej & Boyce along with a land bank. The realignment of shareholding between the two groups was done via an *inter-se* transfer of shares, which does not trigger an open offer under the SEBI Takeover Regulations, 2011, since it is inter se promoters.

Key Factors to Consider

A family settlement could have myriad ramifications and complications. While they would be dealt with in detail by subsequent chapters in this Special Story, they are briefly described here:

(a) **Mode**: In some cases, a Family Settlement MOU is executed as an overarching document but the actual mechanism is via one or more other modes, such as, demerger, gift deed, release deed, partition of an HUF, etc. Hence, the mode of family settlement becomes a key element.

(b) **Personal Family Law**: The personal family law governing the parties to a family settlement should be considered, e.g., the provisions of the Hindu Succession Act, 1956, the Sharia Law, etc., could be a deciding factor. For instance, if an immovable property belonging to a Hindu minor is sought to be gifted, then the provisions of the Hindu Minority and Guardianship Act, 1956 provide that prior permission of a Court would be required even if transaction is for the purported benefit of the minor.

(c) **Income-tax**: Would the settlement trigger a capital gains tax liability on the parties giving up their rights? Would the recipient be taxed under s. 56(2)(x) of the Income-tax Act as

receiving a property without adequate consideration? Could the provisions of GAAR be invoked in case of a family settlement?

(d) **Registration and Stamp Duty**: Would the deed of family settlement require Registration? Would the answer be different if immovable properties are a part of the settlement? The Supreme Court (***Ram Charan Das vs. Girja Nandini Devi (1955) 2 SCWR 837; Tek Bahadur Bhujil vs. Debi Singh Bhujil, (1966) 2 SCJ 290; K. V. Narayanan vs. K. V. Ranganadhan, AIR 1976 SC 1715***, etc.,) has time and again, drawn a distinction between a family arrangement made under the document and a mere memorandum prepared after the family arrangement has already been made. As a corollary, would the deed require to be stamped under the relevant Stamp Act? Neither the Indian Stamp Act, 1899 nor the State Stamp Acts have a specific Article dealing with a Family Settlement Deed.

(e) **Company Law Implications**: If the family settlement involves companies or shares in companies, then the provisions of the Companies Act, 2013 would come into play. The Supreme Court in ***Aruna Oswal vs. Pankaj Oswal, [2020] 160 SCL 302 (SC)*** has held that a family dispute pertaining to inheritance of shares was essentially a civil dispute and could not become a case for oppression and mismanagement under s.241/242 of the Companies Act, 2013.

(f) **SEBI Takeover Regulations**: A rejig of shareholding between the family members in listed companies could end up triggering an open offer under the SEBI Takeover Code. Only specified cases are exempt from an open offer. For instance, in 2004, the Thapar family filed an application before the SEBI Takeover Panel, seeking exemption for acquiring voting rights of 8 listed companies as per a Family Settlement Agreement. Pursuant to the same, SEBI granted a specific exemption in case of JCT Ltd and other listed companies.

(g) **FEMA Implications**: If some of the parties are non-residents, the FEMA Regulations could apply. For instance, a gift of shares to a non-resident can only be done with RBI's prior permission and that too for up to 5% of the capital and for a value not exceeding $50,000.

(h) **Competition Commission Approvals**: The Settlement may require permission from the Competition Commission of India if business combination thresholds are breached. The Godrej group settlement was an example which was approved by the CCI.

Reorganisation of Companies and Family Settlement

Very often an Agreement of Family Arrangement also seeks to make the family-controlled companies as parties thereto so as to make the arrangement (so far as it relates to family shareholdings in such companies,) effective and binding. The moot point here is, when there is a family settlement which involves reorganisation of some of the properties of one or more companies in the Group, whether the principles of family settlement would be applicable even to such reorganization?

The High Courts in ***Sea Rock Investment Ltd., (2009) 317 ITR 253 (Karn)*** and ***B.A. Mohota Textiles Traders (P.) Ltd. vs. DCIT***

[2017] 397 ITR 616 (Bom), dealt with cases of a company owned by the family members which was made a party to the arrangement and which transferred shares held by it to various family members. The company claimed an exemption from capital gains as it was pursuant to a family arrangement. The High Court disallowed this stand since the company was a separate legal entity, distinct from the family members and hence, it was liable to pay tax on this ground.

If the principles of family settlement are confined only to the properties owned by individuals and not to those owned through corporate entities, then it would not be possible to use the instrument of family settlement for settling disputes between the members of the family. Thus, it is respectfully submitted that a narrower interpretation of this principle will defeat the very objective of family settlements, particularly in the context of the modern day where corporate structures are growing!

Prevention is Better than Cure!

"Failing to Plan is Planning to Fail". It would be advisable for families which are joint in business and assets to plan and take steps to mitigate the risk of family settlements. Untangling a family dispute is often a messy, time consuming and costly affair. If not successful, the dispute reads to litigation in which the pill is worse than the ill! Hence, it is always advisable for the family patriarch (or matriarch) to minimise such disputes. How to achieve this would depend upon the facts of each family but some broad ideas have been laid down below:

(a) ***Family Charter/Constitution***: Joint families should have a Family Charter/ Constitution laying down policies and decision-making processes ~ creation of a Governing Council, Exit Mechanisms/ valuation formula, Right of First Refusal, Remuneration/Dividend/Interest policies, Family Office, Brand Ownership, provision for Mediation, Arbitration, etc. The Charter could be accompanied with a Shareholders' Agreement to bind the company. Examples include the Burman family and the GMR Group which have a family charter.

(b) ***Trusts as an Ownership Vehicle*: **Shares in operating listed/unlisted companies should be owned by private family trusts. This would avoid personal ownership of companies and would prevent disruption of ownership by one family member suddenly selling his block of shares. In a vast majority of listed Indian companies, e.g., Dr. Reddy's Laboratories, Zydus, NYKAA, Eicher Motors, etc., the promoter's major stake is owned by family trusts. Trusts allow for control and economic benefits with segregation of management, if needed. An alternative to a family trust could be an LLP.

(c) ***Succession Planning***: Clearly demarcating roles and responsibilities amongst family members helps avoids people getting in each other's crosshairs. One example is that of Reliance Industries Ltd, where the 3 children of the Chairman have been each given a specific responsibility in telecom, retail and renewable energy.

Global Perspective

Family settlements are popular not just in India but also internationally. However, each jurisdiction comes with its own set of personal law and inheritance issues. For example, in the USA, one has to grapple with estate duty

issues. The federal estate duty could be as high as 40%. In addition to the federal estate tax, some US states levy an additional estate tax or inheritance tax. Twelve states impose estate taxes and six states impose inheritance taxes. Further, there is an incidence of gift tax on annual gifts above $18,000 per donor. Probate duties vary across states and could be very high in case of an inheritance, California has the highest probate costs.

The UK also levies Inheritance Tax @ 40% after a basic exemption limit of £325,000. In addition, one UK house up to £175,000 is also exempt. There are certain exemptions, such as, inter-spousal transfers. The UK also has look-back rules of up to 7 years and thus, in the case of certain gifts if the donor does not survive for 7 years after the gift, then the gift would also be subject to Inheritance. It also has stamp duty on transfers of immovable properties.

Inheritance Tax/Estate Duty is applicable in several other nations, such as, Germany, France, Japan, Netherlands, Switzerland, Thailand, South Africa, etc. These provisions apply to the global assets of a resident of these countries and should be carefully scrutinised to understand their implications while planning a family settlement. Switzerland has a unique system where the inheritance taxes are regulated by Cantons. Each Canton can determine their own inheritance tax rate.

Another factor to consider in global family settlements is the issue of forced heirship (prevalent in some European Civil law countries). France, Italy, Germany, Switzerland, Spain, Japan, etc., have ***forced heirship*** rules. Forced Heirship means that a person does not have full freedom in selecting his beneficiaries under his estate planning. Certain close relatives must get a fixed share. Since January 2023, the forced heirship law in Switzerland has reduced from 3/4th share in the estate to ½ share. Thus, a person can now make a Will according to his choice for ½ his estate located in Switzerland and the rest must go according to the law to the spouse and parents of the deceased.

Middle Eastern countries, such as, the UAE, follow the Sharia Law, under which forced heirship rules apply. The ***Federal Law No. (28) of 2005 On Personal Status of UAE*** states ~ when a non-Muslim dies intestate, the Sharia Law would apply to his assets located in the UAE. Sharia Law provides more rights to a son as opposed to a daughter. However, the Federal Law also prescribes ways and means of overcoming Sharia Law hurdles for non-Muslims.

Epilogue

Our present legal framework relating to income-tax, stamp duty, registration, company law, etc., are inadequate to deal with family settlements and, in fact, instead of facilitating the settlement, they may hamper it. Hence, it is necessary to make suitable amendments in various laws so as to facilitate family settlement.

As an aside, family settlements are so interesting that an entire HBO TV Series was developed on it titled, (*what else but)*, ***"Succession"***!!

Key Features in a Family Settlement Agreement

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Overview

As no two families are alike, no two family settlements are alike. Each settlement is bespoke to the needs, structure and assets of each family and aims to resolve specific issues stemming from emotional and interpersonal dynamics of that family while securing peace, goodwill and its reputation. That said family settlements have some common themes and features, emerging from both jurisprudence and market practice, which the article explores.

First, the article explains the legal position laid down by courts for a family settlement to be valid, that is, it must be (i) bona fide; (ii) voluntary; (iii) oral or written; (iv) involve parties who have an antecedent title; and (v) entered into to resolve present or future disputes. The article then delves into two other key components - the parties to a valid settlement in the context of individuals, minors, companies, and HUFs. and types of assets which may be covered in a family settlement. Finally, certain key terms which are commonly found in family settlement agreements are discussed.

"Family quarrels are bitter things. They don't go according to any rules.", as the great American novelist F. Scott Fitzgerald has astutely observed.

Family disputes are unlike other commercial disputes. When they arise, the grievances are often entwined with emotional and interpersonal dynamics instead of claims based strictly on commercial or legal considerations. The grievances may be wide-ranging, across the entire gamut of ancestral, personal and business assets of the family. Moreover, a key focus area is safeguarding the reputation and goodwill of the family, and avoiding public disclosure of private disputes. As a result, successful resolution tends also to be grounded in discussion resulting in a negotiated settlement rather than court orders.

In India, settlements have been recognised as a form of resolution of family disputes since decades and countless family settlements have been consummated in such period. That said, as no two families are alike, no two family settlements are alike. Each settlement represents the nuances and complexities of the relevant family, the business and the assets involved. The terms of an arrangement between brothers engaged in the same business, run through a partnership firm, would be vastly different from that between 4th generation cousins, engaged in managing disparate businesses through listed companies.

Even then, some common features and themes have evolved and can be identified through practice and precedents of such family settlements, which this article seeks to discuss.

I. What is a family Settlement?

A family settlement is an agreement or arrangement, setting out the manner of realignment of rights and assets among the members of a family. In the absence of any statutory provisions (including under the Income-tax Act, 1961) defining a 'family settlement', the courts in India have upheld[1] the following definition of a 'family settlement' given by *Halsbury's Laws of England: "an agreement between members of the same family, intended to be generally and reasonably for the benefit of the family either by compromising doubtful or disputed rights or by preserving the family property or the peace and security of the family by avoiding litigation or by saving its honour*"[2].

Family settlements in India are treated differently from any other formal commercial settlement. Courts have recognized these settlements as legal instruments to ensure peace and goodwill among members of a family. In fact, the (legal and enforceable) consideration for a family settlement is the expectation that such a settlement will result in "*establishing or ensuring amity and goodwill amongst persons bearing relationship with one another*"[3].

II. What are the key components of a family settlement?

While considering the concept of a family settlement, the Supreme Court, in the landmark case of ***Kale vs. Dy. Director of Consolidation***[4], laid down the following elements which are essential for transactions to be considered as a valid family settlement:

1. *Family settlement must be bona fide*

A family arrangement is considered to be *bona fide*, if it is entered into for resolving a family dispute or rival claims, and the settlement results in an equitable division or allotment of property between the parties.

2. *Family settlement must be voluntary*

The family settlement must be voluntary and should not be induced by fraud, coercion or undue influence.

3. *Family settlement may be oral or written*

Like other agreements, a family arrangement may be written or oral. A written settlement under which rights or obligations in respect of immovable property are created or extinguished must be registered. Oral family arrangements are not required to be registered unless (i) the terms are reduced into writing; and (ii) they include creation or extinguishment of rights in relation to immovable properties. That said, it is not uncommon for unregistered written arrangements to be entered into for recording the terms of the broader, comprehensive settlement with separate registered deeds executed to transfer rights in immovable properties.

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1. *Mathuri Pulliah and Ors. vs. Mathuri Narasimham and Ors., AIR 1966 SC 1836.*
2. Halsbury's Laws of England, Fifth Edition, Volume 91, Page 623.
3. *Ram Charan Das vs. Gulabchand and Ors., (1971) 1 SCC 837.*
4. 1976 SC 807.

Settlements can also follow different approaches in relation to timing of entering into the written arrangement. Some families may sign the agreement before the steps for implementation of a family settlement are undertaken (where such steps are listed as future contractual obligations), whereas others sign it post the implementation of an oral settlement (as a recording of completion of all steps and actions). The timeframe for implementation of the family arrangement would typically have a bearing on the above.

It is also important to note that depending on the asset classes forming part of the settlement process, in addition to the family settlement agreement, there may need to be other documents to give effect to the family settlement, e.g. partnership reconstitution related documents, etc.

4. Parties must have an antecedent title

For a family settlement to be considered valid, the parties to the family settlement must have an antecedent title, claim or interest in the family's property. An antecedent title is presumed to exist if there is (i) acknowledgement of the claim by other members of the family, or (ii) relinquishment of claims in favour of a person by other parties to the family settlement. Expanding further on this premise, the Chennai Bench of ITAT, in ***Kay Arr Enterprises vs. Jt. CIT***[5], held that a family arrangement is based on the assumption that there is an antecedent title of some sort in the parties and the agreement crystalises what that title is.

5. Present or Future Disputes

A family settlement must be entered into for resolving a legitimate dispute, either existing or potential. An existing litigation among the family members is sufficient to evidence a dispute for undertaking a valid family settlement. However, even where the dispute has not reached the litigation stage, parties may prove that a dispute either exists or is anticipated. Courts have recognised family settlements undertaken to bring harmony and for avoidance of anticipated future disputes[6].

III. Parties to a family settlement

A key component in a family settlement, given its special nature and treatment, is the identity of parties to the settlement. It becomes necessary to evaluate who is a necessary or confirming party to the settlement and who cannot be a party, and if someone is a party, what rights and obligations can and should be imposed on them.

1. Individuals (having attained the age of majority and being competent to contract)

The crux of a family settlement is that it must be between individuals who stand in the relationship of 'family'. This term is not statutorily defined and therefore, it becomes imperative to understand how the term "family" is understood in this context. In Indian families where joint families are prevalent and businesses may be managed by the 4th or 5th generation cousins, it would be deficient to view the term in a narrow fashion.

5. [2005] 97 ITD 291 (Chennai).

6. *Sahu Madho Das And Ors. vs. Pandit Mukand Ram And Anr., [1955] 2 SCR 22.*

This has been recognised by Indian courts which have observed that "family" must not to be understood in a narrow sense of being a group of persons who are legally recognised as having a right of succession or having a claim to a share in the property in dispute[7]. So long as the individuals who are parties can trace their ancestry back to a common ancestor, such individuals may be regarded as part of a family under a family settlement[8]. Such common ancestor need not be a surviving member of the family at the time of the settlement. Placing reliance on past jurisprudence on the issue, the High Court of Punjab and Haryana, in a recent decision also observed that so long as the condition of common ancestry is satisfied, even cousins can be parties to a family settlement[9].

Conversely, all family members need not be parties to a valid settlement[10]. This is relevant where some family members are not available or desirous of being parties to the settlement, especially if their position with respect to the family assets remains unaffected. It is possible for a limited set of family members to undertake a family settlement if a dispute does not extend to the entire family[11]. However, depending on the circumstances in each case, families may choose to include individuals whose present rights are not being affected, as confirming parties, to bind such individuals to the agreed understanding (should they acquire rights later) and mitigate potential challenges to the family settlement in the future.

2. ***Minors (having not attained the age of majority and not being competent to contract)***

The natural guardian of a minor can enter into a family settlement and alienate movable property of a minor, for legal necessity or the benefit of a minor[12]. The natural guardian of a Hindu minor is empowered to do all acts which are necessary or reasonable and proper for the benefit of the minor or the minor's estate so long as the guardian is not binding the minor by a personal covenant[13] or alienating immovable property without a court's permission.

While a guardian may represent a minor in a family settlement, if they undertake a transaction which is beyond their power, then such a transaction is 'voidable' at the instance of the minor. The minor may, after attaining majority, apply to a court to set aside a transfer of property made by the guardian[14]. However, even when such an application to set aside a an earlier action is made, courts are reluctant to set aside past transactions (including family arrangements) entered into by the natural guardian except when it is proved that the family arrangement

7. *Ram Charan Das vs. Gulabchand and Ors., (1971) 1 SCC 837.*
8. *Krishna Beharilal vs. Gulabchand and Ors., AIR 1971 SC 1041.*
9. *Shish Pal Singh vs. Smt. Balwanti Devi (deceased) through Lrs, RSA-4484-2009 (O&M).*
10. *Ram Pal and Ors. vs. The Deputy Director of Consolidation and Ors., 1982 (8) ALR 269.*
11. *Satya Pal Gupta vs. Sudhir Kumar Gupta, 230 (2016) DLT 73.*
12. *Palani Pillai vs. Sengamalathachi and Ors., AIR 1962 Mad 160.*
13. Section 8, Hindu Minority & Guardianship Act, 1956.
14. *M. Arumugam vs. Ammaniammal and Ors., (2020) 11 SCC 103.*

was not *bona fide* or not in the minor's interest or based on fraud or coercion[15].

3. Companies

Family settlements may require rights and obligations to be imposed on, or actions being required at the level of entities such as companies, and therefore, the question arises as to whether companies may be made parties to a family settlement. Examples of such obligations to be imposed on companies include where the family settlement requires an identified business undertaking to be transferred (so that the business can be allocated amongst family members) or if there are non-compete obligations to be imposed on companies, etc. However, courts have answered the question in the negative. Since a family settlement is to be limited to individual 'family' members and as a company is a separate entity from its individual shareholders or management, it cannot be considered to be part of a family and cannot be a party to a family settlement[16].

4. Hindu Undivided Families (HUFs)

Some family assets which are proposed to be the subject matter of a family settlement may be held through HUFs. The HUF may therefore need to be fully or partially partitioned, or assets transferred to a non-coparcener, as part of the family settlement. An HUF (being represented by its Karta) can be a party to a family settlement and participate in the settlement with the approval of all coparceners of the HUF. If feasible, all coparceners of the HUF may be included as parties to the family settlement, by way of their consent to the actions to be undertaken by the HUF (through the karta).

IV. Assets which may be covered under a family settlement

A family settlement may cover terms of realignment and/or use of a wide range of asset classes which may be owned by the family. These assets include shares of companies (listed and unlisted), financial assets, interest in partnership firms and limited liability partnerships, immovable properties, intellectual property (trademarks, patents etc), personal belongings such as artwork, jewellery and heirlooms, etc. There may be cash settlements in lieu of a family member or branch releasing interests in assets. Repayment or writing off of loans may also be covered. Family members may also agree to partition existing HUFs and distribute the assets as agreed.

V. Key Terms of a family settlement

The provisions in the documentation for a family settlement are bespoke to the requirements and considerations of each family. However, certain key provisions are generally seen to form a part of most family settlement agreements:

1. Background or context

The introductory provisions of the family settlement agreement (whether in the form or recitals or otherwise) typically set out the background and the historical context of the events preceding the family settlement. These

15. *Raivathari Madhupati Singhania and Ors. vs. Madhupati Vijaypat Singhania and Ors. 2015 (5) ABR 748.*
16. *B.A. Mohota Textile Traders (P.) Ltd vs. Dy CIT, 397 ITR 616 (Bom).*

also serve as a tool to demonstrate the satisfaction of the key components to a family settlement (for e.g. the presence of present and future disagreements) explained in paragraph II above.

2. ***Provisions on realignment of assets and other ancillary actions***

Depending on the understanding arrived at amongst the family members, relevant provisions may be built in to cover the following aspects:

(a) *Realignment of assets*: Family settlements may include realignment of interests in the relevant assets as well as use of certain common assets (as detailed in paragraph IV above), for which provisions may be included to cover the understanding amongst the family members. Further, the realignment of certain assets amongst may require the execution of additional documentation (for instance, immovable properties), in addition to a family settlement agreement. Conversely, assets which are excluded from the family settlement could also be identified.

(b) *Business roles and responsibilities:* A family settlement may also cover realignment of roles and management of the family business entities. Provisions recording the understanding with respect to appointment and resignation of family members from specific designations, as well as the different management responsibilities of family members in the same business entity, may be recorded.

3. ***Conditions precedent/compliances***

Where the implementation of the family settlement is subject to regulatory or contractual conditions or compliances, then these would have to be inserted as conditions precedent to effecting the settlement. These could include completion of the process for transfer of title of certain assets, receipt of consent of lender(s) (where the same is required contractually), receipt of approval from regulatory authorities, etc. For instance, in the recently completed family settlement of the Godrej family, the approval of Competition Commission of India was sought and received for the realignment of interests, ownership and management of business entities involved in the said settlement[17].

4. ***Treatment of costs, expenses and liabilities***

Depending on the circumstances, the parties may consider including provisions with respect to sharing of costs and expenses, payment of taxes and future regulatory claims, as well as other liabilities which may arise at a later point in time, based on agreed proportions. To provide for future exigencies, parties may choose to include provisions for creation of a contingency pool (for payment of contingent liabilities by various family members).

17. CCI approves Godrej family settlement proposals, Economic Times (last visited September 18, 2024), https://economictimes.indiatimes.com/news/company/corporate-trends/cci-approves-godrej-family-settlement-proposals/articleshow/111092763.cms?from=mdr

5. ***Withdrawal of legal proceedings***

In situations where legal proceedings have been initiated inter se the family members in relation to disputes, claims, and differences, the parties may record terms necessary actions for withdrawal of such legal proceedings. Further, the parties may add suitable covenants to ensure that they do not initiate legal proceedings in the future, on such items which are covered under the family settlement.

6. ***Timelines for the family settlement***

To ensure that the family settlement process is completed in a timely manner, a settlement date may be identified for undertaking the various settlement actions. Further the parties may consider incorporating a long stop date (by which time, if the family settlement is not completed, then the same may be cancelled). Such a date should be computed on the basis of when it would be reasonably practical to complete the conditions precedent.

7. ***Brand and intellectual property usage***

If any trademark, copyright, design or patent is being used by different family members (or their respective business entities), suitable terms may be included in the family settlement documentation to set out the rights and obligations with respect to the usage of such intellectual property. Such terms may include provisions for licensing of the intellectual property amongst business entities (with or without payment of royalty), restrictions on the present and future business entities to register and utilize a brand mark or logo, assignment of patents for certain commercial operations, etc.

8. ***Non-compete and non-solicitation obligations***

Depending on commercial considerations, the parties may choose to include reasonable non-compete and non-solicitation provisions, to safeguard interests pertaining to products, clients, employees, etc.

9. ***Confidentiality obligations***

Confidentiality and discretion are often important considerations for families, when undertaking a family settlement. To accommodate this, robust confidentiality provisions should be included, with reasonable exceptions set out to cover situations where regulatory disclosures in relation to the family settlement may be permitted as below or parties may seek to make a press release in agreed form or disclosures are to be made to tax authorities.

10. ***Disclosures***

If the family settlement impacts the control or management of a listed company, it may be required to be disclosed under the relevant securities regulations[18]. There may be additional compliances associated with the execution and implementation of family settlement agreements involving promoters of listed companies, which the parties would need to be mindful of, depending on the specifics of each case.

18. Regulations 30 and 30A, Securities and Exchange Board of India (Listing Obligations and Disclosure Requirements) Regulations, 2015.

11. *Dispute resolution*

The goal of family settlements is to resolve existing disputes or to avoid potential disputes. Therefore, should matters proceed as planned, then the potential of invoking the dispute resolution clause of a family settlement should not arise. Nonetheless, the possibility of disagreements arising even after the signing of the settlement cannot be ruled out. To address this situation, it is advisable that the dispute resolution clause provides for alternate dispute resolution mechanisms such as arbitration and mediation, in addition to the available judicial remedies. This would ensure the disputing parties have access to cost effective, timely and efficient tools to resolve their disputes, in a discrete manner. In our recent experience, to ensure neutrality, families have chosen to opt for institutional arbitration over ad hoc arbitration.

VI. Enforceability of Family Settlements

Family settlements serve as an important tool towards preserving peace, harmony and goodwill amongst family members, the significance of which has been widely acknowledged by the Indian judiciary. They are governed by a special peculiar equity and would be enforced if honestly made. While examining the validity of family settlements, courts have upheld them so long as the key principles (set out in paragraph II above) are satisfied. Indian courts do not interfere lightly with family settlements and are of the opinion that technical considerations should be overlooked in favour of peace and harmony, when enforcing family settlements[19]. Further, as noted earlier, courts have also held that minors cannot challenge a family settlement made by their guardian, so long as the settlement is bona fide and not effected by fraud.

Moreover, even in the context of income tax, courts have recognised that family settlements do not amount to taxable ‘transfer’ under the Income-tax Act.

Apart from the validity of the family settlement itself, parties may seek to enforce agreed provisions when the terms of the family settlement are violated – for instance, if there is a breach of representations and warranties by any party to the family settlement or breach of obligations (such as confidentiality or trademark infringements). Typically, family settlement agreements will set out the outcome of such breaches. Parties may seek remedy relying on the dispute resolution provisions in the agreement and the merits of the case would have to be examined on the basis of its facts.

19. *Hari Shankar Singhania vs. Gaur Hari Singhania, AIR 2006 SC 2488.*

Taxation in the hands of individuals and corporate entities/ parties to Family Arrangements

CA Pranav Sayta CA Ajay Agashe

Overview

Family arrangements in India are common in resolving disputes within family business, maintaining peace, and avoiding litigation. Courts have long recognized the legitimacy of family arrangements, with Kale v. Deputy Director of Consolidation (1976) laying the foundation for such agreements.

From a tax perspective, family arrangements are not explicitly addressed in the IT Act. However, courts have held that genuine arrangements, aimed at ensuring peace and equitable division of assets, are not treated as "transfer", exempting them from capital gains tax. The applicability of gift tax provisions in the context of family arrangements is debatable, as family peace and mutual considerations are often regarded as adequate consideration.

Issue often arises, can family-owned entities be a part of family settlement and whether a company is bound by terms of family settlement arrived at by shareholders. Taxation becomes more complex when family-owned entities (i.e., Companies/LLPs) are involved. Such entities having separate legal existence may not be treated as party to family arrangement and accordingly one may have to evaluate whether family-owned entities and stakeholders dealing with them can claim tax exemption on account of family arrangement argument.

In conclusion, family arrangements are a preferred alternative dispute resolution mechanism, offering a tax-efficient way to maintain family wealth and harmony. However, they require careful planning and documentation to ensure validity and compliance with tax laws.

1. Introduction

1.1 In the intricate tapestry of India's economic landscape, family business and joint family systems have long been the backbone of wealth creation. However, as families expand and generational shifts occur, the adage 'where there is a family, there is a dispute' holds true. Family disputes involving control over multiple family businesses get more complex considering the typical complex capital table involving multiple family members becoming shareholders.

1.2 In a country where disputes within prominent business dynasties have made headlines, family arrangements/family settlements prove to be the effective tools to resolve family disputes and ensure peace and goodwill among family members through amicable arrangements

rather than adversarial legal proceedings. This article delves into the complexities of family arrangement in India and their tax consequences for various stake holders.

2. What is Family Arrangement

2.1 'Family Arrangement' refers to any form of mutual understanding, plan, or agreement between family members regarding the management, distribution, or settlement of family wealth and business interests. The objective is to protect a family from long drawn litigation and perpetual strife, thereby preserving the family's unity and goodwill. It may take various forms such as partition, settlement of assets, distribution of assets, or restructuring of ownership interests, all tailored to address the unique dynamics and needs of the family in question.

2.2 The Halsbury's Laws of England (Vol. 18, 4th Ed.) defines a family arrangement as,

'A family arrangement is an agreement between members of the same family, intended to be generally and reasonably for the benefit of the family either by compromising doubtful and disputed rights or by preserving the family property or the peace and security of the family by avoiding litigation or by saving its honour.'

2.3 Though there is no specific law governing family arrangements, the Courts have evolved judicially the concept as a means for resolution of family disputes. This judge-made law has recognised family settlements as of a high pedestal value as a means of resolution of family disputes.

2.4 The essential pre-requisites of a legally binding family arrangement/ family settlement agreement, have been stipulated by the Supreme Court in the landmark judgement of ***Kale vs. Deputy Director of Consolidation (1976) 3 SCC 119*** as follows:

(i) The family settlement must be a bona fide one, so as to resolve family disputes and rival claims by a fair and equitable division or allotment of properties between the various members of the family. Equitable distribution doesn't mean equal distribution, but it should be just distribution having regard to the facts of each case. There may be a case where some members may be given a larger share due to their contribution in the growth or prosperity or some other justifiable reason;

(ii) The said settlement must be voluntary and should not be induced by fraud, coercion or undue influence;

(iii) The members who may be parties to the family arrangement must have some antecedent title, claim or interest, even a possible claim in the property which is acknowledged by the parties to the settlement. Even if one of the parties to the settlement has no title but under the arrangement the other party relinquishes all its claims or titles in favour of such a person and acknowledges him to be the sole owner, then the antecedent title must be assumed and the family arrangement will be upheld, and the Courts will find no difficulty in giving assent to the same;

(iv) Even bona fide disputes, present or possible, which may not involve legal claims, are settled by a bona fide family arrangement which is fair and equitable, the family arrangement is final and binding on the parties to the settlement.

2.5 Family Arrangements typically address distribution of properties wherein parties to the settlement claims have antecedent title. Hence, whether self-acquired assets can be included in the *bona fide* Family Arrangement is a legal issue[1] which needs to be examined basis the facts of the case.

2.6 Apart from the property, the other aspect involved in the Family Arrangement is the "Family". In the context of Family Arrangements, courts have not confined the word 'family' to the term 'family' or 'relative' defined in the succession laws, Income Tax Act, 1961 ('the IT Act') or in any other law or to persons who have a legal title to the property. They have adopted the approach to consider Family Arrangements involving near relation members though not in direct blood stream to mean valid binding family arrangement for all the parties involved.

2.7 Further, being a legal concept with its roots in English common law, family arrangement is not limited to Hindus and applies to any religion or caste or creed. The same has been judicially affirmed by Indian courts by upholding its applicability in following cases involving Muslim and Christian families

- ***Mohd. Amin vs. Vakil Ahmed (1952) 1 SCR 1133 (SC),***
- ***Martin Cashin vs. Peter J. Cashin AIR 1938 PC 103***

3. Tax Aspects

3.1 Family arrangement is not addressed by the legal provisions contained in the IT Act. Tax implications are more so governed by the principles enunciated by courts under general law in the context of family settlement.

3.2 Courts, in the context of tax laws, did not consider Family Arrangements to be bonafide or valid in the absence of any evidence of dispute and/or antecedent title in the party to the arrangement. Before we discuss the same it would be essential to understand the tax impact of various transactions that could be undertaken as part of Family Arrangement to various parties involved.

4. Not treated as 'Transfer'

4.1 In the case of ***Ram Charan Das vs. Girja Nandini Devi AIR 1966 SC 323***, 329, the property in dispute was common ancestor property belonging to deceased grandfather of deceased X. The family settlement was between widow daughter-in-law and son of grandson of collateral of X. One party challenged the validity of the family settlement entered into by the family members to resolve the dispute. The Supreme Court while deciding the validity of family settlement held that family settlement is not an alienation of property and therefore it does not result into creation of interest which leads to the conclusion that the same is not a transfer. Once there is no alienation there cannot be

1. *Tek Bahadur Bhujil vs. Debi Singh Bhujil and others (1965 Ind law SC 494); ITO vs. Smt. Jagrani Bai (1990) 34 ITD 54 (Hyd)*

any relinquishment of any right in the property.

4.2 Hon'ble Madras High Court in the case of ***CIT vs. Kay Aar Enterprises (299 ITR 348) (Mad)***[2] held that *'The tribunal has rightly found that the impugned transfer of shares by way of family arrangement would not attract capital gains tax, as the same is a prudent arrangement to avoid possible litigation among the family members and is made voluntarily and not induced by any fraud or coercion and therefore, cannot be doubted.'* While holding this, the High Court relied upon its earlier judgements in case of ***Commissioner of Income-tax vs. Ponnammal [(1987) 164 I.T.R. 706]***, and in ***Commissioner of Income-tax vs. AL. Ramanathan [(2000) 245 I.T.R. 494]*** which held that where family members give and take "properties" there is no transfer of "property" and hence cannot attract any gift tax.

A valid Family Arrangement proceeds on the premise that title claimed by the person receiving the property was always with him, though technically property was registered in the name of other members.

4.3 In the recent case of ***Gonad Kumar Khemka vs. ACIT (2020) 207 TTJ 393 (Delhi)***, the tax authorities treated the partition of assets among family members under a family settlement as a "transfer" of property, seeking to levy capital gains tax. The Delhi tribunal, reinforcing the view that the reorganization of property through family arrangements is exempt from capital gains taxation, held that "*Partition or family settlement is not transfer. When there is no transfer there is no capital gain and consequently no tax on capital gain is liable to be paid.*"

4.4 In a family settlement, as explained hereinabove, there is no transfer of property by one person to another as each member has a right in the subject property and inter-se between the family members. Accordingly, the concept of exchange cannot be read into the family settlement and therefore there cannot be any transfer attracting capital gain tax liability.

5. Applicability for parties being family-owned entities

5.1 It is not unusual that, in family settlement at times, corporate group entities are also involved. Apart from issues around shift of control and management of these corporate entities, many times assets belonging to companies may also become subject matter of allotment to one or the other family member or family-owned entities paying the family member for the property proposed to be given away to other family members owning the payer family-owned entity or so on and so forth. Issue often arises, can company be a part of family settlement and whether a company is bound by terms of family settlement arrived at by shareholders.

5.2 While binding nature and claim of tax exemption by family-owned entities can have different conclusions and hence both the cases need to be dealt separately.

5.3 As regards the first issue, about binding nature of family arrangement for the

2. SC in (306 ITR 6) (St) rejected SLP)

corporate entities; while clearly it's a legal issue which needs detailed examination in each case, it may be argued that family members as part of family arrangement can agree to facilitate family-owned entities undertaking some corporate action such as buyback, demerger, liquidation, etc. by way of passing the requisite resolutions or consents or amendments to the constitutional documents of the company i.e., articles of association, board resolutions, etc..

5.4 Regarding the later part i.e. family entities claiming non-transfer on account of family settlement the matter is definitely not straight forward.

5.5 The issue was examined by Bombay HC in the case of ***B A Mohota Textiles Private Limited vs. DCIT 397 ITR 616 (Bom) (2017),*** wherein transfer of shares by a company to family member in pursuance of a family arrangement was assessable to capital gain tax. Bombay HC held that the object and purpose of family settlement would restrict itself only to persons who entered into family arrangement and cannot be extended to company as company has an independent existence with perpetual succession and common seal. Lifting of corporate veil at the instance of the taxpayer would mean that it is denying its corporate existence.

The Bombay HC while commenting on separate legal existence of Company gave a passing reference that, *"the Company may opt for voluntarily winding up and then the shares being allotted to the individual members on liquidation would be governed by the family arrangement/settlement".* Whether the family members can argue non-taxation on receipt of assets from Company due to no transfer argument pursuant to family settlement needs to be evaluated separately based on facts of each case.

5.6 Issue can be interesting where instead of family-owned entity selling the assets, such entity is buying the assets from a family member and payment to family member is made by family-owned entities.

5.7 Similar issue was recently discussed by the Mumbai Tribunal in the case of ***Sujan Azad Parikh vs. DCIT [2023] 198 ITD 83***, transfer of shares by a family member vide family arrangement agreement to Company under buy back arrangement was argued to be assessable to capital gains tax in the hands of family member by the Assessing Officer. The Mumbai Tribunal observed that, there is no doubt that there is a family arrangement and hence, no capital gain tax was liable to be paid by family member. The Tribunal distinguished the facts of the case vis a vis ***B. A. Mohota Textiles Traders Pvt. Ltd (supra)*** on the grounds that the transferor is an individual whereas in the case of ***B. A. Mohota Textiles Traders Pvt. Ltd (supra)*** the transferor was a legal entity.

5.8 Such cases may bring up other complexities as well viz. what would be the cost of acquisition and period of holding for the acquiring entity. Disparity on the basis of 'non-transfer' may arise and considering that the matter is not free from doubt a careful consideration needs to be given to such cases. Further, where family-owned entity involved is a partnership firm the position could be entirely different than that of corporate entity. So, facts of each case need to be looked at before applying the argument of Family

Arrangement for non-taxation where the transaction involved family-owned entities.

6. Applicability of clubbing provisions

6.1 As family settlement does not give rise to 'transfer' and further, 'transfer' if any is for adequate consideration in the form of family amity and peace, clubbing provisions may have no applicability. Courts have ruled in the favour of a taxpayer that clubbing provisions are not applicable in respect of assets transferred under family settlement in cases such as ***CIT vs. R. Ponnammal (R) (1987) 164 ITR 706 (Mad), ITO vs. Smt. Jagrani Bai (1990) 34 ITD 54 (Hyd),*** etc.

7. Where family arrangements are held invalid

7.1 Courts, in the context of tax laws, did not consider family settlement to be *bona fide* or valid in absence of any evidence of dispute and/or antecedent title in the party to the arrangement in cases such as ***CIT vs. Bibijan Begum (1996) 221 ITR 836 (Gau), N. Durgaiah vs. CGT (1975) 99 ITR 477 (AP), Kusumben Kantilal Shah vs. ITO (1996) 56 ITD 476 (Ahd)***, etc.

7.2 Hence, the taxpayer will have to substantiate the of a valid family arrangement. In case *bona fides* of a family arrangement are not accepted, the following considerations need to be taken care of:

(i) One will have to evaluate the applicability of provisions of fictional taxation like section 50C or 50CA of the IT Act if the subject matter of transfer is land/building or unlisted shares respectively.

(ii) In case of cross transfer of assets amongst various members, there could be a risk of capital gain tax assessment with respect to the fair market value by treating the transaction as exchange. For instance, the assessing officer in the case of ***Mohd. Haroon Japanwala vs. ITO (1987) 28 TTJ 227 (Del)*** treated the transaction of family settlement as non-genuine and hence, taxed the same as 'exchange' under section 45 of the IT Act.

(iii) It is arguable that where no consideration is received and there is no allegation of transfer by way of exchange, there may not be capital gains tax liability. In absence of consideration, section 50C/50CA being computation provisions may not have applicability. The litigation on account of this cannot be ruled out.

8. Applicability of section 56(2)(x) of the IT Act

8.1 Apart from taxation of capital gains, another aspect that needs consideration in transactions being part of Family Arrangement is applicability of deemed gift taxation under section 56(2)(x). It is pertinent to note that the general exemption from deemed gift taxation under section 56(2)(x) is provided for a transaction between "relatives" defined under the IT Act for this purpose.

8.2 As we have discussed for a valid Family Arrangement, it is not necessary that parties to family settlement should be restricted to "relatives" as defined under the IT Act and accordingly, the applicability of above referred gift taxation provisions in case of receipt of cash or specified assets pursuant to a Family Arrangement wherein the parties are not meeting the definition of the

term "relative" as defined needs to be evaluated.

8.3 For instance, in the case of Purvez A Poonawalla ITA No. 6476/MUM/2009, the Mumbai Tribunal was concerned with an issue on taxability of sum under erstwhile section 56(2)(vii) of the IT Act received by the taxpayer from legal heirs in consideration of taxpayer giving up his right to contest the will of the deceased. The Tribunal applied the definition of 'consideration' under the Contract Act and held that the act of taxpayer's abstinence from contesting the will constituted consideration for payment. Accordingly, the Tribunal held that sum received was not chargeable to tax under erstwhile section 56(2)(vii).

8.4 Further, Courts have regarded family amity and peace as paramount consideration. Forbearance or sacrifice is also a valid concept. Thus, the concept of a family settlement rests on philosophy of mutual considerations. For instance, in the case of ***Ram Charan Das (supra)***, the Hon'ble Supreme Court, while deciding on the validity of family settlement held that *"The consideration for such a settlement, if one may put it that way, is the expectation that such a settlement will result in establishing or ensuring amity and goodwill amongst persons bearing relationship with one another."*

8.5 *Bona fide* family settlement results in redefining of pre-existing rights to the family members, there is no fresh right or interest created. A taxpayer cannot be said to have earned income when the property received by him represents the entitlement which always belonged to him on the date of receipt of property.

8.6 The authority to tax an amount is derived on the basis that the taxpayer has gained some advantage in the nature of income. It is well accepted that the gain or accrual should be from an external source as also the gain or accrual should be tangible and not hypothetical.

8.7 In fact, even in the context of erstwhile Gift Tax Act, Courts have upheld non-applicability of provisions of Gift Tax Act on account of presence of adequate consideration under a family settlement in cases such as ***CWT vs. Her Highness Vijayaba, Dowger Maharani Saheb of Bhavnagar Palace, Bhavnagar & Ors. (1979) 117 ITR 784 (SC), CGT vs. Smt. K. Nagammal (1997) 226 ITR 598 (Ker), CGT vs. Pappathi Anni (1981) 127 ITR 655 (Mad)***.

9. Cost of acquisition and period of holding of asset obtained under family settlement

9.1 Family settlement proceeds on the premise that the title claimed by a person receiving the property had always remained with him. Hence, in respect of the property falling to his share, the cost of acquisition shall also relate back to the purchase of that asset. This is also consistent with the proposition that title is not acquired by way of transfer from one member to another. The contention of antecedent title is extended to its logical conclusion as if the self-same member had acquired antecedent title from the date the asset was acquired.

9.2 In the context of receipt of assets under family settlement, courts have adopted that cost of acquisition and period of holding from the time of purchase in the hands of the previous owner as a cost/period of holding to the recipient of the asset. In the case of ***CIT vs. Minor Shanthi Chandran (2000) 241 ITR 371***

(Mad) and ***ACIT vs. Baldev Raj Charla & Ors. (2009) 18 DTR 413 (Del)***, courts have also regarded family settlement as analogous to partition and applied provisions of section 49(1) of the IT Act to consider the cost and the period of holding to the previous owner.

9.3 However, in the absence of specific provisions under section 49(1) of the IT Act, revenue may consider the cost of acquisition as NIL as member does not acquire assets allocated to him for any cost. Further, in the absence of any transfer by way of exchange, value of assets exchanged cannot constitute the cost of acquisition of assets received by members.

9.4 Further, the period of holding of property received under family settlement may be computed from the date of family settlement on the view that the recipient got the property for the first time under family settlement. Litigation on account of this issue cannot be ruled out.

10. Other Aspects

10.1 Section 79 of the IT Act deals with the restriction on carry-forward and set-off of unabsorbed losses (other than unabsorbed depreciation) in case of the change in the shareholding of more than 51% of a closely held company. Further, in case of any change in voting power on account of transfer of shares by way of gift to any relative of the shareholder making such gift, applicability of section 79 is protected. However, whether applicability of provisions of section 79 of the IT Act in case of change in shareholding pursuant to family arrangement can be protected on account of 'no-transfer' argument needs to be examined.

10.2 Similarly, whether doctrine of family settlement argument is available for recipient being trust is a vexed issue and shall depend upon the type of trust and the relation between parties in the trust.

11. Conclusion

11.1 A family settlement is an effective alternative dispute resolution mechanism and should be a preferred route for families to protect generational wealth from being marred by disputes. Given the fact that genuine family arrangements/settlements are outside the purview of taxation, this mode of dispute resolution has gained popularity over a period. Civil proceedings in a court are not only time consuming but also a costly affair and therefore family settlements should be a preferred choice for dispute resolution amongst families. However, the taxpayer will have to substantiate the bonafides of a valid family arrangement. Thus, a carefully planned and meticulously drafted family settlement agreement, can go a very long way in ensuring the fair, equitable and dispute-free distribution of the family business legacy, property and succession.

Important Cases laws on Family Arrangement

CA Vinit Desai CA Yashvardhan Gupta

Overview

In India, where family-run businesses are prevalent, disputes and divergent aspirations among family members can significantly impact both the business and its reputation. To safeguard interests and foster family harmony, it is crucial to have a well-structured family arrangement agreement. Over the years there have been several matters which have reached courts where courts have made various landmark observations. This article seeks to discuss some of the key cases and principles arising out of them which could be relevant to keep in mind while thinking of any potential family arrangement. It is important to carefully navigate this given it may touch several laws including tax.

Joint families and entrepreneurial skills are embedded deep in the DNA of Indians, which is evidenced in most Indian businesses today being run, managed and owned by large families. Different family members have varied aspirations, goals and entrepreneur skillsets. Further, there are, at times, disputes amongst families with regard to differences in ideologies, which also impacts the business. There has also been relentless media coverage on the way some families have had public fallouts in managing family wealth.

Given the above backdrop, it is imperative for families to have a family arrangement agreement in place, in most probable situations, so that not only are the interests of all family members protected, but also in many cases, the reputation of the family is safeguarded.

In the past we have seen large families like the Ambani family, and more recently the Godrej family, arriving at family arrangements.

Family settlement is a commonly known mechanism used to amicably distribute family wealth among future generations. Each plan is a tailor-made solution and has several "said" and "unsaid" emotional and commercial considerations. While it is imperative to consider the tax and regulatory impact on such transactions, emotional and commercial aspects largely govern the plan. Over the years, many matters have had to reach the courts, for tax or other issues in connection with family arrangement or settlement. Below we have discussed some key cases on the subject.

Recent jurisprudence governing family arrangement or settlement

Essential pre-requisites of a Family Arrangement

Family relationships are grounded in trust and in the equitable distribution of rights and responsibilities. While trust typically governs short-term interactions, long-term dynamics necessitate a careful balance between rights and responsibilities. A family arrangement functions as a strategic framework for property transfer and financial settlement, requiring compliance with relevant legal statutes to ensure proper execution and adherence.

One of the primary factors to be considered is the definition of "family" for arriving at an arrangement among between them. The term "family" has different connotations based on contexts. As per a landmark observation by Supreme Court of India[1], the word "family", in context of family arrangement, is not to be understood in a narrow sense, of being a group of persons who are recognized in law as having right of succession or having a claim to a share in property in dispute. A family may include group of persons descending from common ancestors or group of persons having any other near relation and seen as family etc. Any such group should be entitled to enter into family arrangement.

Further in another decision, the Supreme Court[2] observed that the term "family" has to be understood in a wider sense so as to include not only close relations or legal heirs, but even those persons who may have some sort of antecedent title, a semblance of a claim or even a spes successionis, so that future disputes are sealed forever and the family, instead of fighting claims inter-se and wasting money, time and energy on such futile litigation, is able to devote its attention on more constructive work.

A family arrangement is not statutorily defined. The entire law on family arrangements is judge-made law and reference is made based on landmark decisions. Family settlement have received judicial recognition and are enforceable in a Court of law. The Supreme Court[3] explained that a family arrangement is an agreement among members of the same family, intended to generally and reasonably benefit family members either by compromising doubtful or disputed rights or by preserving the family property or the peace and security of the family by avoiding litigation, or by saving its honor.

In another decision, the Supreme Court[4] observed that a compromise or family arrangement is based on the assumption that there is an antecedent title of some sort in the parties and the agreement acknowledges and defines that title, each party relinquishing all claims to property other than that falling to his share and recognising the right of the others, as they had previously asserted it, to the portions allotted to them respectively.

Further, the Supreme Court[5] has also observed that in a family arrangement there must be

1. *Krishna Bihari Lal vs. Gulabchand (1971 AIR 1041, SCR 27)*
2. *Kale and Ors vs. Deputy Director of Consolidation (1976 AIR SC 48)*
3. *Maturi Pullaiah vs. Maturi Narasimham, (AIR 1966 SC 1836)*
4. *Sahu Madho Das vs. Mukand Ram (AIR 1955 SC 481Z)*
5. *Ram Charan Das vs. Girija Nandini Devi (1965 SCR (3) 841)*

an agreement amongst the various members of the family intended to be generally and reasonably for the benefit of the family. The agreement should be with the object either of compromising doubtful or disputed rights or for preserving the family property, or the peace and security of the family by avoiding litigation or for saving its honour. There must be consideration in family arrangement with an expectation that such settlement will result in establishing or ensuring amity and good-will amongst the relations.

In the past, questions have also been raised around whether an HUF or a company can be part of family arrangement. The Hyderabad Tribunal has observed that HUF was covered within the definition of relative[6]. Similarly, the Ahmedabad Tribunal has[7] observed that gift received by HUF from an uncle of its Karta, fall within the category of the relative and hence is not taxable.

The Bombay High Court[8] has observed that company cannot be part of family arrangement as it denied lifting the corporate veil. The entity created under law not being a natural person cannot have relations or family and therefore cannot be party to a family arrangement.

Placing reliance on the above decision, Delhi Tribunal[9] has also observed that gift made by a company cannot be said to be a part of a family arrangement as a company cannot be a member of a family but is a separate juridical entity having its own separate existence. Hence, a company cannot be said to be in real relation to any of the family members and is a separate legal entity. Therefore, if there is a transaction between two family members of a family, a corporate entity is not entitled to get any benefit which a member of the family is entitled to and hence a corporate entity cannot be considered as a 'member of family' under a 'family settlement'. However, since the gifting of shares did not benefit the Assessee in anyway, all conditions contemplated in section 122 of the Transfer of Property Act were fulfilled. The Tribunal ruled in favour of the assessee and hence gift of shares was held to be a valid gift and was not subject to tax.

Reference can also be drawn to a landmark case[10] wherein it was held by United Kingdom House of Lords' that under the law, an incorporated company is a distinct entity ; and although all the shares may be practically controlled by one person, in law, a company is a distinct entity.

Briefly, the essentials of a family arrangement laid down by the Supreme Court in case of Kale (supra) can be summarized as below:

- The family arrangement should be for the benefit of the family in general.
- The family arrangement must be bonafide, honest, voluntary and it should not be induced by fraud, coercion or undue influence.
- The parties to the family arrangement may have antecedent title, claim or

6. *B.Dhanalaxmi ITA/897/Hyd./2012 and Vineet Kumar Bhalodia 140 TTJ (Raj.) 58.*
7. *Harshadbhai Dahayabhai Vaidya HUF – 155 TTJ (Ahmd.) 71.*
8. *B.A Mohota Mohota Textile Traders (P.) Ltd v Dy CIT (2017)*
9. *Manjula Finance Ltd vs. ITO (3727/Del/2018 (AY 2014-15))*
10. *Salomon vs. Salomon and Co. Ltd. [1897] AC 22*

interest. Even a possible claim in the property which is acknowledged by the parties to the settlement, will be sufficient for the same.

- The consideration for entering into family arrangement should be preservation of family property, preservation of peace and honor of the family and avoidance of litigation.
- Each party relinquishes some claims in favour of others and there is a recognition by some of the rights in favour of others.
- The dispute may be existing or likely to arise in future. If there is no dispute, present or future there can be no family arrangement. Thus, a family arrangement when it is bona fide entered into and for the benefit of the family, will be generally enforced by a Court of Law.
- Family arrangement as such can be arrived at orally or may be recorded in writing as memorandum of what had been agreed upon between the parties. The memorandum need not be prepared for the purpose of being used as a document on which future title of the parties be founded. It is usually prepared as a record of what had been agreed upon so that there are no hazy notions about it in future.

Registration Requirements

When dealing with family arrangements, one key question is whether the document needs to be registered under the Registration Act. As can be observed from some of the cases discussed below, if a person has an absolute title to the property and the said property is transferred to another person then it would be a case of transfer requiring registration. Another important aspect which needs to be borne in mind is that a family arrangement may be oral and therefore in such a case no registration would be required. Registration would still not be required if the arrangement is reduced to writing in a memorandum format wherein the arrangement that has already been made orally, is put on a document to facilitate mutation of properties. On the contrary, if from the terms of the written document it can be discerned that the said document itself creates an interest in a served immovable property, then the same would require compulsory registration under the Registration Act.

In a recent case, the Supreme Court[11] addressed a dispute over the ownership of certain properties between two branches of a family. The original plaintiff, Harbans Singh, had claimed sole ownership of the land based on a family settlement and a subsequent memorandum of settlement. Although the trial court partially favored his heirs, the High Court ruled that the memorandum required registration to be legally valid. On appeal, the Supreme Court overturned the High Court's decision, ruling that the family arrangement did not need to be registered to be enforceable. The Court emphasized that family arrangements, made to settle internal disputes and ensure family harmony, are valid even if not registered, and their terms are binding due to the principle of estoppel.

11. *Ravinder Grewal vs. Manjit Kaur [(2019) 8 SCC 729]*

In another Supreme Court decision[12], it was observed that where the document was drawn up only to serve the purpose of proof or evidence of what had been decided by the parties, and not to form the basis of their rights in any form over the property, the same constitutes a mere memorandum recording something that has already taken place, and such a document would not require registration or stamping.

The same view was reiterated in ***Maturi Pulliah (supra)***, wherein it was held that the family arrangement will need registration only if it creates any interest in immovable property in present time, in favour of the parties mentioned therein. In case where no such interest is created, the document would be valid, despite it being non-registered.

Taxation aspects

One question has time and again been a subject matter of debate before various courts, as to whether such family settlements result in transfer of properties from one person to another and whether such transfer can be said to be without consideration. It is worthwhile to state that the courts in India have time and again held that any property transferred under a family arrangement from one individual family member to another, should not be subject to income-tax. However, transfer by a corporate entity may be viewed differently.

The Privy Council in case of ***Ram Charan Das (supra)*** held that that a compromise by way of family settlement is in no sense an alienation by a limited owner of family property, but a family settlement in which each party takes a share of the family property by virtue of an independent title, which is to that extent, and by way of a compromise , admitted by the other parties.

Further, the Madras High Court[13] relying on its earlier decisions[14] and the well-known decisions of the Supreme Court in the cases of Kale (supra) and Maturi Pullaiah (supra) held that re-arrangement of shareholdings in company to avoid possible litigation among family members is a prudent arrangement necessary to control company effectively by major shareholders to produce better prospects and active supervision and in case of such rearrangement of shareholding, it cannot be held that there is transfer of shares liable to capital gains tax.

In another instance, the Karnataka High Court[15] held that the word ‘transfer’ does not include partition or family settlement as defined under the Act. It is well settled that a partition is not a transfer. What is recorded in a family settlement is nothing but a partition. Every member has an anterior title to the property which is the subject matter of a transaction, that is, partition or a family arrangement. So there is adjustment of shares, crystallization of the respective rights in the family properties and, therefore it cannot be construed as a transfer in the eye of law. Consequently, the Tribunal on a proper consideration of the entire material on record has categorically held that the transaction in

12. *Tek Bahadur Bhujil vs. Debi Singh Bhujil AIR 1966 SC 292/Roshan Singh vs. Zile Singh AIR 1988 SC 881.*
13. *CIT vs. Kay Arr Enterprises {[2008] 299 ITR 348 (Mad.)}*
14. *CIT vs. R. Ponnammal [1986] 28 Taxman 26 (Mad.) and CIT vs. AL. snathan [2003] 128 Taxman 87 (Mad.)*
15. *CIT vs. R. Nagaraja Rao (IT APPEAL NO. 3048 OF 2005)*

question is a family arrangement and it was held by Karnataka High Court that the order of Tribunal was in accordance with the law.

In another case, the Punjab and Haryana High Court[16] held that amount of compensation paid to the assessee to settle inequalities in Partition Capital would not attract capital gain tax.

Similar analogy was derived by the Bombay High Court[17] where it affirmed that the family settlement was a legitimate resolution of disputes involving the clarification and division of existing rights rather than a transfer of capital assets. There was no taxable capital gain from the amount received as it was part of the family arrangement rather than a transfer of assets.

In another case, the Chennai Tribunal[18] held that where pursuant to a family settlement, the assessee received certain amount and assets from a company in which he had substantial interest, the provisions of section 2(22)(e) of the Act could not be applied to amount so received. The entire transactions between the family members and their wholly owned companies were due to the family arrangement/partition or settlement etc. Having held so, provisions of section 2(24)(iv) of the Act will also not be applicable to the case of the assessee in these circumstances.

The Tribunal made the following observations while making this decision -

> "*In the provisions of the taxing Statute, piercing the corporate law is also a recognized phenomenon. Section 2(47)(vi) of the Act is one such provision which includes a transaction as a transfer when on becoming a member of, or acquiring shares, in a co-operative society, company or other Association of Persons, or by way of any agreement, or any arrangement or in any other manner whatsoever which has the effect of transferring, or enabling the enjoyment of immovable property will be considered as a transfer. Further section 47(i) of the Act also makes it clear that any distribution of capital assets on total or partition of Hindu Undivided Family cannot be treated as transfer for the purpose of computing capital gains. When this being the case, in our considered view the assessee should also get the benefit of piercing the corporate veil of the wholly owned family companies while determining his tax liability for viewing the true nature of the entire transactions. Moreover, with regard to applicability of section 2(22)(e) of the Act, it is relevant to note that if the family settlement had not taken place there was a peril for the dissolution of the family-owned companies for the sake of partition. In order to prevent such a precarious situation, the assets of the family-owned companies had to be realigned. Thus, there was a commercial exigency for the family-owned companies to transfer some of its assets and liquid assets in order to avoid extinction".*

However, in another decision the Bombay High Court[19] held that sum received on

16. *CIT vs. Ashwin Chopra (IT APPEAL NO. 354 of 2011)*
17. *Sachin P Ambulkar (IT APPEAL NO. 6975 OF 2010)*
18. *SKM Shree Shivkumar v. ACIT (ITA No.1965/Mds/2011)*
19. *P. P. Mahatme vs. ACIT [2021] 126 taxmann.com*

settlement of case of property usurped by relatives was taxable as capital gain. The case involved LMP, a Power of Attorney holder for an NRI, whose share in an immovable property was settled through consent terms after a civil dispute with relatives. The court clarified that this settlement did not qualify as a family settlement for tax purposes as there was no preexisting right in immovable property, leading to the conclusion that the amount received constituted taxable capital gains. The ruling emphasizes the stringent interpretation of tax laws concerning capital gains and the criteria for defining family settlements. The High Court considered and distinguished the decision in *Kale and others (supra)*.

One of the decisions followed in the case of *P.P. Mahatme (supra)* was the decision rendered by the Punjab and Haryana High Court[20] wherein the facts were that the assessee constructed a property by taking loans from his family members. As he failed to repay the loan, the family members claimed a share in the property. The assessee gave them 3/4th share in a family settlement by way of a Court Decree and claimed that this being, a family settlement, no gift tax (which tax was in existence at that point of time) was chargeable. The Punjab and Haryana High Court, however, held that merely because the loans were not repaid by the assessee to his family members, it could not create a title for them in the property which would entitle them to claim partition by way of family settlement of the property in question. There was no antecedent title, claim or interest.

In another decision[21], the company made wireless devices labeling them as unbranded in their price and classification lists. However, they were actually sold under the brand name "Bush" exclusively to Bush India Ltd. The Revenue alleged that this constituted willful suppression of facts to avoid paying excise duty and issued a Show Cause Notice. The company challenged this in court, arguing that excise duty should be based on the price they charged to Bush India and not the resale price by Bush Ltd. The High Court agreed, saying the assessable value for duty was the price charged to Bush India, not what they sold it for later. The Revenue appealed, but the court upheld its decision, emphasizing that legitimate tax planning must not involve evasion and that the true nature of transactions should be transparent, and that Bush India Ltd wasn't a related person for tax purposes merely because of exclusive sales relationship with Bush India Ltd.

The Mumbai Tribunal Bench[22] noted that the assessee received certain sum from his brother's wife, 'N' and claimed the said sum to be exempt under section 56(2)(v) of the Act. The Tribunal held that since the assessee received the sum out of family settlement, the same was not taxable, as by way of settlement only respective shares were determined.

Another question arises on what should be considered as the cost of acquisition in case of family settlement? In this regard, Madras High Court[23] has concluded that the family settlement is analogous to a partition, and the original cost to the father should be used. In

20. *Banarsi Lal Aggarwal vs. Commissioner of Gift tax [1998]*
21. *Union of India vs. Playworld Electronics (P.) Ltd [1989] 651 (SC)*
22. *Dy. CIT vs. Paras D. Gundecha [2015] 62 taxmann.com 170/155 ITD 880*
23. *CIT vs. Shanthi Chandran [(2000) 241 ITR 371]*

this case, a minor assessee received shares under a family settlement from their father. The Assessing Officer determined that the cost of acquisition should be based on the father's original purchase price, not the higher value mentioned in the settlement deed. The Commissioner (Appeals) and the Tribunal ruled in favor of the assessees, accepting the higher value stated in the settlement deed for calculating capital gains. However, on reference, the court held that in a family settlement, similar to a partition, the cost of acquisition for capital gains purposes should be the cost to the previous owner (the father), not the value assigned in the settlement deed.

In summary, navigating a family arrangement requires a meticulous approach to ensure that the most optimal resolution is achieved while simultaneously considering tax and regulatory implications. This could be quite complex considering large family fragments and large number of businesses and entities in the group. Although certain cases may offer guidance on minimizing tax liabilities within family arrangements, it is crucial to exercise caution. The intricacies of tax laws and regulatory requirements can vary widely, and overlooking these aspects might lead to unintended consequences or legal complications. Therefore, it is essential to carefully evaluate the potential tax consequences and regulatory requirements associated with each arrangement to avoid pitfalls and achieve a solution that aligns with both family objectives, financial goals and legal obligations. Therefore family arrangements should aim to resolve disputes and foster family harmony, not to evade taxes or legal obligations. A family arrangement or settlement should not be seen as entered into with an object of escaping tax. The Tribunal decision in case of Manjula Finance Ltd (supra) pertains to the period before General Anti-Avoidance Rules ("GAAR") was introduced. GAAR provides enough powers in the hands of AO to disregard, combine, recharacterize, etc the impermissible avoidance arrangement. Therefore, one should take necessary precautions to consider the rigor of GAAR. The process must be conducted in good faith, without limiting the rights of non-consenting family members or involving undue influence. Given the scrutiny by tax and government authorities, it's crucial to ensure the arrangement is well-documented and genuinely reflects the intent to maintain family unity rather than exploit legal loopholes. The recent examples of some very large high profile families undergoing family arrangement, show how these arrangements help balance tradition with modern business needs. Ultimately, well-crafted family settlements help preserve family unity and protect both personal and business interests through generational changes.

> "Prayer is not asking. It is a longing of the soul. It is daily admission of one's weakness. It is better in prayer to have a heart without words than words without a heart."
>
> — *Mahatma Gandhi*

Stamp Duty in Family Settlement Agreement

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Overview

A family settlement is an agreement between family members for property disposition intended to protect the family from existing or potential disputes, long-drawn litigation or perpetual strifes which mar the unity and solidarity of the family. After tracing the historical perspective of family settlements, the article explains the principles of special equity used by courts in enforcing them.

The article briefly overviews the fundamental principles of stamp duty legislation and why and when family settlements will attract stamp duty and registration requirements. The article reviews the concepts of 'instrument', 'settlement', essential features of a settlement and the rules of interpretation of contracts that would govern the basis for computation of stamp duty.

The article explains why the principles of special equity are alien to implementation of the stamp duty laws. The article describes the consequences of non-payment or shortfall in payment of stamp duty and highlights the significant risks associated with such non-compliance and its impact on the beneficiaries of settlement in the long run.

The article concludes with financial impact of combining multiple matters and transactions under the family settlement. While trust, mutual respect, transparency, and accountability are the foundations of a sound family settlement, the authors argue the importance of expert professional help in ensuring that settlements remain tax-efficient and are enforced in letter and spirit.

Family "matters" - Family settlement – the historical context

While disputes amongst business families grab headlines for all the wrong reasons, what goes unnoticed is that "family arrangements" are rather ubiquitous thanks to the age-old Indian habit of multi-generational households pooling and owning assets jointly. The need for divvying up family assets from time to time has resulted in a well-developed body of case law cutting across systems of personal law.

A family settlement is an agreement between members of the same family, intended to be generally and reasonably for the benefit of the family either by compromising doubtful or disputed rights or by preserving the family property by avoiding litigation or by saving its honour[1].

1. Halsbury's Laws of England Vol. 17, Third Edition, Pg. 215-216 relied on by the Supreme Court of India in *Kale and others vs. Deputy Director of Consolidation (1976) 3 SCC 119*

The expression 'settlement' has originated in the English Law of real estate. Historically, 'settlement' was a device adopted by the English landed gentry to order the future destiny of their lands and to prevent them from being sold out of their family. The creation of a 'settlement' determined the tenure by which an estate or interest in land may be held[2].

Family settlement – is it a contract?

By virtue of a family settlement or arrangement, members of a family descending from a common ancestor or near relation seek to sink their differences and disputes, settle and resolve their conflicting claims or disputed titles once for all in order to buy peace of mind and bring about complete harmony and goodwill in the family[3]. The agreements enforceable by law are contracts[4] and those which are not enforceable by law are said to be void[5]. The legal efficacy of family arrangements is sometimes questioned on the ground as to whether the parties intended to be legally bound by the terms of the arrangement.

The principles which apply to the case of an ordinary compromise between strangers do not apply with the same rigour to the case of compromises in the nature of family arrangements. Family arrangements are governed by a special equity peculiar to themselves, and will be enforced if honestly made, although they have not been meant as a compromise, but have proceeded from an error of all parties, originating in mistake or ignorance of fact as to what their rights actually are, or of the points on which their rights actually depend.

The object of the arrangement is to protect the family from long-drawn litigation or perpetual strifes which mar the unity and solidarity of the family and create hatred and bad blood between the various members of the family. Today when we are striving to build up an egalitarian society and are trying for a complete reconstruction of the society, to maintain and uphold the unity and homogeneity of the family which ultimately results in the unification of the society and, therefore, of the entire country, is the prime need of the hour. A family arrangement by which the property is equitably divided between the various contenders so as to achieve an equal distribution of wealth instead of concentrating the same in the hands of a few is undoubtedly a milestone in the administration of social justice. That is why the term "family" has to be understood in a wider sense so as to include within its fold not only close relations or legal heirs but even those persons who may have some sort of antecedent title, a semblance of a claim or even if they have a spes successionist so that future disputes are sealed for ever and the family instead of fighting claims inter se and wasting time, money and energy on such fruitless or futile litigation is able to devote its attention to more constructive work in the larger interest of the country. The courts have, therefore, leaned in favour of upholding a family arrangement instead of disturbing the same on technical or trivial grounds. Where the courts find that the family arrangement suffers from a legal lacuna or a formal defect,

2. *Chief Controlling Revenue Authority vs. Banarasi Das Ahluwalia (Full Bench – Delhi High Court) ILR (1972) II Delhi*
3. *Kale and others vs. Deputy Director of Consolidation (1976) 3 SCC 119*
4. S. 2(h) of Indian Contract Act, 1872.
5. S. 2(g) of Indian Contract Act, 1872

the rule of estoppel is pressed into service and is applied to shut out plea of the person who being a party to family arrangement seeks to unsettle a settled dispute and claims to revoke the family arrangement under which he has himself enjoyed some material benefits[6].

Essentials of a Family Settlement

In *Kale and others*[7] Justice Krishna Iyer summarised the binding effect and essentials of a family "settlement" through the following propositions:

(1) The family settlement must be a bona fide one so as to resolve family disputes and rival claims by a fair and equitable division or allotment of properties between the various members of the family;

(2) The said settlement must be voluntary and should not be induced by fraud, coercion or undue influence;

(3) The family arrangement may be even oral in which case no registration is necessary;

(4) It is well-settled that registration would be necessary only if the terms of the family arrangement are reduced into writing. Here also, a distinction should be made between a document containing the terms and recitals of a family arrangement made under the document and a mere memorandum prepared after the family arrangement had already been made either for the purpose of the record or for information of the court for making necessary mutation. In such a case the memorandum itself does not create or extinguish any rights in immovable properties and, therefore does not fall within the mischief of Section 17(2) of the Registration Act and is, therefore, not compulsorily registrable;

(5) The members who may be parties to the family arrangement must have some antecedent title, claim or interest even a possible claim in the property which is acknowledged by the parties to the settlement. Even if one of the parties to the settlement has no title but under the arrangement the other party relinquishes all its claims or titles in favour of such a person and acknowledges him to be the sole owner, then the antecedent title must be assumed and the family arrangement will be upheld and the courts will find no difficulty in giving assent to the same;

(6) Even if *bona fide* disputes, present or possible, which may not involve legal claims are settled by a *bona fide* family arrangement which is fair and equitable the family arrangement is final and binding on the parties to the settlement.

Stamp duty implications on family arrangements

In this article we will examine the stamp duty implications in relation to family arrangements or family settlement.

Fundamental and overarching principles governing stamp duty

Before we review the provisions of the Indian Stamp Act, 1899 (**"ISA"**), it would be appropriate to set out some fundamental and overarching principles governing stamp duty.

i. Stamp duty is a fiscal measure enacted to secure revenue for the state from certain classes of instruments.

6. *Kale and others vs. Deputy Director of Consolidation (1976) 3 SCC 119*
7. (1976) 3 SCC 119

ii. Being a revenue law, the provisions of the stamp duty laws should be interpreted strictly. The principles of special equity considered by the courts in enforcing family arrangements would not apply in interpreting the provisions of stamp duty legislation.

iii. Stamp duty is levied upon execution of 'instruments'. It is a tax chargeable on instruments and not a tax on transactions.

iv. The stamp duty is levied only on such instruments which are listed in the Schedule to the stamp act prevailing in any State.

v. Rates of stamp duty in respect of bills of exchange, cheques, promissory notes, bills of lading, letter of credit, insurance policies, transfer of securities, proxies and receipts are governed by the ISA.

vi. Rates of stamp duty in respect of all instruments other than those mentioned in ISA are governed by the Schedules to the State Stamp Duty Acts.

vii. Stamp duty is levied when any instrument mentioned in Schedule to the State Stamp duty legislation is executed within that State.

viii. Stamp duty is also levied on every instrument mentioned in the Schedule to the stamp duty act if previously executed outside the State and it relates to any property situate or to any matter or thing done or to be done in the said State and is received in the said State.

ix. The Stamp duty is payable prior to the first execution of an instrument in any State at the rate applicable in that State.

x. When an instrument mentioned in sub-paragraph (viii) above is received in another State for execution by an executant to the instrument, and the rate of stamp duty leviable in the recipient state is higher than the stamp duty already paid in the former State, incremental stamp duty will have to be paid before the executant in the recipient state executes the instrument.

xi. The execution of instrument is performed by a party affixing signature to the instrument. The signature to the instrument confirms identity of the executant party, the intent of the executant and the consent to the contents of the instrument, with an intention to be legally bound by the provisions of the instrument.

xii. Where a stamp duty act defines an instrument, that definition cannot be controlled by the meaning commonly attributed to it or by meaning attributed to it by another statute[8].

xiii. Any instrument comprising or relating to several distinct matters or transactions shall be chargeable with the aggregate amount of the duties with which separate instruments, each comprising or relating to one such matters or transactions, would be chargeable[9].

xiv. Subject to the principle in (xiii) above, if an instrument is capable of being

8. *Upendra Nath Poddar and others vs. Ananth Chandra Lodhi (ILR 1951 (1) Cal. 665*, referred to in a Full Bench Judgement of Bombay High Court in *Chief Revenue Controlling Authority vs. Luis Guilherme Dias Colaco and others – 1986 Mh.L.J. 622*

9. Section 5 of the Maharashtra Stamp Act, 1958.

covered under two or more articles under the Schedule to the Stamp Act, it would be chargeable with the highest of the duties prescribed under the applicable articles[10].

Meaning of Instrument

Under stamp laws, the term "instrument" is defined to include every document by which any right or liability is, or purports to be created, transferred, limited, extended, extinguished or recorded. For the purpose of determining rates of stamp duty under the State stamp duty laws, instruments governed by the ISA are excluded. Based on the above definition, the essential characteristics of any document being treated as an 'instrument' under the Stamp Act are:

(a) It is a document

(b) The document purports to relate to a right or a liability

(c) The document when executed by all parties thereto must have the effect of:

  (i) creating

  (ii) transferring

  (iii) limiting

  (iv) extending

  (v) extinguishing; or

  (vi) recording

  a right or liability.

Thus, any document which does not, or does not purport to have the above effect is not an instrument chargeable to stamp duty.

Meaning of "Settlement" under Stamp laws

The term "settlement" has been defined in the Indian Stamp Act[11] to mean any non-testamentary 'disposition' made -

(a) in consideration of marriage;

(b) for the purpose of distributing property of the settler, among his family or those for whom he desires to provide, or for the purpose of providing for some person dependent on him; or

(c) for any religious or charitable purpose.

The above definition of settlement demonstrates the following principles:

1. The definition employs the word "means" and not "includes". When the word 'means' is used in a definition, it shows that the definition is a hard and fast definition and that no other meaning can be assigned to the word, or the expression defined than is put down in the definition[12].

2. It is a non-testamentary instrument – Settlement has to be thus distinguished from a "Will" or a "Codicil".

3. In order to be a settlement chargeable to stamp duty, such instrument must be made for disposition of property – moveable or immoveable. The word 'disposition' is not a term of law. Further, it has no precise meaning. Its meaning has to be gathered from the context in which it is used[13]. In view of this wide meaning of which the word "disposition" is capable of, meaning of "settlement" cannot be

10. Section 6 of the Maharashtra Stamp Act, 1958

11. Section 2(24) of the ISA.

12. P Ramanatha Aiyar – Concise Law Dictionary – 8th Edition (LexisNexis)

13. *Goli Eswariah vs. Commissioner of Gift Tax, Andhra Pradesh – AIR 1970 SC 1722*

restricted to any particular kind of dealing with the property or money[14]. The term 'disposition' has been defined in Stroud's Judicial Dictionary as a device *"intended to comprehend a mode by which property can pass whether by act of parties or by an act of the law and includes transfer and charge of property"*[15].

4. The purpose of the disposition of property must be one of the three listed in the definition of 'settlement' mentioned above.

5. When the purpose of the disposition is for distributing property of the settlor, such distribution must be either –

   (i) among his family members; or

   (ii) among those for whom he desires to provide, or

   (iii) for the purpose of providing for some person dependent on him.

6. It is pertinent to note that the persons intended to be covered by (ii) or (iii) above need not be members of his family.

Principles governing interpretation of documents

The principles of interpretation of documents must be wisely employed in order to ascertain whether a document constitutes a settlement as defined under the stamp laws. The key principles are as follows:

1. The instrument must be stamped for its leading and principal object, and the stamp covers everything accessory to that object.

   In order to determine whether any, and if any, stamp duty is chargeable upon an instrument the legal rule is that the real and true meaning of the instrument is to be ascertained; that the description of it given in the instrument itself by the parties is immaterial; even although they may have believed that its effect and operation was to create a security mentioned in the Stamp Act and they so declared.

2. In ***Al Sanea vs. Saad Investments Co Ltd,***[16] Gross L.J. gave the following principles of interpretation of contracts:

   (i) ***The Process of interpretation***: The ultimate aim of contractual construction is to determine what the parties meant by the language used, which involves ascertaining what a reasonable person would have understood the parties to have meant. The reasonable person is taken to have all the background knowledge which would reasonably

14. *Chief Controlling Revenue Authority vs. Banarasi Das Ahluwalia (Full Bench – Delhi High Court) ILR (1972) II Delhi*

15. *The Madras Refinery Limited vs. The Chief Controlling Revenue Authority, Board of Revenue, Madras – (1977) 2 SCC 308*

16. *[2012] EWCA Civ 313. See also Cottonex Anstalt vs. Patriot Spinning Mills Ltd [2013] EWHC 236 (Comm); (2014] 1 Lloyd's Rep. 615; Napier Park European Credit Opportunities Fund Ltd vs. Harbourmaster Pro-Rata Clo 2 B.V. [2014] EWCA Civ 984. Useful summaries of principle are also contained in BMA Special Opportunity Hub Fund Ltd vs. African Minerals Finance Ltd [2013] EWCA Civ 416; Jackson vs. Dear [2012] EWHC 2060 (Ch); reversed on appeal: [2013] EWCA Civ 89; [2014] 1 BCLC 186 (but without significantly affecting the statement of principle); Ardagh Group SA vs. Pillar Property Group Ltd [2013] EWCA Civ 900, [2014] S.T.C. 26. See also Tokio Marine Europe insurance Ltd vs. Novae Corporate Underwriting Ltd [2013] EWHC 3362 (Comm).*

have been available to the parties in the situation in which they were in at the time of the contract.

(ii) ***Ascertainment of meaning to a reasonable reader***: The Court has to start somewhere and the starting point is the wording used by the parties in the contract.

(iii) ***Interpretation is objective***: It is not for the Court to rewrite the parties' bargain. If the language is unambiguous, the Court must apply it[17].

(iv) ***A contract has only one meaning***: Where a term of a contract is open to more than one interpretation, it is generally appropriate for the Court to adopt the interpretation which is most consistent with business common sense. A Court should always keep in mind the consequences of a particular construction and should be guided throughout by the context in which the contractual provision is located.

(v) ***Contract must be read as a whole***: The contract is to be read as a whole and an 'iterative process' is called for ' ... involving checking each of the rival meanings against other provisions of the document and investigating its commercial consequences.'

3. From the broad definitions of family arrangement and instrument, a practical consideration is that a family arrangement may be a compound document covering an entire spectrum of conveyancing transactions within its scope and ambit.

4. In ***Kale and others***[18], a distinction was also made between a document containing the terms and recitals of a family arrangement made under the document and a mere memorandum prepared after the family arrangement had already been made either for the purpose of the record or for in formation of the court for making necessary mutation in revenue records in the case of immoveable property.

Distinction between Settlement, Will, Gift, Partition, Trust etc. – stamp duty implications

With that background we now proceed to analyse some important instruments defined under our stamp laws that describe transactions routinely undertaken pursuant to family arrangements.

(a) ***Settlement and Testamentary Declaration***: By the very definition under the ISA, a testamentary instrument such as a will or a codicil is excluded from the ambit of settlement.

Firstly, a Will is not an ‘instrument’ as defined under the stamp laws – no right or liability is or is purported to be

17. The Court of Appeal has repeated the point that the court cannot rewrite an agreement to accord with what it might think fair: *Ilott vs. Williams [2013] EWCA Civ 645*. The same point was made by Etherton C. in *Napier Park European Credit Opportunities Fund Ltd vs. Harbourmaster Pro-Rata Clo 2 B.V. [2014] EWHC 1083 (Ch)*, although the actual decision was reversed on appeal.

18. (1976) 3 SCC 119

created, transferred, extended, limited, extinguished or recorded in favour of any of the legatees. Hence, it is not an instrument liable to stamp duty.

Secondly, a Will is not a contract enforceable against the testator.

Thirdly, a settlement is intended to have immediate operation and a will is a document that is revocable during the lifetime of the testator and is irrevocable upon his demise.

(b) ***Settlement and Gift***: A gift[19] is the transfer of certain existing moveable or immoveable property made voluntarily and *without consideration*, by one person, called the donor, to another, called the donee, and accepted by or on behalf of the donee. As it is very common for a gift to confer title upon the donee vide a written instrument, a settlement is easily confused for a gift.

A critical distinguishing factor is that a gift is made without any *quid pro quo*. Lack of consideration is fatal to a family arrangement as the members who may be parties to the family arrangement must have some antecedent title, claim or interest or even a possible claim in the property which is acknowledged by the parties to the settlement[20]. Family members voluntarily agree to give up their antecedent title for some valid consideration.

Disposition of property by a father for making provision for his son was held to be neither a gift nor a release, but a settlement within the meaning of stamp duty legislation[21].

(c) ***Settlement and Partition***: Partition is an act of dividing. The ISA defines "an instrument of partition" as any instrument whereby co-owners of the property divide or agree to divide such property in severalty. Partition is effected in cases where property is held by several persons as tenants-in-common. In such cases individuals hold the relevant property through distinct titles, but there is a unity of possession. i.e. the persons are entitled to possess the whole of the property and not only a particular portion.

A partition when effected has a legal and physical consequence. In the case of immoveable property, it is divided into distinct portions by metes and bounds. In the case of goods such as jewelry or artefacts, the individual items are distributed in specie and in the case of fungible goods such as cash or shares the goods are distributed as per the agreed value.

It is easy to see why a "settlement" may be mistaken for a partition by state revenue authorities. Please note that in case of partition the parties must have a vested interest in the title and not just some 'antecedent' claim. In family arrangements the members need not have a clear title, only a possible claim in the property which is acknowledged by the parties to the settlement.

19. Section 122 of the Transfer of Property Act, 1882

20. *Kale and others vs. Deputy Director of Consolidation (1976) 3 SCC 119*

21. *Shyamnarain Vishwakarma vs. Ajay Patel – 1998 (1) WN 93 MP*

(d) ***Settlement and Trust***

Section 3 of the Indian Trusts Act, 1882 defines a trust as an obligation, annexed to the ownership of property, and arising out of a confidence reposed in and accepted by the owner, or declared and accepted by him, for the benefit of another, or of another and the owner.

There can be significant overlaps between instruments of settlement and instruments creating trusts. In fact, a deed of settlement can also be a deed of trust. Merely because an instrument answers the description of trust deed does not cease to be a "settlement" for the purpose of stamp duty, if the particular transaction also answer to the description of "settlement".

A notable difference between beneficiaries in a trust and family arrangement is that a beneficiary in a trust cannot enjoy his property without an intermediary known as a trustee. The trustee is the legal owner of the property in whom the trust property has been reposed by the author or settlor of the trust for the benefit of the beneficiary[22].

Family arrangements may result in creation of trusts but only if the particular transaction contains the basic elements of a trust elaborated in Section 3 of the Indian Trusts Act, 1882.

A wakf created by Mussalmans should be treated as a settlement within the meaning of sub-clause (c) of the definition of settlement under ISA[23].

(e) ***Settlement and Release:***

A release is the action of releasing or the state of being released. The Stamp Act defines a "release" as a transaction whereby "one person renounces a claim upon another person or against any specified property".

A release is a unilateral transaction that requires the giving up of a right, title or claim in favour of another and has no effect of disposition of property. Accordingly, while a release does not fall within the technical meaning of settlement defined above, in a complex family arrangement, a particular settlement may record a 'release' by a party to the settlement of his interest in certain property.

(f) ***Settlement and Conveyance***

Under the ISA, a conveyance includes a conveyance on sale and every 'instrument' by which property, whether immoveable or movable in transferred inter vivos and which is not specifically provided in the Schedule. As the definition is deliberately worded to include instruments not covered in the Schedule further analysis is necessary. The subject-matter of the conveyance must be property.

Transfers of shares in private limited companies, shares in co-operative societies, assets transferred to individuals upon liquidation of a company, book debts or transfers of interests in a partnership firm and

22. Section 3 of the Indian Trusts Act, 1882
23. *Chief Controlling Revenue Authority, Board of Revenue, Madras vs. A Raoof Ali Khan – (1978) 1 MLJ (NRC) pg.2*

assets thereof have all been held to be conveyances in various instances.

A settlement may involve a conveyance of property, but the converse is not true.

Stamp duty on Settlement – Will vary from State to State

Pursuant to the provisions of Part II of Schedule VII of the Constitution of India, each State has been empowered to determine the rates of stamp duty on instruments other than those governed by the ISA. The rates of stamp duty on various instruments will, thus, vary from State to State.

The article dealing with stamp duty on 'settlement' under Maharashtra Stamp Act, 1958 is set out below as an illustration:-

Article No	***Description of Instruments***	***Proper Stamp Duty***
55.	SETTLEMENT: - A. Instrument of-- including a deed of dower, --	
	(i) where the settlement is made for a religious or charitable purpose.	Two percent. of a sum equal to the amount settled or the market value of the property settled.
	(ii) in any other case	The same duty as is leviable on a conveyance under clause(a), (b),[or (c), as the case maybe, of Article 25, for a sum equal to the amount settled or the market value of the property settled **Provided** that, where an agreement to settle is stamped with the stamp required for an instrument of settlement and an instrument of settlement in pursuance of such agreement is subsequently executed, the duty on such instrument shall not exceed ten rupees:

Article No	*Description of Instruments*	*Proper Stamp Duty*
		Provided further that, where an instrument of settlement contains any provision for the revocation of the settlement, the amount or the value of the property settled shall, for the purposes of duty, be determined, as if, no such provisions were contained in the instrument.
	Exemption Deed dower executed on the occasion of or in connection with, marriage between Muhammadans, whether executed before or after the marriage.	
	B. Revocation of, --	
	(i) in respect of settlement described in sub-clause (i) of clause A.	Five hundred rupees
	(ii) in respect of settlement described in sub-clause (ii) of clause A.	Five hundred rupees

It is pertinent to note that any disposition of property under a 'settlement' made for religious or charitable purpose attracts stamp duty considerably lower than the disposition for any other purpose. It is also pertinent to note that a uniform rate of stamp duty is attracted for settlements of property for religious or charitable purposes regardless of whether the property under disposition involves moveable or immoveable property.

It is also interesting to see the effect on the stamp duty when a settlement includes a provision for revocation of such settlement.

Further, any instrument executed to revoke a settlement is also subjected to levy of stamp duty, albeit, at a very nominal rate.

In view of the provisions of section 5 of ISA as modified by Maharashtra Stamp Act, 1956 (instruments relating to several distinct matters or transactions), the draftsmen of a family settlement should also be careful about the inclusion of multiple transactional relationships under one instrument of settlement. Attention is invited to the provisions of Article 5 of Schedule to the Maharashtra Stamp Act, 1958 the relevant extract of which is quoted below:

Article No	*Description of Instruments*	*Proper Stamp Duty*
5.	AGREEMENT OR ITS RECORDS OR MEMORANDUM OF AN AGREEMENT, -	
	(h) (A) if relating to –	
	… … …	
	… … …	
	(iii) specific performance by any person or a group of persons where the value of contract exceeds rupees 1,00,000	
	(a) if the amount agreed does not exceed rupees ten lakhs, --	0.25 percent. of] the amount agreed in the contract subject to minimum of rupees 100.
	(iv) creation of any obligation, right or interest and having monetary value, but not covered under any other article, --	
	(a) if the amount agreed does not exceed rupees ten lakhs, --	0.1 per cent. of the amount agreed in the contract subject to minimum of rupees 100.
	(b) in any other case, --	0.2 per cent. of the amount agreed in the contract.
	(B) if not otherwise provided for	One hundred rupees.

Settlement and Owelty

When property is distributed among family members, it is usual to ensure that such distribution is equitable and equal to the best extent. However, it may not be possible to divide the property by metes and bounds, there being necessity of allocation of properties of unequal value among the members of a joint family. This leads to a situation of inequality. The inequality may be set right by adjustment of values by prodding for payment by a member getting property of a larger value to the member receiving lesser property. Such equalisation of shares has been recognised in law and provision for such payment is termed as ‘a provision for owelty or equalisation of partition’. The sum directed to be paid for equalisation is called ‘owelty’[24]. While this sounds just and fair, please note that the direction to pay owelty creates a monetary obligation and will result in enhancing the stamp duty liability due to the provision of Article 5(h)(iv) quoted above.

Similarly, any provision in the family settlement deed which is capable of specific performance in accordance with the provisions of the Specific Relief Act, 1963, may attract

24. *T.S. Swaminatha Odayar vs. Official Receiver of West Tanjore – AIR 1957 SC 577*

additional stamp duty on valuation of such provision under the family settlement deed.

Do Family Settlements require registration?

Section 17 of the Registration Act, 1908 deals with documents that are required to be compulsory registered. As per Section 17(1)(b), *"non-testamentary instruments which purport or operate to create, declare, assign, limit or extinguish, whether in present or in future, any right, title or interest, whether vested or contingent, of the value of one hundred rupees and upwards, to or in immovable property"*, are required to be compulsory registered.

With respect to non-testamentary instruments which *purport or operate* to create, declare, assign, limit or extinguish any right, title or interest dealing with *movable property*, registration is optional under section 18(d) of the Registration Act, 1908.

Further, as per section 49 of the Registration Act, 1908, a document for which registration is compulsory and is not registered, *does not affect immovable property* and cannot be relied upon as evidence of the transaction undertaken.

As seen above, a family arrangement can be oral or reduced to writing. Since, there is allocation or redistribution of assets (which could involve both movable and immovable property) the questions of stamp duty will be substantial. Registration will also have the effect of making the contents of a sensitive document accessible to the public. The question that must be addressed is whether the instrument of family arrangement must be compulsorily registered?"

In *Tek Bahadur vs. Debi Singh*[25] the Supreme Court held *"the memorandum need not be prepared for the purpose of being used as a document on which future title of parties is to be founded. It is generally prepared as a record of what had been agreed upon in order that there are no hazy notions about it in future. It is only when the family arrangement is reduced to writing with the purpose of using that writing as proof of what they had arranged and where the arrangement is brought about by the document as such, that the document requires registration, because it is then that it would amount to document of title declaring for future what rights and in what properties the parties possess. But a document which is no more than a memorandum of what had been agreed to between the parties does not require compulsory registration under Section 17, Registration Act."* (emphasis added)

Where the family arrangement will operate as the instrument operating conferring title on the family members on a plain reading of Section 17(1)(b) read with Section 49 of the Registration Act, it must be registered.

Unstamped or Inadequately Stamped Instruments – A hanging sword on parties and a perpetual risk for the posterity

Unstamped instruments not admissible in evidence

As stated earlier, stamp duty law is a revenue law. Usually, any non-payment of taxes would result in additional financial liability in the form of interest and penalty. In extreme cases, it may also result in prosecution. The sequitur of non-payment or shortfall in payment of stamp duty, however, is harsher than the parties incurring transaction costs.

As per Section 35 of the ISA, an instrument chargeable with duty shall not be admitted in evidence for any purpose by any person having by law or consent of parties, authority

25. 1963 SCC Online SC 197

to receive evidence, or shall be acted upon, registered or authenticated by any such person or by any public officer, unless such instrument is duly stamped.

This is the most severe consequence of inadequate stamp duty paid on an instrument. It cannot be produced as evidence before a court and is rendered virtually unenforceable. In case of family settlements that devolve titles to immoveable property inadequate stamp duty may result in denial of clear and marketable title to the property for the future generations and may even deny them the ability to rectify the title until the stamp duty default is cured. With interest meter ticking by the minute, the financial burden cast on the claimant of the property may in a matter of just few years outweigh the benefit of holding such property.

Further, the ISA has empowered courts to examine the instrument for assessing payment of adequate stamp duty and if necessary, impound the instrument and send it for adjudication.

Financial liability on account of stamp duty, interest and penalty

Stamp duty is required to be paid by parties prior to the first execution of the instrument. If an instrument is not duly stamped, the revenue authorities can adjudicate the appropriate stamp duty and claim such stamp duty amount. In addition to stamp duty, the parties would also be charged with interest at the rate of 2% per month payable from the date of execution of the instrument up to the date of payment.

Further, in addition to stamp duty and interest, the stamp authorities are also entitled to levy penalty for non-payment of stamp duty. While imposition of such penalty is discretionary, the maximum penalty amount may vary from State to State and ranges between two times to ten times of the original stamp duty liability.

Conclusion

The success of effective implementation of a settlement will depend on the trust, mutual respect, transparency and accountability of all stakeholders. In view of the stamp duty liability and other legal consequences arising out of the family settlement agreements, it would be appropriate to ensure that all stakeholders are made aware of the individual segments of disposition as also the overall settlement proposition, the purpose, objective and the principles of equitable distribution among the beneficiaries under the settlement. This gains more importance when some of the proposed beneficiaries are not direct family members but are dependent on the settlor of the arrangement. It would also be advisable that all the stakeholders are signatories to the family settlement to minimize the risk of a future dispute or disagreement. Lastly, in view of the financial and evidentiary impact of the stamp duty provisions illustrated above, it would be prudent to seek professional guidance from an experienced legal practitioner who can craft the intention of the parties in the most tax-efficient manner.

> "Freedom is not worth having if it does not include the freedom to make mistakes."
>
> — *Mahatma Gandhi*

Family Settlements: Stock Exchange and Corporate Law Disclosures

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Overview

Family settlements play a critical role in maintaining harmony and preserving the longevity of family-owned businesses, especially in India, where a substantial number of public and private enterprises are family-run. These settlements often involve the transfer or redistribution of shares within the promoter family of listed companies, raising several regulatory challenges under SEBI and the Companies Act. A key focus in such arrangements is the concept of 'control,' as any change in control can trigger open offer obligations and disclosure requirements. To address these concerns, SEBI has issued comprehensive guidelines to facilitate family settlements while safeguarding public shareholders, including exemptions for intra-group share transfers that do not impact control. The SEBI (Listing Obligations and Disclosure Requirements) Regulations also mandate the disclosure of any material changes in shareholding to ensure transparency. Further, compliance with the Companies Act, 2013 requires accurate reporting of changes in management or shareholding to the Registrar of Companies.

In this article, we examine SEBI's regulations on open offers and disclosure requirements, as well as the reporting obligations under the Companies Act, all in the context of family settlements.

Introduction

That families have disagreements is no secret, and this is as true of wealthy families as anyone else. As per a report from a Bangalore based NGO called Daksh, 76% of all litigation pertains to property and family disputes[1]. Large business families are no different, and there are enough examples in the public domain of situations where well-known promoter families have had public and extended disputes in relation to family holdings[2]. However, it is equally true that to opt for litigation is to burn bridges, in ways that often destroy the underlying value of the business.

1. 'Access To Justice Survey 2015-16' https://dakshindia.org/wp-content/uploads/2016/05/Daksh-access-to-justice-survey.pdf (accessed 18 September 2024)
2. Kapoor S, 'Dynasties at War: Inside India's Fiercest Business Family Feuds' (CNBCTV1817 September 2024) <https://www.cnbctv18.com/photos/business/indian-businesses-dynasties-at-war-inside-indias-fiercest-business-family-feuds-19477603.htm> (accessed 18 September 2024)

Family settlements play a crucial role in maintaining family harmony and preserving businesses, especially in India, where 70% of public and 85% of private businesses[3] are family owned. However, when such settlements involve the movement of significant shareholding in listed companies, they could trigger consequences under securities regulations and corporate law.

The Securities and Exchange Board of India (**"SEBI"**), which governs listed entities, has established strict disclosure norms to ensure transparency and protect other shareholders, in addition to laying down guidelines for open offer and other requirements when large tranches of shares are transferred. This article explores the intersection of family settlements, SEBI regulations, exemptions and reporting obligations, and corporate law disclosures, with examples of how business families navigate them.

Control and Open Offer Requirements

A material issue in family settlements involving a share in listed securities, is the definition of 'control' under the SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 2011 (**"Takeover Code"**) and associated regulations. The Takeover Code determines whether the family needs to make disclosures or trigger other obligations under the regulatory framework, such as compliance with open offer requirements or other disclosure mandates.

Under Regulation 2(1)(e) of the Takeover Code[4], 'control' is defined broadly to include not just the right to appoint a majority of directors but also the ability to influence or direct management decisions. In the context of family settlements, control could shift from one family member (or a group within the family) to another, especially when the settlement involves changes in shareholding. The Supreme Court in ***Arcelor Mittal India Private Limited vs. Satish Kumar Gupta***[5] addressed the issue of control emphasizing that control does not only require holding a majority shareholding but can be inferred from influence over decisions of the company. Such interpretation would mean that even non-majority shareholders in a family settlement may exercise control, thereby triggering disclosure and open offer obligations.

When family settlements involve a redistribution of shareholding or management control in listed companies, they can trigger mandatory open offer requirements under the

3. What Are the Hindrances to the Growth of Indian Family Businesses? - Forbes India' (Forbes India2024) https://www.forbesindia.com/article/iim-bangalore/what-are-the-hindrances-to-the-growth-of-indian-family-businesses/77357/1#:~:text=Family%20businesses%20in%20India,invest%20in%20long%2Dterm%20innovatio (accessed 17 September 2024).

4. Regulation 2(1)(e) of Takeover Code, ""control" includes the right to appoint majority of the directors or to control the management or policy decisions exercisable by a person or persons acting individually or in concert, directly or indirectly, including by virtue of their shareholding or management rights or shareholders agreements or voting agreements or in any other manner: Provided that a director or officer of a target company shall not be considered to be in control over such target company, merely by virtue of holding such position."

5. *Arcelor Mittal India Private Limited vs. Satish Kumar Gupta, AIR 2019 SC 847.*

Takeover Code[6]. Regulation 3 of the Takeover Code mandates that any acquisition of shares or voting rights exceeding 25% requires the acquirer to make an open offer to the public shareholders. Similarly, Regulation 4[7] mandates an open offer in cases where an acquirer gains control over a listed entity.

Exemptions from Open Offer Requirements

Certain transactions, which aim at simplifying specific types of share transfers that do not materially impact the company's control, are exempt from the requirement of making an open offer under Regulation 10[8] of the Takeover Code. One such exemption involves intragroup transfers, where the acquisition of shares or voting rights occurs within a group, typically between promoters or entities belonging to the same promoter group. For this exemption to apply, both the transferor and transferee must be part of the promoter group, and the transfer should not lead to a change in the company's control. Another exemption applies to acquisitions by will or inheritance, where shares or voting rights are acquired through succession or inheritance, rather than by purchase, and thus are not subject to the open offer requirement.

Regulation 11 provides a broader framework for exemptions from the obligation to make an open offer, detailing situations where the usual requirements under Regulations 3 or 4 do not apply. For instance, if a promoter transfers shares between two family trusts which form part of the promoter group, the transaction would be exempt under Regulation 11(1) as it is considered an internal transfer. Until 2017, there was a debate on whether an exemption application was required in case of transfer to a private trust where the promoters or their spouse and/or lineal ascendents or descendants were beneficiaries. However, SEBI issued a circular[9] in 2017 (**"2017 Circular"**) which provided detailed guidelines for granting exemptions under the Takeover Code,

6. Regulation 3(1) of Takeover Code, "No acquirer shall acquire shares or voting rights in a target company which taken together with shares or voting rights, if any, held by him and by persons acting in concert with him in such target company, entitle them to exercise twenty five per cent or more of the voting rights in such target company unless the acquirer makes a public announcement of an open offer for acquiring shares of such target company in accordance with these regulations".
7. Regulation 4 of Takeover Code, "Irrespective of acquisition or holding of shares or voting rights in a target company, no acquirer shall acquire, directly or indirectly, control over such target company unless the acquirer makes a public announcement of an open offer for acquiring shares of such target company in accordance with these regulations".
8. Regulation 10 of Takeover Code, "General exemptions.—(1) The following acquisitions shall be exempt from the obligation to make an open offer under Regulation 3 and Regulation 4 subject to fulfillment of the conditions stipulated thereof,—(a) acquisition pursuant to inter se transfer of shares amongst qualifying persons, being,—
   (i) immediate relatives;
   (ii) persons named as promoters in the shareholding pattern, filed by the target company in terms of the listing regulations or as the case may be, the listing agreement or these regulations for not less than three years prior to the proposed acquisition;… (g) acquisition by way of transmission, succession or inheritance.."
9. SEBI Circular SEBI/HO/CFD/DCR1/CIR/P/2017/131 https://www.sebi.gov.in/legal/circulars/dec-2017/exemption-application-under-regulation-11-1-of-sebi-substantial-acquisition-of-shares-and-takeovers-regulations-2011_37083.html

specifically addressing the treatment of private trusts in the context of acquisitions and open offers. The idea behind the 2017 Circular was to ensure that the regulators identify the beneficial ownership and control within the trust. The critical provisions highlighted below became contentious points in the case studies analysed in the next section of this article:

- The trust must reflect the promoter's existing shareholding structure, ensuring there is no alteration in the overall ownership of the target company.
- Beneficiaries of the trust should be limited to individual promoters, their immediate relatives, or lineal descendants, and the beneficial interest must remain non-transferable.
- Upon the dissolution of the trust, assets must be distributed exclusively among the designated beneficiaries.
- Trustees are restricted from transferring or delegating their powers to other individuals, preserving the integrity of their control.
- The trust's structure should not involve multiple layers of sub-trusts or complex arrangements that could obscure the ultimate beneficiaries.

Case studies and SEBI's approach to exemption orders

SEBI has, over time, provided informal guidance and exemption orders to facilitate compliance while preserving the intent of the settlement. Parties to a family settlement can approach SEBI for informal guidance to clarify their obligations under the Takeover Code. In several cases, SEBI has granted exemptions from making open offers under Regulation 10 for inter se transfer among family members, recognizing that the transfer was part of a bona fide family settlement and did not adversely affect public shareholders.

In ***Alkem Laboratories Ltd***.[10], a family settlement agreement led to the proposed transfer of 21.08% of the company's shares by the transferors to the acquirer. This transfer was arranged as a gift under the family settlement. The objective of the agreement was to consolidate the assets of the families into a unified structure, aimed at ensuring the welfare and maintenance of all family members and their descendants. The SEBI order clarified that this transfer was part of a private family arrangement and did not impact the interests of public shareholders. Importantly, the proposed acquisition would not result in a change of control over the company. The promoter group's shareholding, both pre-acquisition and post-acquisition, would remain constant at 66.88%, indicating no new acquisition by the group. Moreover, the public shareholding in the company would remain unaffected, ensuring that the company continued to comply with the minimum public shareholding requirements under the regulations.

10. SEBI Order SEBI/WTM/SR/CFD–DCR/17/03/2017 < https://www.sebi.gov.in/enforcement/orders/mar-2017/order-in-the-matter-of-alkem-laboratories-limited-_34351.html >

Similarly, in ***NIIT Technologies Limited***[11], the proposed acquisition involved acquiring 7.12% of the company's shares, which, when combined with the shares held by NIIT Limited (23.68%), would give the acquirers and persons acting in concert a total of 30.80% of the voting rights. This aggregate would exceed the 25% threshold, thereby triggering the open offer requirements under Regulations 3(1), 4, and 5 of the Takeover Code. The SEBI order addressed these concerns by noting that the proposed acquisition was part of a private family arrangement intended for succession planning and family welfare, and thus would not negatively impact public shareholders. The order also confirmed that there would be no change in control of the company, as the promoter group's shareholding would remain constant at 30.80% both before and after the acquisition.

Cases dealing with Private Trusts

One of the issues with the 2017 Circular is that any departure from the requirements of the circular can result in complexities with the exemption application. One situation where this arises is where sub-trusts are involved or where non-individual beneficiaries are involved.

In the ***Khandwala Family Trust***[12] case, the proposed acquisition involved a complex trust arrangement where the acquirer trust's beneficiaries included several layers of sub-trusts. The intention behind this structure was to facilitate smooth succession planning for the descendants of the trust's beneficiaries. However, the multiple-layered trust structure raised concerns.

SEBI identified two main issues with the application. First, the structure of the trust involved beneficiaries who were themselves trusts, leading to an intricate layering of trust relationships. This complexity led the SEBI to recommend that an exemption from open offer requirements could not be granted due to the convoluted nature of the trust structure. Second, SEBI noted that the transferor, Khandwala Commercial Private Limited, had not been disclosed as a promoter in the shareholding pattern filed with stock exchanges for at least three years, which was a key regulatory requirement.

As a result, the application for exemption was rejected. Although the layering issue was acknowledged, it was not the primary reason for the rejection in the final order. The main factor leading to the rejection was the lack of disclosure of the transferor as a promoter, which did not meet the necessary regulatory criteria. Despite the acquirer trust's arguments about the necessity of the sub-trusts for succession planning, the application did not qualify for the exemption. However, SEBI has granted exemptions for similar trust structures involving sub-trusts when they adhered to the guidelines set out in the 2017 Circular, as seen in cases like the ***Bhogilal Family Trust***[13] case

11. SEBI Order SEBI/WTM/SR/CFD–DCR/10/03/2017 < https://www.sebi.gov.in/enforcement/orders/mar-2017/exemption-order-under-regulation-11-of-sebi-sast-regulations-2011-in-the-matter-of-niit-technologies-limited_34327.html >
12. SEBI Order WTM/GM/CFD/ 32/2018–2019 < https://www.sebi.gov.in/sebi_data/attachdocs/jun-2018/1530268108256.pdf >
13. SEBI Order WTM/GM/CFD/34/2018-19 < https://www.sebi.gov.in/sebi_data/attachdocs/jul-2018/1530781062612.pdf >

and ***Anand Mahindra and Mahindra Family Trust***[14] case.

In the ***Kothari Descendants Private Trust***[15] case, the main issue revolved around the trust's beneficiary criteria, which initially allowed any trust exclusively benefiting one or more natural persons to be a beneficiary of the acquiring trust. This provision led to concerns about layering, where multiple layers of trusts could complicate the structure and obscure transparency. SEBI recommended removing this provision to address the layering issue, along with several other concerns. Specifically, the panel noted that the trust included a son-in-law as a beneficiary, which was problematic as he did not qualify as an 'immediate relative' under the relevant regulations. Additionally, there were issues regarding the settlor's power to appoint administrators and the trustees' ability to delegate their powers.

In response, the acquirer trust amended the trust deed to remove the problematic provisions: they excluded the son-in-law as a beneficiary, restricted the trustees' power to delegate, and addressed other compliance issues. Despite the removal of the son-in-law and the other amendments, the exemption was ultimately granted based on the revised trust deed that complied with SEBI's guidelines. The final order was issued on April 19, 2018, confirming that the exemption could be granted following these changes.

Disclosure Requirements

Under the Takeover Code and the SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015 ("LODR"), the disclosure of certain acquisitions, material events and information is crucial for maintaining transparency in the functioning of listed companies. This is particularly relevant for family settlements and private family trusts when they involve significant changes in shareholding or control.

Applicability of Takeover Code in the context of family settlements

As per Regulation 29 of the Takeover Code, any acquirer who, together with persons acting in concert (**"PAC"**), acquires shares or voting rights which entitles them to 5% or more of the voting rights in a listed company must disclose the acquisition to the stock exchange and the target company within two working days. When there is an acquisition of shares or control, a public announcement must be made to inform the market. This is governed by Regulation 13, which requires detailed disclosures regarding the purpose of acquisition, the shareholding pattern, and any changes in control. Additionally, any subsequent acquisition or disposal of shares by the acquirer or PAC that results in their shareholding changing by 2% or more can also trigger disclosure obligations. The Takeover Code provides for these obligations to safeguard public shareholders by ensuring that they are informed of significant changes in ownership and control, thus providing them with an opportunity to make informed decisions. This also prevents market manipulation and ensures that all shareholders have equal access to relevant information, promoting fairness and transparency in the securities market.

14. SEBI Order WTM/GM/CFD/110/2017-2018 < https://www.sebi.gov.in/sebi_data/attachdocs/mar-2018/1522064609322.pdf >
15. SEBI Order WTM/GM/CFD/10/2018–19 < https://www.sebi.gov.in/sebi_data/attachdocs/apr-2018/1524148016256.pdf >

Applicability of LODR in the context of family settlements

Regulation 30 of LODR mandates that listed companies disclose any material events or information that could affect the company's share price or public interest. This includes significant changes in control, financial performance, or corporate structure. Regulation 31 requires listed companies to ensure that their shareholding pattern is updated and accurate, reflecting the ownership distribution of their equity shares. Both regulations aim to ensure transparency, timely communication with stakeholders, and compliance with regulatory standards to maintain investor confidence and market integrity. Family settlement agreements are specifically listed as a material event in Clause 5 of Para A of Part A of Schedule III of LODR (read with Regulation 30). Such agreements which impact a listed entity, whether through changes in shareholding, control, or corporate structure, often trigger disclosure requirements under LODR.

Regulation 30A, along with Clause 5A of Para A, Part A of Schedule III of LODR, requires listed entities to disclose certain agreements involving related parties, such as shareholders or key managerial personnel, even if the entity is not a direct party to these agreements. Any such agreements must be disclosed within two working days of their execution. For agreements in place when Clause 5A was introduced, involved parties must inform the listed entity, which must then disclose these agreements to the stock exchanges and its website within the prescribed timelines. Furthermore, the listed entity is required to report the number of such agreements, their key features, and provide a link to their full details in its Annual Report for FY 2022-23 or FY 2023-24.

Key Thresholds That Trigger Disclosure Requirements

In the context of family settlements and private trusts, key thresholds for disclosure under LODR include:

i. ***Change in Shareholding:*** Any change in the shareholding pattern that results in a shift of 5% or more in the shareholding of promoters or a significant change in control must be disclosed to the stock exchange. This is particularly relevant in family settlements where shares are reallocated among family members or entities controlled by them.

ii. ***Changes in Promoter Group***: Family settlements often result in changes to the composition of the promoter group, especially when shares or control rights are transferred among family members. Such changes must be disclosed as per Regulation 31A of LODR, which governs reclassification of promoters and public shareholders.

iii. ***Board Restructuring***: Changes in the board of directors or key managerial personnel as a result of family settlements may also trigger disclosure requirements. Regulation 30 mandates that any change in the board or management structure be disclosed to the stock exchanges.

The SEBI Circular of 2023 on the Disclosure of Material Information/Events under Regulations 30 and 30A of the SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015 (**"2023 Circular"**), clarifies and expands the scope of disclosures required from listed entities. The 2023 Circular broadens the scope to include material events related to family settlements and private trusts. If such

arrangements impact the control or ownership structure of a listed company, they must be disclosed

Examples of Material Events Requiring Disclosure Under LODR

In the case of ***Zee Entertainment Enterprises Ltd.***[16], the company was required to disclose its merger and corporate restructuring with Sony Pictures Networks India as a material event under Regulation 30 of LODR. Although this case did not arise from a family settlement, it illustrates the importance of timely and transparent disclosure of significant changes in control and governance structures in listed companies.

Another example can be drawn from the case of the Indiabulls Group, where significant internal reorganization and transfer of assets among its various entities had to be disclosed. Despite these changes being part of internal restructuring rather than a family settlement, the company was required to inform the stock exchanges and public about these material events to comply with SEBI's disclosure norms.

In the context of family settlements, similar principles apply. For instance, if a family-controlled conglomerate reorganizes its shareholding or management structures through a private family settlement, such changes must be disclosed if they affect the company's control or governance.

Company Law Provisions Relating to Governance and Control

In family-run businesses, control and decision-making are usually managed through a combination of board of directors (**"BOD"**) positions and shareholding interests. Under the Companies Act, 2013 (**"CA"** or **"the Act"**), the BOD is the central decision-making body, authorized to act on the company's behalf on a wide range of issues, including matters arising from family settlements[17]. By occupying key managerial roles within the board, family members can exercise oversight and retain control over the management and ownership of the business. BOD decisions are typically formalized through board resolutions. When there is a material change in the company's management, control, or structure, it is mandatory to notify the Registrar of Companies (**"ROC"**)[18]. Any resolution or agreement that amends the company's articles of association or alters the rights attached to shares must be filed with the ROC within 30 days of its passing through Form MGT-14[19]. Similarly, to maintain an up-to-date and accurate record of the company's leadership Form DIR-12 must be filed with the ROC within 30 days of change in the composition of the BOD, whether due to appointments, resignations, or removals[20].

Beyond board participation, families also exercise control and influence key managerial decisions through their shareholding. If they

16. Disclosure under Regulation 30 by Zee Entertainment Enterprises Limited < https://assets-prod.zee.com/wp-content/uploads/2023/05/19184218/SEDisclosureIDBIMay23.pdf >
17. Section 179 of the Companies Act 2013.
18. Section 117 of the Companies Act 2013.
19. Section 117 of the Companies Act 2013, read with the Companies (Management and Administration) Rules, 2014.
20. Companies (Appointment and Qualification of Directors) Rules, 2014.

are able exercise shareholding rights as a collective, for example through a family council construct (wherever possible under applicable law), it ensures consistency of decision making and preserving the long-term vision of the family. Under the Act, certain decisions by the BOD require mandatory approval from the shareholders. For instance, appointment or removal of a director by passing an ordinary resolution at a general meeting[21], amendment of the charter of the company[22], issuance of shares[23] or reduction of authorized share capital of the company[24], all such decisions form part of shareholder's rights within the company.

For a listed company, any changes in the promoter's shareholding, for instance those resulting from a family settlement, must be accurately reflected in the company's annual return filed using Form MGT-7[25]. Proper documentation and transparency of these ownership changes are crucial to keep all stakeholders informed. Failure to comply with these filing requirements can lead to significant penalties and legal repercussions for both the company and the individuals involved—particularly for promoters, directors, and officers who are responsible for ensuring that the company adheres to the law. The penalties can include fines up to INR 5 lakh for the company and additional INR 1 lakh for each officer in default.

Conclusion

Family settlements, particularly in the context of corporate law and stock exchange regulations, represent a delicate balance between maintaining family control and ensuring compliance with regulatory frameworks. In practice, we see promoter families using intricate legal structures such as trusts for internal transfers, thus adding another layer of complexity. As seen in case of the Khandwala Family Trust, the regulators may deny exemption due to complex layering of such trusts, if they fails to meet regulatory criteria.

In various other high-profile cases as well, such settlements often lead to complex legal challenges involving shareholding redistribution, control mechanisms, and the need for transparency. SEBI's regulatory framework, especially under the Takeover Code and LODR, plays a critical role in ensuring that such settlements do not disrupt market fairness or harm minority shareholders. Through exemptions, informal guidance, and stringent disclosure requirements, SEBI provides avenues for family-run businesses to reorganize while safeguarding public interest. The interplay between family dynamics and corporate governance will continue to shape how business families approach settlements, trust structures, and succession planning in a manner that complies with both legal mandates and shareholder expectations.

21. Section 169 of the Companies Act 2013.
22. Section 13 & Section 14 of the Companies Act 2013.
23. If it is proposed that the shares must be offered to persons other than the existing shareholders (preferential allotment) then a general meeting must be convened and a special resolution be passed in this regard according to Section 62(1)(c) of the Companies Act 2013.
24. Section 66 of the Companies Act 2013.
25. Rule 11 of the Companies (Management and Administration) Rules, 2014.

Understanding Global Estate Duties and Inheritance taxes with respect to Family Settlement Agreements

CA Amber Bhavsar

Overview

Family Settlement Agreements (FSAs) are essential for ensuring fair and clear asset distribution among family members, especially in multinational estates. Estate duties and inheritance taxes vary significantly across countries, impacting overall tax liability. Estate duties are levied on total value of the deceased's estate before distribution, while inheritance taxes are paid by beneficiaries on the value of assets they receive.

It is important to keep in mind regional nuances of estate and inheritance tax regimes across various countries to devise tax-efficient FSAs. For instance, the United States imposes a 40% federal estate tax on estates above a certain threshold, Belgium and Japan have high inheritance taxes of 80% and 55%, while jurisdictions like Hong Kong and Singapore have no estate duties.

Strategic planning and expert advice are crucial to minimize tax liabilities and ensure smooth wealth transfer across generations. FSAs must consider regional tax regimes, cross-border considerations, and legal issues to optimize tax outcomes. Proper evaluation of these taxes helps in protecting family and beneficiary interests, reducing potential disputes, and ensuring compliance with local and international regulations.

Overall, FSAs play a critical role in managing complex estate duties and inheritance taxes, preserving family wealth, and facilitating smooth transitions across generations.

Family Settlement Agreements (FSA) are essential tools to ensure that the distribution of assets is clear, fair, and agreed upon by all parties involved. While finalizing the terms it is imperative that estate duties and inheritance taxes are factored and analyzed, especially when assets and parties involved are both spread across multiple jurisdictions.

Estate duties and inheritance taxes are both forms of tax that come into play when there is a transfer of assets through inheritance, especially when someone passes away. While they are often used interchangeably in common parlance, they tend to differ in certain aspects.

Estate Duties is a tax on the total value of the deceased person's estate before it is distributed to the heirs. This tax is paid by the estate itself, not the beneficiaries. This is usually levied before the assets are distributed to the heirs.

Inheritance Tax is a tax on the value of the inheritance received by the beneficiaries. This means the person who inherits the assets is responsible for paying this tax.

Both these levies vary significantly across countries in terms of rates, exemptions, and structures. Tax liability may depend on the tax residential status of the deceased and the heirs, dictating how and where taxes are applied.

Regional Overview

FSAs covering multinational estates must contend with diverse estate and inheritance tax regimes globally. Comprehending these differences is the first step in devising a tax-efficient FSA.

United States: The U.S. imposes a 40% federal estate tax on estates above a certain threshold ($13.61 Million as of 2024). This threshold can change, making estate planning significant.

Europe: Countries like the UK, Belgium Germany, and France impose inheritance or estate taxes ranging from 20% to 80%. Exemptions, deductions, and reductions on taxable amounts under specific conditions are available, each case needs to be reviewed independently.

Asia-Pacific: Countries like Japan impose large inheritance taxes (up to 55%), while jurisdictions like Hong Kong and Singapore have no estate duties, making them attractive for wealth structuring. New Zealand and Australia also don't impose inheritance taxes, but certain other parameters would compel looking at FSAs closely.

Middle East: The majority of the Gulf nations, such as the UAE and Saudi Arabia, have no estate or inheritance taxes. However, family rows over inheritance may arise due to differences between local Sharia law and global estate planning instruments.

Role of Global Estate Duties and Inheritance Taxes Play in Family Settlement Agreements

FSAs are often used in conjunction with wills, trusts, and other estate planning mechanisms, especially in complex family models. Understanding these levies qua FSAs is crucial especially when individuals with international ties and cross-border assets are involved.

1. ***Family and Beneficiary Protection***: FSAs must aim to provide a clear framework for how assets will be distributed, reducing the probability of disagreements among heirs. By preemptively addressing potential areas of conflict, families can preserve internal harmony. Hence, correct evaluation of these taxes could not only help families decide on wealth distribution depending on the beneficiary's tax position in his/her jurisdiction thereby protecting the interests of all parties but also aid in reducing potential disputes among family members due to varying and unequal tax levies.

2. ***Tax Optimization and Strategic Planning***: The focal point of FSAs primarily is equitable distribution of assets to the beneficiaries. However, proper planning and review of taxes ensures that assets are transferred smoothly without unjust tax burdens in the hands of the recipient. Asset reallocation in FSAs could involve reorganizing assets among family members in tax-efficient ways. For instance, reallocating assets to younger family members or non-domiciled members may ease exposure to higher estate tax rates. In some situations, in countries like the USA, gifting assets below the annual exemption threshold during the lifetime of the estate owner can reduce the overall taxable estate. Additionally, FSAs may also employ methods such as the establishment of family trusts or foundations that hold assets for future generations, providing a way to transfer wealth without triggering

immediate tax obligations. Common examples of this are the set-up of an irrevocable trust in USA or Offshore trusts in tax-friendly jurisdictions, which could serve as tax-efficient vehicles for wealth transfer. Further when family goals also involve giving back to the community; FSAs can designate philanthropic objectives, setting aside portions of the estate for charitable giving, which may reduce estate tax exposure in certain jurisdictions.

3. ***Cross-Border Considerations***: With growing trends of family members residing in different countries, each with its own tax regime; it's vital to comprehend the tax implications and compliances in each jurisdiction to optimize tax outcomes. FSAs could be crafted with the intent that assets are distributed in a way that minimizes double taxation. Some countries have double tax treaties that prevent heirs from paying taxes in both their home country and the country where the deceased held assets but not all countries have this advantage. Secondly, the beneficiaries' domicile and residency also play a pivotal role in the applicability of these levies. In countries like the UK, domicile status has a significant impact on the inheritance tax treatment of global assets. Careful planning through FSAs could help families manage their tax residency and domicile status as well. Some FSA may specify a gifting strategy to distribute assets before death, reducing the size of the estate and associated taxes. This method is often deployed by families in the USA through the availing of the annual gift tax exclusion.

4. ***Mitigating Legal Issues***: Most family settlement agreements majorly focus on circumventing any legal clashes within family members. However, whist drafting the agreement if global taxes are also kept in mind, it could potentially avoid any legal ramifications arising from statutory levies. Each country has specific legal requirements for estate and inheritance taxes, taking cognizance of which would help in averting legal complications and penalties once assets are distributed and settled via the terms of the agreement. The rise of virtual digital assets and cryptocurrencies introduces new complexities into FSAs; jurisdictions differ on how digital assets are taxed, and FSAs need to clearly define ownership, control, and distribution mechanisms for such assets and the legalities surrounding the same.

5. ***Currency Exchange and Valuations***: Exchange rate fluctuations may affect the value of the inheritance, especially if the assets need to be converted into the heir's local currency. Further, certain countries require specific movable and immovable assets to be valued by a particular method which usually may not always align with the actual value of the asset under consideration. Taxes on these result in further reducing the overall value of the inheritance. Therefore, families need take stock of these nuances as well when discussing the terms in FSAs

6. ***Compliance, Reporting, and Regulations***: Beneficiaries may need to disclose local and foreign inheritances to their jurisdictional tax authorities, which can involve additional paperwork and compliances. Further, such large cross-border transfers may be subject to scrutiny under anti-money laundering laws, regulatory laws, and other statutory laws requiring thorough documentation and justification. Additionally, the

advent of global transparency initiatives like the OECD's Common Reporting Standard (CRS) and the FATCA (Foreign Account Tax Compliance Act) means that cross-border asset holdings are microscopically examined. Hence the FSA becomes key to corroborating these transactions in multiple jurisdictions viz. the local tax reporting standards.

Estate Duties and Inheritance Taxes in Jurisdictions Worldwide

The below table gives a brief snapshot via a tabular representation of the estate duty/ inheritance tax rates. The maximum rates have been captured but each country has its conditions, exemptions, rules, and criteria when it comes to coverage, rate of levy, and compliance. Hence an independent deep dive for each situation is paramount.

Country	Maximum Rate	Country	Maximum Rate
Belgium	80%	Australia	0%
Japan	55%	Austria	0%
South Korea	50%	Canada	0%
Germany	50%	China	0%
France	45%	Hong Kong	0%
United Kingdom	40%	India	0%
USA	40%	Malta	0%
Netherlands	40%	Mexico	0%
Denmark	36%	New Zealand	0%
Spain	34%	Norway	0%
Ireland	33%	Portugal	0%
Turkey	30%	Singapore	0%
South Africa	25%	Sweden	0%
Italy	8%	Switzerland	0%

A more detailed overview has been provided for certain key jurisdictions which have a large Indian diaspora.

United States of America (US)

Inheritance Tax

The US does not have a federal inheritance tax. However, some states have their inheritance tax systems. Typically, these state-level taxes do not apply to transfers to spouses and descendants. When state inheritance taxes do apply, they can have sizeable tax implications, with rates reaching up to 18%.

Estate Tax

The US imposes an estate tax on the transfer of a decedent's taxable estate at death. Various considerations, exemptions, and rules need to be evaluated. Following is a summary covering the high-level aspects of the law:

- ***Applicability***: The estate tax applies to transfer of a decedent's estate at death. For US citizens and residents dying after December 31, 2012, the estate tax rate is 40%, with an estate tax exemption of $10 million, adjusted annually for inflation ($13.61 million in 2024). Non-resident aliens face the same tax rate

but have a significantly lower exemption of $60,000, which is not adjusted for inflation.

- ***Purview***: The estate tax is levied on the taxable estate, defined as the gross estate minus allowable deductions. For US citizens and residents, the gross estate includes the fair market value (FMV) of worldwide assets at death, with an option for an alternative valuation date six months later. Non-resident aliens are taxed only on US situs property, such as real estate, US stock, and certain pensions. Property situs is defined by the Internal Revenue Code (IRC) and may be affected by estate and gift tax treaties.

- ***Specific Rules:***

  — Estate tax considerations extend beyond assets owned at death due to retained interest rules, which include:

    ▪ Gifts made within three years of death

    ▪ Transfers with a retained life estate

    ▪ Transfers effective at death

    ▪ Certain annuities

    ▪ Jointly owned interests

    ▪ Transfers with broad powers of appointment

    ▪ Revocable transfers

  — These rules also apply to non-resident aliens, but the taxable estate is limited to US situs property. Transfer rules are based on the property's situs at the time of transfer or death, which affects estate planning for non-resident aliens.

  — The estate tax allows for a step-up in basis to the FMV of the property at death.

  — States may impose their own estate taxes with varying rules, so non-resident aliens should seek state-specific tax advice.

- ***Deductions***:

  — Federal estate tax deductions include those for administrative expenses, debts, and charitable contributions. US citizens and residents can deduct charitable contributions to global charities, while non-resident aliens receive deductions only for US-based charities.

  — For marital transfers, US citizens and residents benefit from an unlimited marital deduction for transfers to US citizen spouses. For non-US citizen spouses, a Qualified Domestic Trust (QDOT) is required to defer taxes. The estate tax exemption is portable between US citizens or residents, but not between non-citizens and non-residents.

- ***Filings***: Estates must file Form 706 (for US citizens and residents) or Form 706-NA (for non-resident aliens) within nine months of death, with a possible six-month extension. Consistent-basis reporting rules, effective from July 31, 2015, require beneficiaries to use the basis reported on the estate tax return, reported on Form 8971 within 30 days of the Form 706 due date.

Therefore, FSAs that include US assets or family members with tax residential ties to US, a comprehensive due diligence of US estate taxes needs to be carried out so that all facets of these levies are considered.

United Kingdom (UK)

While the new UK government is heading towards making significant changes to Inheritance Tax (IHT) rules, FSAs that cover UK wealth and UK-domiciled family members need to be prudent while crystalizing the terms. The following is a brief overview of the existing provisions:

- ***Thresholds***: In the UK, IHT applies to estates valued above £325,000. Estates below this threshold are exempt from IHT. For estates that include a family home passed to children, stepchildren, or grandchildren, the threshold rises to £500,000. Any unused portion of this threshold can be transferred to a surviving partner.
- ***Gifting and IHT***: Gifts made to individuals may be exempt from IHT if the donor survives for 7 years. This is classified as a "'potentially exempt transfer". If however the donor dies within this period, the gift's value at the time it was made may be subject to IHT. It's crucial to consider the current market value of the gifted asset for tax purposes. Gifts exceeding the nil band rate i.e. £325,000 threshold may incur IHT.
- ***Trusts and IHT***: Settling a trust is generally a taxable event for IHT purposes. However, if the settlor's nil rate band is available, up to £325,000 can be transferred into the trust without IHT liability, or £650,000 for married couples. Capital Gains Tax (CGT) relief might be available on the transfer, but future sales of trust assets may incur CGT based on prevailing rates. Trustees should assess whether the trust meets its objectives and if it's appropriate to allocate assets to beneficiaries.
- ***Charitable Gifts***: Gifts to UK-registered charities or Community Amateur Sports Clubs (CASCs) are exempt from IHT. Gifts to non-UK charities are not exempt and may incur IHT levies as they would be considered chargeable lifetime transfers. Donors can still support international causes through other "UK Friends of" charity or other UK charitable vehicles.
- ***Pensions and IHT***: Residual pension savings can be passed on without IHT, following the deceased's nomination form. However, if the individual chooses not to withdraw pension funds with the intent to pass them on could affect IHT exemptions. Recent changes, including the removal of the Lifetime Allowance (LTA), might alter pension withdrawal strategies. Those with pension pots previously exceeding the LTA should review their approach now that the LTA tax charge has been done away with.
- ***Business Relief (BR)***: BR is a valuable relief from IHT for business owners. Its purpose is to reduce IHT charges arising on the transfer of qualifying business interests during a person's lifetime or on their death to allow the business to continue. FSAs that include the transfer of family business must get a review of family business operations to check the BR position and BR qualifying status to limit IHT applicability.

Australia

In Australia, a deed of family arrangement/ FSA may be entered into to legally change the way assets are divided under the Will or change the distribution under rules of intestacy. It is generally done after the person has died. It is often used where beneficiaries under a will wish to change the terms of the will/distribution of assets, if the beneficiaries are unhappy with the division under the intestacy rules, or if someone wants to challenge a will.

Australia does not have inheritance tax nor gifts tax per se. But assets passed through a will or under a deed of family arrangement that meets certain conditions to an Australian tax resident does not trigger a capital gain tax (CGT) liability to the estate of the deceased. In this case, the beneficiary under the will or deed of family arrangement inherits the cost base/purchase price of the deceased resulting in the beneficiary paying tax but only if they sell the asset at a later time. Assets left to foreign residents will trigger a CGT liability except for any property holdings in Australia which will be kept within the Australian tax net until the asset is sold by the foreign beneficiary. Generally, a bequest through a will is also not subject to duty liability on death however it is necessary to carefully consider the duty rules if a deed of family arrangement is entered into after death. It is relevant to note that the duty rules are different in every state in Australia

Singapore

Singapore is usually considered tax-friendly when it comes to estate and inheritance taxes. A Family settlement is usually a negotiated process. For succession planning, will and family trusts are common structures combined with Variable Capital Company (VCC) and Singapore's Specific exemptions are available in Income Tax Act, 1947 for Trusts, Trustees, and Beneficiaries.

Specific tax benefits are also available for family fund holding and family fund managing companies in Singapore found in the Income Tax Act 1947:

- the Offshore Fund Exemption Scheme
- the Resident Fund Exemption Scheme
- the Enhanced-Tier Fund Exemption Scheme
- Licensed Fund Management Incentive

These structures help families plan their settlement/succession plans in a hassle-free manner. In recent times, select measures and tax benefits to grow local businesses and the Philanthropy Tax Donation Scheme for Family Offices have been introduced that are bringing structure to family estate planning and utilization.

Epilogue

In an increasingly complex and transparent world, FSAs provide a framework for protecting family wealth while ensuring fairness and compliance across borders. As wealth transfer between generations accelerates, high-net-worth families often face the challenge of navigating estate duties and inheritance taxes across multiple jurisdictions and in parallel also managing the minutiae of familial culture and dynamics. FSAs therefore play a critical role as they not only help manage intra-family disputes but also provide a key function of minimizing global estate and inheritance tax liabilities. Families must ensure that FSAs are crafted with expert advice, taking into account cross-border considerations, domicile and residency issues, and emerging legal trends. Estate and inheritance tax laws are constantly evolving. For example, discussions in the USA to reduce the estate tax exemption or increase rates make FSAs critical for agile tax and strategic planning. Similarly, the changing political climate in the UK may lead to changes in inheritance tax laws, requiring a certain level of flexibility in FSAs. FSAs are indispensable tools for managing complex, cross-border estate duties and inheritance taxes. The granular detailing of these levies worldwide make it essential for families and family offices to take a tailored, informed approach when structuring FSAs as understanding the intricacies of these tax systems is crucial for preserving wealth and ensuring smooth transitions.

Keshav B. Bhujle
Advocate

DIRECT TAXES
Supreme Court

1 ***Principle CIT vs. Dharmanandan Diamonds Pvt. Ltd.; [2024] 467 ITR 31 (SC): Dated 10/07/2024***

Depreciation — Actual cost — Definition — Successor assessee making payment for the asset to predecessor firm — AO treating revalued price as per Government as actual cost — High Court holding that in years subsequent to the year of take-over by successor assessee of the business of predecessor firm, actual cost would be actual cost paid by the assessee to the firm — Supreme Court dismissed special leave petition filed by the Revenue: S. 32 and 43(1) of ITA 1961 and R. 5 of ITR 1962: A. Y. 2009-10

In ***Principal CIT vs. Dharmanandan Diamonds Pvt. Ltd. [2024] 467 ITR 26 (Bom)*** Bombay High Court held as under:

"The proviso to section 32 of the Income-tax Act, 1961 would apply only to the assessment year in which the succession took place and not to later years as the assets would no longer belong to the predecessor firm but only the successor assessee, who would be entitled to claim depreciation for those years on the actual cost of the assets which would be the actual cost paid to the predecessor firm by the assessee after revaluing the assets."

The Supreme Court dismissed the special leave petition filed by the Revenue and held as under:

"i) Heard the learned Additional Solicitor General appearing for the petitioner.

ii) Delay condoned.

ii) We find no error in the impugned order. The special leave petition is accordingly dismissed."

2 ***Principal CIT vs. HTL Ltd.; [2024] 467 ITR 573 (SC): Dated 05/08/2024***

Revision — Conditions precedent — Order erroneous and prejudicial to interests of Revenue — Sale of assessee's land effectuated by a secured creditor of the assessee — Revision on the ground that value of land sold lower than value for purposes of stamp duty — High Court holding revision to be illegal — Supreme Court dismissed special leave petition filed by the Revenue: Ss. 50C and 263 of ITA 1961: A. Y. 2014-15

For the A. Y. 2014-15, the Assessing Officer passed an order u/s. 143(3) of the Income-tax Act, 1961, against the assessee. The Principal Commissioner was of the view that the land sold by the assessee was below the value adopted by the concerned authority for the levy of stamp duty. Therefore, the assessment made was contrary to the provisions of section 50C, since this aspect was not inquired into and there was under-assessment. Accordingly,

in his power, u/s. 263, he set aside the order u/s. 143(3) as erroneous and prejudicial to the interests of the Revenue.

The Tribunal set aside the revision order under section 263.

The Delhi High Court dismissed the appeal filed by the Revenue and held as under:

"i) The Tribunal had, on the facts, correctly appreciated the law that for invoking the powers u/s. 263, two conditions had to be met, i. e., not only the order should be erroneous, but it should also be prejudicial to the interests of the Revenue.

ii) The Tribunal had found that the Assessing Officer had issued a notice to the assessee in respect of the land in question, that it was not the assessee who had effectuated the sale of the land in question, that since the bank which was the assessee's secured creditor was unable to auction the land, at a meeting held concerning the consortium of lenders, took a decision to fix the reserve price of the land and that it was the bank which had finally effected sale of the land to recover the dues owed by the assessee.

iii) Hence, the Tribunal had concluded that the Principal Commissioner had failed to notice the underlying facts, while invoking his powers u/s. 263."

(See ***Principal CIT vs. H. T. L. Ltd. [2024] 467 ITR 163 (Delhi)***)

Supreme Court dismissed the special leave petition filed by the Revenue and held as under:

"i) Delay condoned.

ii) Heard the learned Additional Solicitor General.

iii) We are not inclined to interfere with the impugned judgment and order passed by the High Court 1. Hence, the special leave petition is dismissed."

3 ***CIT vs. Paradeep Phosphates Ltd.; [2024] 471 ITR 422 (SC): Dated 02/09/2024***

Revision — Powers of Commissioner — Business expenditure — Disallowance — Payments liable to deduction of tax at source — Commissioner holding expenditure to be disallowed since the assessee had not deducted tax at source — Tribunal holding Commissioner not entitled to direct AO to add sum without direction to re-examine issue — High Court holding conclusion of Tribunal proper and no substantial question of law arose — Supreme Court dismissed special leave petition filed by the Revenue: Ss. 40(a)(ia), 195 and 263 of ITA 1961: A. Y. 2007-08

For the A. Y. 2007-08, the Commissioner, in his revision order u/s. 263 of the Income-tax Act, 1961, made an addition of the payments made by the assessee towards the import value of machinery, spares and raw materials to non-residents on the ground that tax was not deducted at source u/s. 195 and accordingly directed the Assessing Officer to make the assessment de novo other than the issue of disallowance of expenditure u/s. 40(a)(ia).

The Tribunal found that the Assessing Officer had allowed such expenditure to be in accordance with the scheme of the assessee's business. The Tribunal was of the view that the direction by the Commissioner to the Assessing Officer to add the sum without a direction to the Assessing Officer to re-examine the issue was beyond the scope of the powers of the Commissioner u/s. 263 and held that the Commissioner could not unilaterally direct the Assessing Officer to disallow the expenditure when the procedure to adopt assuming jurisdiction under the provisions of section 263 remained unfulfilled

and also referred to the decision in ***Ge India Technology Centre P. Ltd. vs. CIT [2010] 327 ITR 456 (SC);*** wherein it was held to the effect that if there was a remittance abroad, the requirement u/s. 195(1) to deduct tax would arise only if the tax were assessable in India, and since the payment made by the assessee was for import, the issue required re-examination by the Assessing Officer and accordingly set aside the order u/s. 263.

The Orissa High Court dismissed the appeal filed by the Revenue and held as under:

"The conclusion of the Tribunal, to the extent, that the Commissioner could not have unilaterally directed the Assessing Officer to add back the sum paid towards the import of raw materials by holding that it was disallowable as expenditure could not have been issued u/s. 263 without the Assessing Officer re-examining the issue was beyond the jurisdiction of the Commissioner, did not suffer from any legal infirmity."

(See ***CIT vs. Paradeep Phosphates Ltd. [2024] 471 ITR 419 (Orissa)***)

Supreme Court dismissed the special leave petition filed by the Revenue and held as under:

"i) We have heard learned senior counsel for the petitioner and learned counsel for the respondent-assessee. We are not inclined to interfere in the matter.

ii) The special leave petition is hence dismissed."

4 ***Principal CIT vs. Anuj Bansal; [2024] 466 ITR 254 (SC): Dated 11/07/2024***

Search and seizure — Assessment in search cases — Assessment of undisclosed income — Approval of prescribed authority — Sanction u/s. 153D must be accorded only after due consideration — Approval granted without application of mind — Assessment quashed by Tribunal — High Court dismissed the appeal filed by Revenue — Supreme Court dismissed special leave petition filed by the Revenue: S. 153D of ITA 1961: A. Y. 2017-18

An assessment order was framed qua the respondent- assessee u/s. 153A, read with section 143(3) of the Income-tax Act, 1961.

The Tribunal set aside the assessment order on the ground that there was no application of mind by the Additional Commissioner of Income-tax in granting approval u/s. 153D of the Act.

The Delhi High Court dismissed the appeal filed by the Revenue and held as under:

"i) Having regard to the findings returned by the Tribunal, which are findings of fact, in our view, no substantial question of law arises for our consideration. The Tribunal was right that there was absence of application of mind by the Additional Commissioner of Income-tax in granting approval u/s. 153D. It is not an exercise dealing with an immaterial matter which could be corrected by taking recourse to section 292B of the Act.

iii) We are not inclined to interdict the order of the Tribunal."

(See ***Principal. CIT vs. Anuj Bansal [2024] 466 ITR 251 (Delhi)***).

The Supreme Court dismissed the Special leave petition filed by the Revenue and held as under:

"Having regard to peculiar facts of these cases, we are, not inclined to interfere in the matters. Hence, the special leave petitions are dismissed."

DIRECT TAXES
High Court

Jitendra Singh
Advocate

Radha Halbe
Advocate

Harsh Shah
Advocate

1 ***Pr. CIT vs. Hanubhai R. Sangani [2024] 165 taxmann.com 300 (Gujarat)***

Appeal to Appellate Tribunal - Section 253 of the Income Tax Act 1961 – Appeal dismissed on account of low tax effect - audit objection accepted by the AO – appeal maintainable.

Facts

The assessment was finalised under section 143(3) of the Act by making certain additions / disallowances. Subsequently, the revenue audit had raised objections with respect to the proportionate disallowance under section 14A read with Rule 8D. The AO accepted the audit objections and initiated the reassessment proceedings by issuing the notice under section 148 of the Act. The reassessment order was passed by making disallowance of ₹ 44.35 lakhs under the provisions of section 14A read with rule 8D. On appeal the first appellate authority upheld the disallowances of ₹ 4.62 lakhs made under rule 8D(2)(iii) and deleted disallowance of ₹ 39.73 lakhs made under rule 8D(2)(ii) made by AO. The department being aggrieved by the order of the first appellate authority preferred an appeal before the income tax appellate tribunal. The appellate tribunal dismissed the appeal filed by the department on account of low tax effect relying upon the CBDT Circular No. 3 of 2018 with liberty to recall the dismissal of appeal if the matter was covered by the permissible exceptions mentioned in the said circular. The department filed a miscellaneous application to recall the order passed by the tribunal. However, the tribunal relying upon CBDT Circular No. 5 of 2017 passed the impugned order and dismissed the application by observing that the department had not brought any substantial material on record to prove that appeal was filed after evaluating the merits of the issue involved. The tribunal further observed that the department wants to recall the order merely on the basis of audit objection which is not sufficient. The department being aggrieved by the order passed by the tribunal filed a writ petition before the Hon'ble Gujarat High Court.

Ruling of the High Court

Hon'ble High Court allowed the writ petition of the department by observing that the tribunal had overlooked the specific exception in the CBDT Circular, which permits the filing of appeals when an audit objection has been accepted by the department, irrespective of the tax effect. The High Court referred to previous judgments where similar situations had

occurred, and the cases were remanded to the tribunal for reconsideration. It emphasized that CBDT Circulars must be given due weightage and cannot be ignored. The High Court therefore held that the tribunal's order, which dismissed the appeal without considering the audit objection, constituted an "error apparent on record."

2 ***Pr. CIT vs. Sahyadri Co-operative Credit Society Ltd [2024] 166 taxmann.com 445 (Kerala)***

Deduction – section 80P of the Income Tax Act 1961 – interest income earned by co-operative society from the deposits made with the banks and other permitted institutions are entitled to benefit of deductions under section 80P(2) of the Act.

Facts

The assessee before the Hon'ble Kerala High Court was engaged in the provision of credit facilities to its members. It was a multi-state co-operative society registered under the Multi-State Co-operative Societies Act, 2002, the provisions of which Statute regulate its functioning. The assessee had earned interest on deposit of principal income with banks and other permitted financial institutions. The AO while finalising the assessment of the assessee held that the assessee was entitled to the deduction in relation to the principal income by way of interest earned through the provision of credit facility to its members. However, the interest income earned through deposit of the principal income with banks and other permitted financial institutions are liable to be taxed under the head of 'Income from other sources' as the interest would cease to have the character of profits and gains of business or profession. The matter was carried upto the appellate tribunal. the tribunal held that the interest earned by the assessee on deposits made with a bank or other permitted institutions, from amounts found to be eligible for deduction under section 80P(2), would also be entitled to the benefit of deduction under section 80P(2) of the Act.

The department being aggrieved by the order passed by the Tribunal challenged the same before the Hon'ble Kerala High Court.

Ruling of High Court

Hon'ble High Court was pleased to dismiss the appeal of the department by observing that amount of profits and gains of business earned by assessee co-operative society which was attributable to business of providing credit facilities to its members was found to be eligible for deduction under section 80P(2) of the Act. Therefore, interest earned by assessee on deposits made with bank or other permitted institutions from said amounts would also be entitled to benefit of deduction under section 80P(2) of the Act and such interest would not cease to form part of its profits and gains attributable to its business of providing credit facilities to its members.

3 ***Jyotsna M. Mehta vs. Pr. CIT [2024] 166 taxmann.com 442 (Bombay)***

Condonation of delay in filing returns – section 119 of the Income Tax Act – delay in filing of returns due to personal difficulties of the CA – delay beyond the control of the assessee – delay condoned.

Facts

The assessee before the Hon'ble Bombay High Court was an individual. The accounts as well

as the income-tax returns of the assessee was looked after by a CA. The CA due to ill health of his spouse could not be able to file the returns of the assessee within the stipulated time provided under section 139(1) of the Act. The assessee filed an application under section 119(2)(b) praying for condonation of delay in filing of her returns claiming that there was *bonafide* and a legitimate cause, requiring the delay to be condoned in filing of the returns. The assessee also submitted all the medical papers in support of her contentions that the case as made for condonation of delay was bonafide/genuine as reflected from the medical papers. The Principal Commissioner of the Income Tax, however, rejected the application of the assessee by holding that the reasons provided by the assessee are not genuine reasons preventing the assessee from filing her returns within the due date provided under section 139(1) of the Act.

The Assessee, being aggrieved, challenged the above order by way of a Writ Petition before the Hon'ble Bombay High Court.

Ruling of the Hon'ble High Court

Hon'ble Bombay High Court was pleased to allow the writ petition filed by the assessee and condoned the delay in filing the returns by observing that the approach of the Principal Commissioner appears to be quite mechanical, who ought to have been more sensitive to the cause which was brought before him when the assessee prayed for condonation of delay. In such context, it can never be that technicalities and rigidity of rules of law would not recognize genuine human problems of such nature, which may prevent a person from achieving such compliances. It is to cater to such situations the legislature has made a provision conferring a power to condone delay. These are all human issues, and which may prevent the assessee who is otherwise diligent in filing returns, within the prescribed time.

"Silence becomes cowardice when occasion demands speaking out the whole truth and acting accordingly."

— *Mahatma Gandhi*

"Feel nothing, know nothing, do nothing, have nothing, give up all to God, and say utterly, 'Thy will be done.' We only dream this bondage. Wake up and let it go."

— *Swami Vivekananda*

DIRECT TAXES
Tribunal

CA Nikhil Mutha

CA Viraj Mehta

CA Kinjal Bhuta
Advocate

1 ***The Assistant Commissioner of Income Tax vs. Eastman Exports Global Clothing Private Limited [ITA No. 3326/Chny/2019 dated 20.09.2024] [AY 2017-18]***

Section 2(24)(xviii) – The benefit received by assessee by way of MLFPS scrips is a reward to be considered as non-taxable capital receipt

Facts of the case

The assessee is a private limited company, engaged in manufacturing and exporting knitted hosiery garments and generating and selling power through windmill.

The assessee filed the return of income for AY 2017-18 declaring a total income of ₹ 8,99,90,600.

The assessment proceedings were initiated against the assessee and notice under Section 143(2)/142(1) was issued. The Assessing Officer ('Ld. AO') considering the submission made by the assessee passed an assessment order under Section 143(3) of the Act wherein exemption of ₹ 27,28,00,467 claimed in connection with incentive under Market Linked Focus Products Scheme (MLFPS) was denied. The same was on the basis that the MLFPS is an incentive directly falling under Section 2(24)(xviii) of the Income Tax Act, 1961 ('the Act') and therefore chargeable to tax.

MLFPS is an incentive scheme intended to promote export trade in certain products and markets. The main objective of this scheme is to incentivize the export of products, that have high employment intensity in rural and semi urban areas so as to offset territorial inefficiencies, infrastructure and other associated costs involved in marketing of these products in the international market. As per FPS policy, exports of notified products to all countries shall be entitled for duty credit scrip equivalent to 2-5% of the value of exports for each licensing year. It is similar to the MEIS Scheme of the Government.

Aggrieved by the said order, the assessee filed an appeal before the learned Commissioner of Income Tax (Appeals) ('Ld CIT(A)'). The Ld. CIT(A) allowed exemption claimed on MLFPS. Aggrieved by the said order of the Ld. CIT(A), the Revenue filed an appeal before the Hon'ble Tribunal.

The Department's contention was that post insertion of clause (xviii) to section 2(24), with effect from 1.4.2016, the scope of the term 'income' stands enlarged to include

assistance in the form of a subsidy or grant or cash incentive or duty drawback or waiver or concession or reimbursement (by whatever name called). Hence, the receipt under the subject scheme should fall within the scope of taxable income. The Department placed reliance on the Hon'ble Bombay High Court decision in the case of ***Serum Institute of India (P.) Ltd [2023] [157 taxmann.com 107]***, wherein the constitutional validity of the aforesaid amendment has been upheld. Additionally, it also placed reliance on the co-ordinate Bench decision in the case of Hyundai Motors (ITA No.3192/CHY/2017 - AY 2013-14).

Held

(a) The decision of the Hon'ble Bombay High Court in the case of Serum Institute of India (P) Ltd, though upheld the validity of clause (xviii) to section 2(24), did not render any finding on the scope of the terms employed therein.

(b) The Hon'ble Tribunal in assessee's own case for earlier years, following the decision of the Supreme Court in the case of ***Ponni Sugars (306 ITR 392)*** has held the incentives under the subject scheme as a non-taxable capital receipt.

(c) The co-ordinate bench decision in the case of Hyundai Motors (ITA No. 3192/Chny/2017-AY 2013-14) relied upon by the Department cannot be applied since in the said decision, the Hon'ble Bench did not follow the decision of Hon'ble Rajasthan High Court in case of ***Nitin Spinners Ltd (312 CTR 540)***, the SLP of the Revenue against which has been dismissed by the SC.

(d) The Hon'ble Tribunal having perused the scheme observed that the incentive received by the assessee is the nature of 'Reward'. The Hon'ble Tribunal thereafter examined each of the terms in clause 2(24)(xviii) and held that those terms do not cover the present incentive which is in the nature of a Reward. In arriving at this crucial conclusion, the Hon'ble Tribunal applied the principle of ejusdem generis.

(e) The Hon'ble Tribunal applying the said principle held that the receipt in the present context is (a) not in the nature of 'subsidy' since it relates to achieving the required turnover in a specified area which entails reimbursement of specific cost, (b) not in the nature of 'grant' since it is not a sum of money provided by the Government in implementing or establishing any ideas or projects which contributes to societal development, (c) not a cash incentive since it is not received in cash and (d) not in the nature of reimbursement since such reimbursement should also be in cash, (e) not in the nature of duty drawback since it is specific in nature and granted either in cash or kind and (f) not in the nature of 'Waiver' and 'Concession' since these terms falls under the category of discount on any amount paid or payable. Accordingly, the Hon'ble Tribunal held that the subject receipt is not covered under the scope of section 2(24)(xviii) of the Act.

(f) The Hon'ble Tribunal also held that ICDS-VIII relating to Government Grants does not cover the incentive received in the present case since it only deals with Grant, which is a sum of money given by the Government for a particular purpose.

(g) The Hon'ble Tribunal further held that only because the incentive is a specific % of the turnover does not partake the character of revenue receipt. Also, only because the income is credited to the profit & loss account, it does not entail that the same is revenue in nature. What needs to be assessed is the object and purpose of the scheme to decide its character and not the manner in which the same is received.

(h) The Hon'ble Tribunal observed that in the present case, the scrips are given to off-set infrastructural inefficiencies and not to run the business more profitably. Hence, as held in the assessee's own case for earlier years, the incentive is in the nature of non-taxable capital receipt.

In view of the above, the Hon'ble Tribunal upheld the claim of the assessee that income realized through scrips under the MLFPS/MEIS Scheme is a non-taxable capital receipt.

2 ***ITO vs. Narendra Kumar Jain, Mumbai [ITA No.3422/MUM/2024 dated 22.08.2024] [AY 2020-21]***

Section 56(2)(x) – The agreement entered into many years back between the parties and payment made in instalments based on the terms and conditions of the agreement – stamp duty value of the year of agreement to be considered and not as on the date of registration of agreement with stamp duty authorities

Facts of the case

The assessee had entered into a transaction with a Developer to purchase a flat in FY: 2011-12. On the date of the agreement, the sale consideration was more than the ready reckoner rate. When registering the sale deed, in 2020, the Fair Market Value as per the Stamp Duty Valuation Authority was much higher as compared to the agreement value. The Ld. AO directed the assessee to show cause as to why the difference between the value determined by the Stamp Duty Valuation Authority and the consideration already paid by the assessee, should not be added back to the total income of the assessee as per provisions of section 56(2)(x) of the Act. The assessee submitted that the agreement was registered in FY: 2019-20 with terms and price agreed upon in FY: 2012-13 and also submitted other documents pertaining to the property. Further, the assessee relied upon the decision of the Jurisdictional Hon'ble Bombay High Court in the case of ***PCIT vs. Vembu Vaidyanathan (261 Taxmann 376).*** The Assessing Officer, however rejected the contention of the assessee and added the difference between the Fair Market value and the agreement value. The assessee filed an appeal before the CIT(A) against the said addition. In the CIT(A) Order, it was observed by the CIT(A) that all relevant documents were submitted by the Appellant. Moreover, it was also seen that the applicable TDS was also deducted on payments made after June 2013. As the agreement to buy the property was entered into by the appellant prior to April 2017, the provisions of section 56(2)(x) were not applicable in the case of the Appellant. The decisions of the Jurisdictional Hon'ble Bombay High Court in the case of ***PCIT-3 vs. Vembu Vaidyanathan (supra)*** and the Hon'ble Mumbai Tribunal in ***Benudhar Gokulanand Biswal vs. National E Assessment Centre [2023] 153 taxmann.com 112 (Mumbai - Trib.)*** were squarely covered in favour of the assessee and the additions made were deleted. The Revenue filed an appeal before the Hon'ble Tribunal against the said order.

Held

In the appeal before the Hon'ble Tribunal, it was stated that the assessee had submitted all documents, further, it was also established that the price decided upon by the builder and the assessee in 2012, was higher than the price as per the ready reckoner rate. The assessee had made payments to the builder from September 2012 to September 2020, as per a fixed schedule. The Developer had also acknowledged the receipt towards payment received for the allotted flat. The Hon'ble Tribunal observed that on the date of agreement, amount of consideration was fixed for the transfer of immovable property and the date of registration was not the same, then the stamp duty value on the date of agreement was to be taken. Further, the section further provides that the value as on the date of agreement can be taken only when the amount of consideration in the agreement has been paid by way of account payee cheque or by the electronic clearing system through a bank account on or before the date of agreement transfer of such immovable property. Thus, the aforesaid provisos carve out an exception by taking the stamp duty value as on the date of agreement when the payments have been made through banking channels.

It was observed that the Ld. AO had stated that the allotment letter was not a registered agreement, therefore, the value of the property had to be taken as on the date of sale registration. In connection to this argument of the Ld. AO, it was held by the Hon'ble Tribunal that when a Developer gives an allotment letter with terms and conditions, all the rights and the value of purchase were agreed upon and the assessee had acted upon by accepting the terms and conditions and by initiating the payment, then it gets covered by the proviso to section 56(2)(x) of the Act. Therefore, the value as on the date of allotment had to be treated as stamp duty value for the purpose of the provision of section 56(2)(x) of the Act, since at that time the payment made was more than the stamp duty value, no addition can be made. Thus, the finding of the CIT(A) was upheld. Accordingly, the revenue appeal was dismissed.

3

Assistant Commissioner of Income Tax vs. Veer Energy and Infrastructure Limited [I.T.A. No.1885/Mum/2024 dated 2 September 2024] [AY 2014-15]

Section 133(6) – Non-response from a third party to notice under Section 133(6) does not constitute a valid ground for making addition

Circular Nature of transaction - Addition to the extent of 1% of the value is sustained.

Facts of the case

The assessee is a company engaged in the business of development of infrastructure in power sector including setting up of Wind Turbine Generator (WTG) Farms. The assessee filed the return of income for AY 2014-15 on 29 September 2024 declaring a total income of ₹ 2,28,41,400 and a book profit of ₹ 3,01,52,299 under section 115JB of the Act.

The assessment proceedings were initiated and statutory notices were duly served on the assessee. The Ld. AO observed that the assessee purchased raw materials from Kundan Industries Limited and Agastya Copper Pvt. Ltd. which purchased goods from M/s Hari Steel Industries Limited, the same party to whom the assessee sold goods. Therefore, the Ld. AO concluded that the entire transaction is circular in nature and made addition ₹ 1,32,65,703 on account of bogus purchases by applying GP rate of 6 percent.

The Ld. AO further observed that the assessee sub-contracted certain projects to M/s. VNR Infrastructures Ltd ('VNR') which in turn sub contracted the work to M/s. Massive Infrasol Pvt. Ltd ('Massive Infrasol'). The Ld. AO issued notice under Section 133(6) to Massive Infrasol and no reply was received from the said party. The Ld. AO concluded that it was a sham transaction and made an addition of ₹ 6,08,13,844 on account of subcontracting charges paid by VNR to Massive Infrasol, since the assessee could not establish the genuine of the transactions.

Aggrieved by the said assessment order, the assessee filed an appeal before the Ld. CIT(A) wherein the said additions were deleted on the ground that the assessee had provided the following details:

(a) In relation to alleged circular trading: Complete details of purchase/sale invoice, challan copies duly signed, and confirmation from the parties/VAT Audit Report, Form 704 and the fact that all the payments to suppliers and from customers is through the normal banking channels.

(b) In relation to sub-contract charges: Work orders received and work orders assigned to sub-contractor on back-to-back basis.

Aggrieved by the said order of the Hon'ble CIT(A), the revenue filed an appeal before the Hon'ble Tribunal.

Held

The Hon'ble Tribunal held that there was merit in the finding of the Ld. AO that the transactions were circular in nature and not genuine. The assessee failed to substantiate that there has been real movement of goods and therefore, the finding of the AO that these are paper transactions is correct. Since the assessee had recorded both the purchases and sales pertaining to the impugned transactions and the income arising therefrom was offered to tax, therefore, no addition can be made by the Ld. AO on a GP basis. However, as the assessee has acted as a conduit, the alternate contention of the Authorized Representative merits acceptance that the addition should be only towards the commission income that the assessee would have earned towards providing accommodation entries. Therefore, the Hon'ble Tribunal held that 1% of the value of the impugned transaction is sustained as an addition and the balance amount is deleted.

Regarding the subcontracting charges, the Hon'ble Tribunal observed that the Ld. AO had incorrectly concluded that VNR had back-to-back subcontracted the work to Massive Infrasol, without appreciating that the contracts were different. The Hon'ble Tribunal further noted that the Ld. AO's finding, based solely on the non-receipt of a reply to the notice under Section 133(6), was to be dismissed in light of documentary evidence submitted and the work completion certificate issued by the customers of the assessee. The Hon'ble Tribunal also observed that the Ld. AO has erred in making an addition of an amount paid by VNR to Massive Infrasol which has got no relevance to the assessee. Consequently, the Tribunal ordered the deletion of the addition of ₹ 6,08,13,844 related to the subcontracting charges holding that this amount had no bearing on the assessee's income.

4 *American Express (I) Pvt. Ltd. vs. PCT (ITA No. 2468/Delhi/2024)*

Section 263/Section 80G – CSR Expenditure Incurred – Disallowance made u/s 37 by assessee in ROI – Few CSR Expenditure was taken as deduction u/s 80G – AO allowed the same on verification – PCIT invoked 263 as such expenditure were incurred towards CSR – Order not satisfying twin conditions of 263 – revision was held to erroneous and 263 order was held to be quashed (AY 16-17)

Facts of the Case

The assessee had incurred expenditure as Corporate Social Responsibility (CSR). The assessee in its book disallowed the said expenditure. The aforesaid expenditure included some donations which were eligible for deduction under section 80G of the Act. The assessee claimed benefit of said deduction on the donations made under CSR. The Ld. AO in assessment proceedings examined assessee's claim of deduction under section 80G of the Act and accepted the same.

The Principal Commissioner invoked revision jurisdiction under section 263 of the Act on the ground that a claim of deduction under section 80G of the Act was not allowable to the assessee as the said claim had been made on expenditure incurred towards CSR. Being aggrieved with the same, the assessee challenged the revision order before the Hon'ble Tribunal.

Held

The Hon'ble Tribunal held that it is an undisputed fact that the assessee has incurred expenditure of certain amount on account of CSR under the provisions of section 135 of the Companies Act 2013. Merely, for reason that the Principal Commissioner does not agree with the view taken by the Ld. AO, the assessment order does not become erroneous. The. Ld. AO, in allowing deduction under section 80G of the Act on donations which were part of the expenditure incurred on account of CSR, was backed by various decisions of the Tribunal. Thus, the Ld. AO has taken a view that has been approved by the Tribunal. The satisfaction of twin conditions set out in section 263 of the Act i.e. the order is (i) erroneous; and (ii) prejudicial to the interest of revenue are sine qua non for exercising revisional jurisdiction. If any of the above said conditions are not satisfied, the revisional jurisdictional under section 263 of the Act cannot be invoked. Thus, on the above principle it was held by the Hon'ble Tribunal that revision u/s 263 of the Act is not justified.

5 *Ace Developers vs. DCIT (ITA No. 362-365/Bang/2024 dt. 20.09.2024)*

Section 68 – Survey action carried out in the premises of the assessee – Loose Sheets were found and impounded – On basis of Loose Papers found additions was made on account of On Money received by the assessee (AY 14-15)

Facts of the Case

The assessee was subject to survey under section 133A of the Act. Many documents were impounded during the survey proceedings containing various information about the payment made by the assessee in cash as well as through bearer cheques to various parties being subcontractors, labour, suppliers and towards commission etc. Based on such documents, the Ld. AO was of the opinion that the assessee has received an element of cash of ₹ 1100 per sq. ft. on the

sale of flats. As such the actual area of flats which were sold was 40698 sq ft. Accordingly, the AO worked the amount of on money at ₹ 4,47,67,800/- (40698 sq. ft. X ₹ 1100) and proposed to make the addition to the total income of the assessee on account of ON Money received by the assessee. CIT(A) also confirmed the additions made by AO. Being aggrieved, an appeal was filed before Hon'ble Tribunal.

Held

The Hon'ble Tribunal held that provisions of section 132(4A) and 292C of the Act provides a presumption that the documents impounded from the premises of the assessee belongs to the assessee and the contents of the same are true. However, such presumption is rebuttable and assessee based on evidence can rebut the same. Even though the provision of sections 292C and 132(4A) of the Act provides a presumption to the assessing authority to presume that the document belongs to the assessee and that contents are true about the documents found from the possession of the assessee that do not mean that such documents shall be brought under the tax net. As such, to tax income based on loose sheets, it is necessary to bring findings on the record that notings made in such documents are actual transactions that have materialized leading to income in the hand of the assessee and such income has been unaccounted or unexplained by the assessee. It was held that there was no finding, based on independent inquiry, brought on record that the assessee has collected on money on the sale of flats except relying on the loose sheets/paper found during the survey proceeding at the assessee premises. There was no inquiry made from the person who allegedly bought the flats. Therefore, the Hon'ble Tribunal held that additions were not justified as addition cannot be made merely on certain rough notings made on loose sheets and hence additions were directed to be deleted.

"It is easy enough to be friendly to one's friends. But to befriend the one who regards himself as your enemy is the quintessence of true religion. The other is mere business."

— *Mahatma Gandhi*

"Never think there is anything impossible for the soul. It is the greatest heresy to think so. If there is sin, this is the only sin; to say that you are weak, or others are weak."

— *Swami Vivekananda*

INTERNATIONAL TAXATION
Case Law Update

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A. HIGH COURT

1 *Tiger Global International III Holdings vs. AAR [2024] 165 taxmann.com 850 (Delhi)*

The Hon'ble HC held that in the facts of the instant case, the taxpayer, a Mauritian Co. holding a valid TRC and meeting the fiscal prescriptions stipulated in Article 27A (LOB clause) of the Indo-Mauritius Treaty - could not be treated as a "shell/conduit company" as defined in the LOB clause of the Treaty and consequently, tax exemption under the 'grandfathering clause' [Article 13(3A)] could not be denied to it in respect of capital gains from 'indirect transfers' of (Flipkart Singapore) shares acquired by it before 01.04.2017

Facts

i. Tiger Global International III Holdings (the taxpayer) was a tax resident of Mauritius. It had a Category 1 Global Business License and a TRC issued by the Mauritian Authorities.

ii. The immediate shareholders of the taxpayer were also Mauritian companies which, in turn, were part of a foreign private equity fund (The PE Fund). The PE Fund had raised funds from several investors across the globe. A US-based group company was the investment manager of the fund (with no investment in the taxpayer).

iii. The taxpayer had acquired shares of a Singapore based company before 1 April 2017. The Singapore company had investment in the shares of the Indian companies. In 2018, the taxpayer sold shares of the Singapore company which derived their value substantially from assets in India.

iv. The taxpayer filed an application before the AAR to determine the tax implications in India, if any, arising from the sale. The taxpayer argued that the gains arising from the sale of shares was not taxable in India as per the IM treaty.

v. The AAR held that the transaction was designed for the avoidance of tax and the application was rejected.

vi. Aggrieved, the taxpayer filed Writ petition against the advance ruling before the Hon'ble Delhi High Court.

Decision

i. The Hon'ble HC held that there cannot be an assumption of treaty shopping

or abuse merely because a subsidiary or a related entity is established in a tax-friendly jurisdiction. Each case would thus have to be tested based on facts obtained, requiring the Revenue to examine and ascertain whether such an entity undertook actual and tangible business activity.

ii. Insofar as the present case was concerned, the Court noted that, The DTAA, post its amendment in 2016 and the insertion of Article 27A enumerates the circumstances in which an entity may be denied treaty benefits (of Article 13(3B)) or where it would be deemed to be a mere shell/conduit company. It defines a shell/conduit company as being one with negligible or nil business operations or one which fails to exhibit the carrying on of a real and continuous business.

iii. Once LOB provisions come to be incorporated in a convention, it would be only those provisions which would govern and be determinative of an allegation of treaty abuse or a benefit being illegitimately claimed. The doubts of the Revenue or the material that it may gather in support of its allegation of abuse would have to be demonstrative of the LOB provision being breached or violated. In the facts of the present case, the Court noted that they were additionally faced with a LOB clause which creates a negative legal fiction against such an assumption being harbored.

iv. The TRC as well as the LOB provisions comprised in the DTAA comprehensively, address themselves to treaty abuse, and it would thus be wholly impermissible for the Revenue to construct additional barriers or qualification standards for the purposes of extending benefits under the DTAA. This would of course be subject to the limited caveat and narrow confines of fraud, illegal activity or where the transaction be contrary to the underlying objective and purpose of the treaty itself, with the onus lying squarely upon the Revenue to establish that the substance of the transaction clearly warrants the entity being deprived of treaty benefits.

v. The HC noted that Article 27A came to be included in the DTAA at a time when Chapter X-A had already come to exist in the statute book in terms of the Finance Act, 2013 and with effect from 01 April 2016. The Contracting States being aware of the aforesaid as well as other significant amendments, including those pertaining to taxation of indirect transfers, made to the Act chose to grandfather all transactions pertaining to alienation of shares and which had been consummated prior to 01 April 2017. Thus, it is not possible to recognise an authority inhering in the Revenue to create additional barriers or invent novel grounds for disentitlement of treaty benefits.

vi. Section 90(2A) and the GAAR family of provisions in Chapter X-A would be inapplicable in light of Article 13(3A) of the DTAA and which grandfathers all acquisitions prior to 01 April 2017. The clear intent of the Contracting States to ring-fence those transactions is evident not just from the plain language of Article 13(3A) but additionally fortified by the stated language of Rule 10U(1)(d).

vii. The HC referred to CBDT Circular No. 789 which provides that the TRC is sufficient evidence of status of residence as well as of beneficial ownership for availing the treaty benefit. The proposed amendment by the Finance Bill, 2013 (which provided that the TRC is not a sufficient condition for claiming the treaty benefit) never got enacted. The Finance Ministry (vide press release dtd. 1st March 2013) also clarified that the TRC would be accepted as sufficient evidence for the treaty benefit and that the Revenue would not question or go behind the TRC.

viii. The beneficial ownership test requires the determinations to whether the recipient of income holds the income in the capacity of an administrator/ trustee or has no right or control over the income or merely holds the income to be deployed on the instruction of another. The revenue had failed to substantiate that the taxpayer was under a contractual or legal obligation to remit its revenue to the US company. The HC thus held that the allegation that the taxpayer was not a beneficial owner was thoroughly misconceived and untenable.

ix. The entire case against the taxpayer was based on the erroneous and factually unsustainable premise that the US company was the holding company of the taxpayer and controlled major decisions taken by the taxpayer. The Revenue alleged the US company was the beneficial owner of investments made by the taxpayer. Neither the Revenue nor the AAR was able to prove the same with valid evidence. The US company did not have any equity participation or investment in the taxpayer. It was just a management company.

x. The Hon'ble HC concluded that, the petitioner held valid TRC's as well as a Category 1 GBL issued by the competent authority in Mauritius. The writ petitioners also qualified the LOB stipulations as embodied in the DTAA. The legal fiction comprised in Article 27A forbids one from viewing an entity as a conduit once the conditions prescribed therein are satisfied and met. The petitioners undisputedly qualified the fiscal prescriptions stipulated in Article 27A of the DTAA. The shares were ultimately transferred in August 2018. In view of all of the above, the submissions by the Revenue in the context of economic substance as well as the impugned AAR's order were clearly untenable. Therefore, The AAR's conclusion, that the impugned transaction was aimed at tax avoidance was arbitrary and unsustainable. The impugned transaction stood duly grandfathered by virtue of Article 13(3A) of the DTAA and was thus not taxable in India.

2

Phoenix Lamps Ltd. vs. DCIT [2024] 166 taxmann.com 376 (Allahabad)

CIT (International Taxation) vs. A.T Kearney Ltd. & ANR [2024] 8 NYPCTR 917 (Del)

Following the judgement of the Hon'ble Delhi HC in ***PCIT vs. Kusum Healthcare Pvt. Ltd. [ITA no. 765 of 2016***], the Hon'ble HCs deleted the TP adjustment made in respect of interest on outstanding receivables from AEs by holding that where working capital

adjustment was granted to assessee, there was no need for further imputation of interest on outstanding receivables at end of year as same got subsumed in working capital adjustment.

3 ***CIT vs. (International Taxation) vs. A.T Kearney Ltd. & ANR [2024] 8 NYPCTR 917 (Del)***

The Hon'ble HC upheld the order of the Hon'ble Tribunal deleting the TP adjustment in respect of payments made for intra-group services by holding

i. It is impermissible for the TPO to disregard the actual transaction unless it comes to the conclusion that an unrelated party would not have undertaken the same in usual course of business.

ii. It is wholly impermissible for the TPO to doubt commercial soundness of the expenditure that may be incurred.

iii. It would also not be permissible for the TPO to engage in the restructuring of a transaction, unless the economic substance of a transaction differed from its form and if the form and substance of the transaction were the same but the arrangements relating to the transaction when viewed in totality differed from that which would have been adopted by independent enterprises acting in a commercially rational manner.

4 ***PCIT vs. Radhashir Jewellery Co. (P) Ltd. [2024] 8 NYPCTR 268 (Bom)***

The Hon'ble HC dismissed the Revenue's appeal and upheld the order of the Hon'ble Tribunal holding that

i. Assessee who started the business in the relevant year could not be compared with companies who were doing business for many years.

ii. Though there had been no major sales throughout the whole year, the expenses incurred by assessee were almost the same as compared to the expenses of the next year.

iii. It was also a fact that assessee had achieved substantial sales (of ₹ 62 crores) in the next assessment year which the assessee could achieve only because the business by that time had got stabilised.

B. TRIBUNAL

5 ***Emersion Automation Solutios Intelligent Platforms (P.) Ltd. vs. DCIT [2024] 166 taxmann.com 516 (Bangalore – Trib.)***

Where assessee-company had received various support services from its AE and had paid certain amount for these services and TPO had disallowed the said expense on ground that assessee did not receive any benefit from the services rendered by its AE, the Hon'ble Tribunal held that, since for claiming an expense, incurring of expense as well as genuineness of expenses is to be seen and not fruits ripened by businessman on incurring of business expenses, impugned disallowance made by TPO was not permissible and same was to be deleted.

Facts

i. Assessee company had received various support services from its AE and had paid certain amount for these services.

ii. For benchmarking this payment, assessee had adopted TNMM and claimed the aforesaid payments to be at ALP.

iii. TNMM method adopted by assessee was rejected by TPO who disallowed the entire expense on ground that assessee did not receive any benefit from services rendered by its AE.

iv. The DRP upheld the action of the TPO.

v. Aggrieved, the assessee filed appeal before the Hon'ble Tribunal.

Decision

i. The Hon'ble Tribunal held the argument of the Revenue that the assessee had failed to obtain any benefit via rendering of these services by AE was not justifiable because it is settled position of law that for claiming of an expense, the incurring of expense as well as genuineness of expenses is to be seen and not the fruits ripped by the businessman on incurring of business expenses.

ii. It is equally settled position of law that the AO/TPO would not sit in the armchair of a businessman as held by Hon'ble Supreme Court in the case of S.A. Builder 237 ITR Page 1.

iii. Therefore, it held that the disallowance was not permissible and allowed the same by placing reliance upon the judgment of Hon'ble Delhi High Court in the case of HIV Communication Private Limited in ITA No. 306 of 2011 and Abhishek Auto Industries Limited in ITA No. 1433/Del/2009.

6 ***Tyco Electronics Singapore Pte Ltd. vs. DCIT (International Taxation) [2024] 166 taxmann.com 491 (Delhi – Trib.)***

Where assessee, a Singapore based company, claimed exemption on capital gains arising from sale of shares of an Indian company under India-Singapore DTAA, the Hon'ble Tribunal, following the judgement of the Hon'ble Delhi HC in ***Tiger Global International III Holdings vs. AAR – [2024] 165 taxmann.com 850 (Del)***, allowed the said exemption since a) the assessee had discharged initial burden by filing statutory evidence of tax residency in the form of TRC which was not rebutted by any inquiry or evidence by Assessing Officer b) the assessee had incurred substantial expenditure in the preceding and the relevant financial year which showed that it had significant business operations/activities in Singapore which was not disputed by the AO. It further held, that consequently, it could not be alleged that the assessee company was not a resident in Singapore and, therefore, assessee was eligible for the benefits of the Indo-Singapore DTAA, more so as the AO had not denied the treaty benefits in other years.

> "Happiness is when what you think, what you say, and what you do are in harmony."
>
> — *Mahatma Gandhi*

INDIRECT TAXES
GST

CA Naresh Sheth CA Jinesh Shah

A. RULINGS BY APPELLATE AUTHORITY FOR ADVANCE RULING

1 *Rajkot Nagarik Sahakari Bank Ltd [Advance Ruling No. GUJ/GAAAR/APPEAL/2023/07] – GUJRAT AAAR*

Facts and Issues involved

Appellant is multi state Schedule Co-operative bank. The State Government announced "Atma Nirbhar Gujarat Sahay Yojna" on 16.5.2020, appellant and credit co-operative societies were to provide loans without securities up to ₹ 1 lac to customers and charge 8% interest p.a. Out of this 8% interest, 2% interest portion was to be paid by the customer and remaining 6% interest portion was borne by the State Government. Further based on the performance of the respective banks, they would be allowed one-time incentive amount depending on the total lending done by the Banks under the said scheme.

After disbursement of loan to the beneficiaries, appellant forwarded the claim for incentive/subsidy through the office of District Registrar, Co-operative Society, Rajkot and after considering the said claim, the Gujarat Government has sanctioned incentive to the tune of ₹ 9,24,28,936/-.

Appellant sought an advance ruling as to whether:

1. Incentives received under "Atma Nirbhar Gujarat Sahay Yojna" dated 16-5-2020 could be considered as subsidy and not chargeable to tax?
2. Incentive received under said scheme could be considered as supply of service under the provisions of Section 7 under CGST Act?
3. Incentive received under said scheme, if considered as supply then would it be covered under sub-section (2) of Section 7 of CGST Act?
4. Incentive received under said scheme could be considered as excluded from the value of taxable supply under clause (e) of sub-section (2) of Section 15 of CGST Act, 2017.

Gujarat AAR, vide its ruling Order No. GUJ/GAAR/R/44/2021 dated 11.08.2021 held that the said incentive is liable to GST. It is not a subsidy and does not merit exclusion from valuation u/s 15(2)(e) of CGST Act. The said supply is covered u/s 7(1)(a) of CGST Act and not covered at Section 7(2) of CGST Act.

Appeal to AAAR

Being aggrieved by above referred order, appellant has preferred an appeal to AAAR on following grounds:

- Subsidy received in form of incentive cannot be termed as consideration u/s 2(31) of CGST Act;
- Subsidy received in form of incentive is not covered under definition of scope of supply u/s 7(2) of CGST Act;
- Payment made by Centre Government/ State Government as incentive/subsidy is nothing but subsidy paid to achieve some object;
- Following ruling/case laws substantiate their above ground:
  - ***Rashmi Hospitality Service Pvt. Ltd. – Order No. KAR ADRG 61/2019, dated 20-9-2019*** wherein it was held that any compensation/ amount paid for implementation of government scheme would be treated as subsidy.
  - ***Ponni Sugars and Chemicals Limited – [2008(9) TMI 14]*** wherein Honorable SC held that the purpose of payment by Government is to allow subsidized loan to a specified class of persons and therefore any amount paid under scheme would be considered as subsidy.
- Assuming that it is not a subsidy, then it can be considered as payment of 'actionable claim';
- At the most it can be treated as differential interest which is not chargeable to GST in terms of notification no. 12/2017-CT(R).

Discussion by and Observations of AAAR

The sole contention of the appellant is that the amount received by them under the heading incentive, as mentioned in the State Government Resolutions, is akin to 'subsidy' and hence not leviable to GST.

Government resolution purposefully used two words one being 'vyaj sahay' which would mean interest subsidy while the other word being incentive, which even in the Government Resolution is mentioned in English language, though the text of the entire Resolution is in Gujarati.

Therefore, the submission that both the words mean the same is neither factually correct nor legally tenable. Had the words been same, there was no reason to have mentioned them differently in the Government Resolution. While the 6% interest rebate granted to the beneficiary/loanee who avails the loan is mentioned as vyaj shay, the amount paid to the Cooperative Banks, Cooperative Credit Society, on achieving a certain amount of disbursement of loan target, is explicitly mentioned in a different and distinct terminology as an incentive.

The incentive can be termed as a consideration to the Cooperative Banks for providing the service to the beneficiaries/ loanees by extending loans under the scheme promoted by the State Government of Gujarat. The argument of the appellant, therefore, that they had provided services only to the person who had availed loan and not to Government, fails.

The incentive granted based on the performance cannot be termed as a subsidy. Even otherwise, GAAR has clearly held that this incentive granted to Cooperative Banks/ Cooperative Credit Societies granted no benefit to the loanees.

Further, one time incentive paid to appellant earned proportionate to the total disbursements of loans, would not fall within the ambit of actionable claims so as to fall within the exclusion as per Sr. No.6 of Schedule III to CGST Act.

The next argument of appellant that incentive should be equated as differential interest also fails. Had that been the case, the incentive given would have been constant/static and would not have varied with the increase in the level of disbursements of loans.

Ruling of AAAR

Appeal filed by appellant against Advance Ruling No. GUJ/GAAR/R/3512021 dated 30.07.2021 of the Gujarat Authority for Advance Ruling is rejected.

B. RULINGS BY ADVANCE RULING AUTHORITY

1 *Anmol Industries Ltd [2024-TIOL-14-AAR-GST] – West Bengal AAR*

Facts and Issues involved

Applicant has entered into a 30-year leasing agreement with the Shyama Prasad Mookerjee Port, Kolkata (SMPK) for a piece of land which will be used for setting up commercial office complex. Applicant would pay over ₹ 39 crore to SMPK as upfront lease premium. Further, the allotment letter seeks to recover GST at 18 per cent on the said upfront lease premium payment.

Applicant has sought an advance ruling as to whether upfront premium payable towards the services of by way of granting of long-term lease of thirty years, or more of industrial plots or plots for development of infrastructure for financial business by SMPK is exempted under entry 41 of Notification No. 12/2017-CGST (Rate) dated 28.06.2017?

Applicant's submissions

In order to qualify for exemption under entry 41 of Notification No. 12/2017-CGST (Rate) dated 28.06.2017, following conditions need to be satisfied.

- Firstly, the lease period should be of thirty years or more.
- Secondly, the property leased should be an Industrial plot or plots for development of infrastructure for financial business.
- Thirdly, service provider must be a state Government Industrial Development Corporations or Undertakings or by any other entity having 20 per cent. or more ownership of Central Government, State Government, Union territory (either directly or through an entity wholly controlled by the Central Government, State Government, Union territory).
- Lastly, the Service Recipient must be an Industrial Unit.

In present case, applicant was of the view that all the above conditions are satisfied as under and thus, it is entitled to claim exemption benefit:

- The present lease of land is for thirty years which can be duly indicated in the Allotment Letter dated 21.09.2022 issued by SMPK. Thus, the first condition as mentioned above is satisfied in the instant case.
- Applicant will be setting up their corporate office building wherein all the financial activities shall be undertaken.

Further, as per the sketch of the plot annexed with the tender document, the plot is in an industrial area as there was another unit of India Foils Limited running at the said plot. Thus, the second condition as stated above is duly satisfied in the instant case.

- As regards the third condition stated above, SMPK in the instant case, is a body incorporated under the Ministry of Ports, Shipping and Waterways, Government of India. The lessor is directly controlled by the Central Government department,
- Applicant is a manufacturing company duly registered under CGST/WBGST Act, 2017 and has manufacturing units in the state of West Bengal. Therefore, the applicant fulfils the last condition as well.

Discussions by and observations of AAR

The crux of the contention of the applicant is that the applicant being an industrial unit has entered into an agreement for having leased out land for a period of thirty years for setting up commercial office complex against upfront lease premium. According to the applicant, the aforesaid factual position leaves no doubt that the applicant has fulfilled all the conditions as specified in entry number 41 of Notification No. 12/2017- Central Tax (Rate) dated 28.06.2017 from the end of the recipient. And that from supplier's end, SMPK also fulfils the condition specified in the said entry.

The first condition regarding lease period of thirty years or more is a settled matter of fact as evident from the allotment letter itself. So, the first condition for availing the benefit of exemption as per the aforesaid entry gets fulfilled.

Applicant has argued that by setting up their commercial office complex, all the financial activities shall be undertaken. He has also argued that as per the sketch of the plot annexed with the tender document, it is clear that the plot is in an industrial area as an industrial unit of another business entity was previously operative at the same plot. The last proviso of the condition for exemption vide entry no 41 of the Notification No. 12/2017-Central Tax (Rate) dated 28.06.2017 requires that the lease agreement entered into by the original lessor with the original lessee for lease of such plots shall incorporate in the terms and conditions, the fact that the central tax was exempted on the long term lease of the plots by the original lessor to the original lessee subject to above condition and that the parties to the said agreements undertake to comply with the same. Similar Notification No. 1136 F.T. dated 28.06.2017 issued by the Government of West Bengal speaks about incorporation of exemption from payment of State tax in the lease agreement. However, the copy of the allotment letter issued by the SMPK dated 21.09.2022, as submitted by the applicant during the original stage of hearing, does not refer any such exemption from payment of tax. On the contrary, para 3(a) of the said allotment letter specifically mentions payment of applicable GST on upfront premium.

Thus, even if one assumes that the applicant has taken on lease an industrial plot for financial business from SMPK, the said supply of services does not fulfill all the conditions as specified in the relevant entry of the exemption notification.

SMPK takes administrative and financial decisions, raises loans, pays salaries and other financial benefits to its employees and retired employees, decides the rate for assets and

services available at the port, creates master plan for infra structural projects, without any intervention from the Central Government, it is rather clear that SMPK is controlled by the Board which is an autonomous body. Thus, the third condition for availing the benefit of exemption as per the aforesaid entry, i.e. whether service provider is a state Government Industrial Development Corporation or Undertaking or any other entity having 20 per cent. or more ownership of Central Government, State Government, Union territory (either directly or through an entity wholly controlled by the Central Government, State Government, Union territory) does not get fulfilled in this case.

Ruling of AAR

Services by way of grant of long-term lease of land by SMPK to the applicant for the purpose of "setting up commercial office complex' as involved in the instant case is not covered under entry 41 of Notification No. 12/2017 Central Tax (Rate) dated 28.06.2017 and therefore cannot be treated as an exempt supply.

2 ***Ramesh Kumar Jorasia (Muskan Construction) – [2024] 166 taxmann.com 364 – Rajasthan AAR***

Facts and issue involved

Applicant intends to start the process of making glasses, toughened, reflective, laminated, secured etc. in the name of Muskan Construction. Applicant has been awarded a contract from Jaipur Development Authority ('JDA') for Operation and Maintenance of Water Supply Scheme for 1 year in JDA Jurisdiction at PHE – I (South) Jaipur. The contract is in the nature of Pure Labour Service Contract including involvement of material not exceeding 25% of total contract value.

Applicant has sought an advance ruling as to whether Jaipur Development Authority ('JDA') can be considered as 'State Government' in regards of exemption Entry 3A of Notification No. 12/2017-CT(R) dated 28.06.2017?

Discussion by and Observations of AAR

The issue to be deliberated on is whether the above contract will be covered by the exemption entry 3A of Notification No. 12/2017 Central Tax – Rate dated 28.06.2017 which states that composite supply of goods and services in which the value of goods does not exceed 25% of the value of the composite supply provided to Central Government, State Government, Local Authority or any Governmental Authority is exempt from tax i.e. carries a nil rate of GST. For the above exemption entry to be applicable, JDA should qualify as a Central Government, State Government, Local Authority or any Governmental Authority.

Section 2(53) of the CGST Act, 2017 defines "Government" to mean the Central Government. As per Section 2(53) of the RGST Act, 2017 the term "Government" is defined to mean Government of Rajasthan.

JDA has been established vide The Jaipur Development Authority Act, 1982 [Act No. 25 of 1982] ('JDA Act'). It is mentioned in the Act itself that the authority should be deemed to be a local authority within the meaning of the term 'local authority' as defined in Rajasthan General Clauses Act, 1955.

Section 2(69) of the CGST Act defines a local authority as under:

"*Local authority*" *means-*

(a) *a "Panchayat" as defined in clause (d) of article 243 of the Constitution;*

(b) *a "Municipality" as defined in clause (e) of article 243P of the Constitution;*

(c) ***a Municipal Committee, a Zilla Parishad, a District Board, and any other authority legally entitled to, or entrusted by the Central Government or any State Government with the control or management of a municipal or local fund;***

(d) *a Cantonment Board as defined in section 3 of the Cantonments Act, 2006 (41 of 2006);*

(e) *a Regional Council or a District Council constituted under the Sixth Schedule to the Constitution;*

(f) *a Development Board constituted under article 371 8[and article 371J] of the Constitution; or*

(g) *a Regional Council constituted under article 371A of the Constitution*

Section 2(69)(c) of the GST Act is similar to the definition of 'local authority' as per Section 3(31) of the General Clauses Act, 1897 which defines it to mean a municipal committee, district board, body of port commissioners or other authority legally entitled to or entrusted buy the Government with **the control or management of a municipal or local fund.**

JDA is not a municipality as a municipal corporation already exists in Jaipur City thus JDA cannot be entrusted with the control or management of a municipal or local fund.

Further, Governmental authority is defined in clause (zf) of Notification No. 12/2017 – CT(R) to mean an authority or board or any other body:

i. set up by an Act of Parliament or State Legislature; or

ii. established by any government with 90% or more participation by way of equity or control to carry out any function entrusted to a Municipality under Article 243W of the Constitution or to a Panchayat under Article 243G of the Constitution.

JDA is constituted by State Government under JDA Act and fully controlled by State Government. It is a Governmental Authority under GST Act. *Vide* Notification 16/2021 – Central Tax (Rate), entry in 3A of Notification No. 12/2017–C.T. (R) was amended and the words "a Governmental Authority or a Government Entity" was omitted i.e. the exemption no longer applies to service provided to a Governmental Authority or a Government Entity.

Ruling of AAR

JDA is not covered under the definition of "State Government" in reference to entry 3A of Notification No. 12/2017 – CT(R) and therefore, contract with JDA shall not qualify for exemption benefit.

3 *MCM Pacific PTE Ltd [2024-TIOL-16-AAR-GST] – Andhra Pradesh AAR*

Facts and issues involved

Applicant is a Singapore based company and is in the business of power generation and distribution. Applicant, currently, does not have any place business in India and resultantly is not registered in India under any

Act. Applicant is in the process of procuring certain goods/assets as per the agreement from Lanco Kondapallli Power Limited ("Lanco") a company which is currently undergoing liquidation in India. Applicant is acquiring the said goods/assets for the further transfer of the same to Myanmar after dismantling it. The intention of the applicant is to take the assets out of India to a place outside India.

Applicant has sought a ruling as to whether the outward supply of goods procured by the applicant from an Indian company undergoing liquidation shall be treated as Zero-Rated Supplies as per Section 16 of IGST Act? Whether the same can be exported under Zero-Rated supplies without payment of tax against Letter of Undertaking ("LUT")?

Discussions and Observations of AAR

As per Terms of the Process Document and LOI, MCM being the successful bidder is required to pay the entire sale consideration and is required to bear all applicable taxes and duties as may be applicable.

As per the representation of Lanco, it is submitted that the successful bidder, in this case the applicant, will be required to complete the entire process of taking possession of the assets and removing the same from the premises of the Corporate Debtor. Hence, the sale process will conclude in India upon issuance of Sale Certificate by the Liquidator and the applicant will be responsible for dismantling, transporting and exporting the Assets to Myanmar. In the light of the same, it is evidently clear neither the Lanco nor the liquidator are not being acting in the capacity of an exporter.

Here it involves two transactions, first is the possession of asset and the same was in the territory of India. The delivery of goods is made in the territory of India to the applicant. It is an undisputed fact that the supply involves movement of goods and therefore the place of supply would be the termination for delivery to the recipient. Hence, the place of supply is location of point where goods delivered to applicant i.e. premises of Lanco.

Ruling of AAR

The supply covered under this application subject to the agreement, facts and information furnished by the Applicant is neither exempted nor export of goods/services, The stated transaction is not treated as zero rated supplies. Further the export without payment of tax against Letter of Undertaking ("LUT"), for the said transaction "does not arise".

> "It is unwise to be too sure of one's own wisdom. It is healthy to be reminded that the strongest might weaken and the wisest might err."
>
> — *Mahatma Gandhi*

INDIRECT TAXES
Service Tax

CA Rajiv Luthia CA Keval Shah

1 *M/S Lakshmi Machine Works Ltd. vs. The Commissioner of CGST and Central Excise Coimbatore Commissionerate 2024-TIOL-879-CESTAT- MAD*

Backgrounds and facts of the case

- The appellant is engaged in manufacture of textile machinery and spares and are registered with the Central Excise Department. M/s. Super Sales India Limited (M/s. SSIL) Coimbatore is a selling agent of the appellant and also provides erection, commissioning and installation work for the appellant. The said selling agent raises invoices for service charges including service tax on the appellant for providing erection, commissioning and installation services. The appellant availed cenvat credit of the service tax paid on such services as an input service for them.

- Various SCN for the period's April 2009 to July 2013, September 2013 to March 2014 and April 2014 to August 2014 were issued to the appellants for disallowing the CENVAT credit availed by them on the input services from SSIL. The adjudicating authority confirmed the said demands, hence the present appeal.

Arguments by the Appellant

- Ld. Consultant submitted that M/s. SSIL was appointed as a selling agent for the appellant who is also required to carry out erection and commissioning of the machinery outside India. The invoices indicated the cost of erection, commissioning as well as the charges that have to be incurred by the appellant in the nature of transportation charges etc. The appellant has thus included the cost of the services in the cost of final products and therefore they are eligible to take cenvat credit of the service tax paid on such services. The said services are availed by appellant directly or indirectly, in or in relation to manufacture of final products and therefore and therefore would fall within the definition of "input services" under Rule 2 (l) of Cenvat Credit Rules, 2004. The cost of the goods cleared include the cost of supervision and installation services and without providing such services, the goods cannot be installed within the customer's site.

- The services are provided by M/s. SSIL for and on behalf of the appellant and the appellant has included these services in the price of the product which means the

service charges are received in foreign currency while receiving the price for the goods supplied. M/s. SSIL have provided services to the appellant. Even though the machineries have been installed abroad since M/s. SSIL who is located in India has provided sales services to the appellant also who is in India the services are subject to levy of service tax at the hands of M/s. SSIL. They have correctly collected the service tax from the appellant and, in turn, appellant has availed cenvat credit of such service tax. The machinery which is sold, installed and put to work the activity of manufacturing would not be complete. The allegation that the said activity is a post-manufacturing activity and therefore not eligible for credit is without any factual basis.

Decision of the Hon'ble Tribunal

- It has been observed from the invoice that the costs of Erection, Commission and Installation are not included in the cost of machineries sold. It is mentioned in the invoice that the appellant would be providing free supervision of the installation, the original authority has concluded that the cost of such services is not included in the assessable value of final products, and being post-manufacturing activity, the appellant is not eligible for availing input credit.

- The Engineers of M/s. SSIL are deputed to provide service of erection and commissioning and installation. Thus M/s. SSIL has provided ECIS to customers on behalf of appellant. In fact, M/s. SSIL has deputed their own engineer to go abroad and provide the services. The services are provided as per the requirement of the appellant and in fact M/s. SSIL has provided services to the appellant. The whole gamut of contentions and discussions has been as to whether the charges for ECIS have been included in the value of goods supplied by appellant.

- This issue comes into consideration only in a case where the input service is availed upto the place of removal. For e.g. in the case of outward transportation of goods the credit of service tax would be eligible as an input service only upto the place of removal. The definition of 'input service' is very wide and it has a 'means' part and 'includes' part. The services listed in the 'includes' part are services in the nature of accounting, advertising, sales promotion, marketing, research etc. The definition does not restrict or say that these kinds of services are to be availed upto the place of removal. The definition does not say that these services have to be availed within the factory only. It is not practically possible to consume all input services within the factory.

- The definition of 'inputs' say that 'goods received within the factory'. Whereas in the case of input services, even if they are availed outside the factory, it is eligible for credit. In the present case, the service (ECIS) has been provided by M/s. SSIL outside India on the request of the appellant. This is because at the time of sale of the textile machinery, the appellant assures to carry out the activity of ECIS at the customer's premises. The appellant has outsourced this activity and the same is provided by M/s. SSIL and correspondingly issued invoices to the appellant for charges of providing ECIS on behalf of appellant and

also collected the service tax. The appellant is able to sell the finished product only by assuring proper installation of machinery by experts at the customer's premises.

- Undeniably, the activity is in relation to manufacture of products by the appellant. The ECIS is an eligible 'input service' to the appellant. The credit availed in our view is proper.
- For the period prior to 01.04.2011 the definition of "input services" had a wide ambit as it included the words "activities relating to business". Almost all services would fall within the expression "activities relating to business" and therefore the services of installation would be an eligible input service.
- In the case of ***Ramala Sahakari Chini Mills Ltd. vs. CCE Meerut - 2010 (260) ELT 321 (SC) = 2010-TIOL-102-SC-CX the Hon'ble SC*** considered the meaning of the word "include" used in the definition of "inputs". It was held that the word does not have a restricted meaning and should be given a wide interpretation. When services are availed directly or indirectly, in or in relation to the manufacture and clearance of final products, the credit would be eligible.
- Since M/s. SSIL is an agent appointed by the appellant for providing the installation services on behalf of appellant by incurring cost for providing such services, the service tax collected by M/s. SSIL from the appellant is in order. The appellant is therefore eligible to avail the credit.

2 ***M/s Industrial Fire and Safety Services Versus Commissioner of Central Excise & St, Vadodara-I 2024(9) TMI 693-CESTAT AHMEDABAD***

Backgrounds and facts of the case

- The appellant is engaged in assisting fire safety service to handle any emergency arising at the client's premises and to maintain fire and safety equipments in working condition. The department during the course of audit and scrutiny of the financial records of the appellant entertained a view that the appellant is providing Manpower Recruitment or Supply Agency Service and have not paid the service tax amounting to ₹ 34,03,091/- for the period October 2006 to March 2011.
- Accordingly SCN was issued asking to pay service tax of ₹ 34,03,091/- under Section 73(1) of the Finance Act, 1994. Interest and penal provisions of the Finance Act, 1994 have also been invoked. The matter got adjudicated where under all the charges as invoked in the show cause notice have been confirmed against the appellant. The appellant have approached the Commissioner (Appeals) for relief however, the appellant did not succeed at the appeal level also and hence the present appeal.

Arguments by the Appellant

- It was submitted that appellant has entered into annual contract for assisting and fire fighting service entered with Chambal Fertilizers and Chemicals Limited at Gadepan site and has pointed out that annual contract is for assistance and fire safety service to handle any

emergency in the plant of their clients and residential township of M/s. Chambal Fertilizers and Chemicals Limited for which they are paid a lump sum amount of ₹ 1,63,000/- per month.

- The personnel deployed by the appellant have always remained at their own pay-roll and worked under their personal control and supervision. The company, where the fire fighting personnel are deployed does not exercise any control over the persons engaged by the appellant and therefore, it is wrong on the part of the department to allege that the appellant have supplied manpower to various companies. It has been contended that they have taken a specific work of fire detection and for handling and to upkeep fire safety equipments on an annual contract basis, therefore, the same does not fall under the category of Manpower Recruitment or Supply Agency Service as provided under Section 65 (68) of the Finance Act, 1994. The learned advocate argued that when specific job is undertaken on lump-sum payment on monthly/annual basis, same cannot be classified as service under the category of Manpower Recruitment or Supply Agency Service.

Decision of the Hon'ble Tribunal

- A perusal of work order makes it clear that annual contract was for assisting fire fighting and to handle any emergency arising due to fire incidence in the complex of M/s. Chambal Fertilizers and Chemicals Limited and to maintain fire safety equipments in healthy and working condition and for this purpose, the appellant are being paid an amount of ₹ 1,63,000/- per month. In the terms of contract, we find that it is the responsibility that appellant to make statutory monthly payment like PF, ECI etc. for his employees and the receipt of the same need to be forwarded to the unit entering into the contract for fire safety with the appellant.

- Most of the work orders as well as invoices are for maintenance and fire fighting service as claimed by the appellant. It is also relevant to consider the definition given in the Finance Act for Manpower Recruitment or Supply Agency Service which provides that for service under the category of Manpower Recruitment or Supply Agency Service 'any person engaged in providing any service directly or indirectly in any manner for recruitment or supply of manpower, temporarily or otherwise to any other person'. From the work order which we have mentioned in the forgoing paras, there is no contract for providing man power and the same is for specific purpose for fire fighting and to handle any emergent situation as well as for maintenance and keeping the fire fighting equipments in good condition. We are of the view that activity undertaken by the appellant does not fall under the category of Manpower Recruitment or Supply Agency Service.

- The Tribunal also rely upon this Tribunal decision in the case of ***M/s. Sureel Enterprise Pvt. Limited vs. CCE&ST, Ahmedabad vide order No. A/11947-11949/2019 dated 18.10.2019***.

- In view of entire above discussion and following the above decision, we hold that impugned order-in-appeal is not sustainable. We set-aside the same. Accordingly, the appeal is allowed.

CORPORATE LAWS
Case Law Update

CS Makarand Joshi

IBC – CASE – 1

In the matter of *Mitsubishi Heavy Industries Limited (Appellant) vs. Punj Lloyd Limited (Respondent) and Others* at National Company Law Appellate Tribunal (NCLAT) 9 August 2024

Facts of the Case

- In 2015, a contract was entered between Indian Oil LNG Private Limited (IOLPL) and Mitsubishi Heavy Industries Limited (the appellant) on 15 September 2015. The appellant subcontracted parts of the work to Punj Lloyd Ltd. (Respondent No. 1/Corporate Debtor/CD).

- As per the contract's general conditions, the Corporate Debtor (CD) was required to provide an unconditional and irrevocable Bank Guarantee as security for proper and timely performance of the obligations. A Performance Bank Guarantee worth approximately ₹ 47.7 Crores was issued by the State Bank of India in favor of the appellant.

- The agreed mechanical completion date under the contract with CD was 23 March 2018, but the appellant issued a Mechanical Completion Certificate with a completion date of 31 January 2019.

- On 8 March 2019, the Corporate Insolvency Resolution Process (CIRP) was initiated against CD before the National Company Law Tribunal (NCLT).

- On 30 October 2019, the appellant invoked the Performance Bank Guarantee due to fundamental breaches of the contract, including delays in achieving mechanical completion and failure to inspect and repair leakage in the LNG Tank during the defect liability period.

- On 13 November 2019, the Resolution Professional (RP) of CD filed an application before the NCLT, seeking directions under Section 14 of the Insolvency and Bankruptcy Code, 2016 (IBC) to restrain the appellant from encashing the Performance Bank Guarantee.

- *NCLT referred to the NCLAT judgment in C&C Construction Ltd. vs. Power Grid Corporation of India Limited (26 July 2021), where it was held that the moratorium period under Section 14 of the IBC does not cover performance bank guarantees.*

- On 27 May 2022, NCLT directed the liquidation of the CD as a going concern.
- Despite this, the RP's application to restrain the appellant from encashing the Performance Bank Guarantee was allowed by an order dated 30 October 2023, against which this appeal has been filed.

Arguments of the Appellant

- The Performance Bank Guarantee (PBG) issued by the State Bank of India in favor of the appellant was irrevocable and unconditional.
- The CD had agreed to complete the work by the mechanical completion date, but there was a 10-month delay. During the defect liability period, the appellant sent emails to CD to inspect leakage in the LNG tank, but these requests were refused, resulting in a breach of contract by CD.
- As a result, the appellant was forced to invoke the PBG on 30 October 2019.
- The RP filed an application on 13 November 2019, seeking to restrain the appellant from encashing the PBG. However, the application was not maintainable because:
  - — NCLT lacked jurisdiction to determine the legality of the PBG invocation or adjudicate contractual disputes between the appellant and CD.
  - — The PBG is an independent contract, and courts should not interfere with its invocation except in exceptional circumstances, which did not exist in this case.
- Since the bank guarantee was unconditional and irrevocable, the appellant was not required to prove losses at the time of invocation. The appellant had valid claims due to:
  - — Delay in mechanical completion.
  - — Failure to cure defects during the defect liability period
- The Defect Liability Period was 30 months from the mechanical completion date or 24 months from the issuance of the completion certificate. During this period, the CD was required to conduct searches, tests, or trials to determine the cause of any defect.
- The NCLT's order restraining the appellant from encashing the PBG was without jurisdiction.
- The PBG has been explicitly excluded from the moratorium under Section 14 of the IBC, following an amendment by Act 26/2018 effective 6 June 2018.
- As such, the moratorium under Section 14 of the IBC did not apply to the PBG, and the appellant was fully entitled to invoke the PBG even after the insolvency proceedings against CD which began on 8 March 2019.
- In similar cases within the same CIRP, the NCLT rejected applications filed by the RP seeking to restrain the invocation of guarantees by IOCL and GAIL, but in this case, the NCLT allowed the RP's application, resulting in an inconsistent ruling.
- The NCLT was aware that the issue was pending before the NCLAT in the case of C&C Construction Ltd., which was decided on 26 July 2021, confirming

that the moratorium period under Section 14 does not cover performance bank guarantees, meaning the RP's application should have been rejected.

Arguments of the Respondent

- NCLT had ample jurisdiction to adjudicate the application filed by the RP regarding the bank guarantee.
- NCLT previously considered similar applications filed by the RP in cases involving IOCL, GAIL, and Triveni-Mersens and passed orders on the issues related to bank guarantees, indicating that the appellant cannot now claim that NCLT lacks jurisdiction.
- The orders passed by NCLT in the IOCL, GAIL, and PLL cases were not overturned by the NCLAT, and the Triveni-Mersens order applied directly to this case. In the Triveni-Mersens case, NCLT held that once a Mechanical Completion Certificate is issued, the bank guarantee should be discharged.
- Even if the bank guarantee was termed unconditional and irrevocable, this did not mean the appellant could invoke it arbitrarily or outside the scope of contractual provisions. Any claim during the Defect Liability Period should have been quantified and communicated to the Corporate Debtor (CD) with sufficient evidence, which the appellant failed to do.
- As per Clause 7.1.2, once a Mechanical Completion Certificate is issued, the contractor is no longer responsible for that part of the work, unless there is damage caused by the CD's ongoing activities.
- In this case, the Mechanical Completion Certificate was issued on 3 September 2018, so the CD could not be held responsible for the alleged leakage. The invocation of the bank guarantee could lead to asset stripping of the CD.
- The argument that the bank guarantee is not an asset of the CD should be rejected, as the State Bank of India extended the bank guarantee based on the CD's collateral. If the bank guarantee was wrongfully invoked, the State Bank of India would claim the same from the CD as a creditor, causing the CD to suffer the ultimate loss.
- NCLT has jurisdiction to examine all aspects related to bank guarantee invocation, including factual aspects. Given the special equities in favor of the CD, the bank guarantee should not have been invoked, as doing so would cause irretrievable injury to the CD.

Held

- NCLAT referred the following cases:
  - — ***State Bank of India vs. V. Ramakrishnan & Anr.***
  - — ***Himadri Chemical Industries Ltd. vs. Coal Tar Refining Co.***
  - — ***Standard Chartered Bank vs. Heavy Engineering Corporation Limited & Anr.***
- *It was noted that the issue regarding the invocation of performance bank guarantees during the moratorium period is well-established in law. Also noted that the definition clarifies that "Security Interest" does not include PBG. Effective from June 6, 2018, Section*

14(3) explicitly excludes security in a contract of guarantee from the provisions of Section 14(1) of the IBC. It is well settled that Section 14 does not affect the right of a beneficiary to invoke a bank guarantee during the moratorium. The disputes between the beneficiary and the party who requested the bank guarantee are immaterial and do not affect invocation. Invocation of a bank guarantee may only be restrained on the grounds of irretrievable injury and special equity.

- NCLT did not allow the application filed by the Resolution Professional (RP) based on exceptions highlighted by the Supreme Court in Standard Chartered Bank. Instead, NCLT stated that the appellant failed to prove any fault on the part of the CD or quantify its claim.
- NCLT allowed the application on the grounds that the appellant did not prove a default of contract by the CD.
- According to the Supreme Court in *Standard Chartered Bank*, disputes raised by the contractor regarding the invocation of an unconditional and irrevocable bank guarantee are not to be considered.
- The NCLT erred by allowing the application to restrain the appellant and other banks from invoking the bank guarantee, rendering its order unsustainable. The appeal was allowed, overturning the NCLT's decision.

CASE – 2 SEBI

WRIT PETITION IN THE HIGH COURT OF JUDICATURE AT BOMBAY IN THE MATTER OF DR. PRADEEP MEHTA

Facts of The Order

1. The present writ petition deals with two petitions filed under Article 226 of the Constitution of India. The first Petition No.1590 of 2021 is filed by Dr. Pradeep Mehta ('Petitioner') and the second Petition (Writ Petition No. 2228 of 2021) is filed by his son Neil Pradeep Mehta. Dr. Pradeep Mehta and Neil Pradeep Mehta are collectively referred to as 'Petitioners'.

2. In both the writ petitions the reliefs prayed for are quite similar, which pertain to challenging the action of the Bombay Stock Exchange ('BSE') and the National Stock Exchange ('NSE') under the directives of the Securities and Exchange Board of India ('SEBI') to freeze the Demat Accounts of the Petitioners.

3. Respondents in the matter are- Respondent 1-Union of India, Respondent 2-Securities and Exchange Board of India, Respondent-3 Bombay Stock Exchange Ltd. Respondent 4-National Stock Exchange Ltd., Respondent 5-Central Depository Services (India) Ltd.('CDSL'), Respondent 6- National Securities Depository Ltd. ('NSDL') Collectively referred to as respondents. Collectively referred as 'Respondents'.

4. The challenge raised in the petition was with regards to the freezing of the "demat account" of the Petitioners by the respondent no. 6 – NSDL under the regulations/orders of the SEBI merely for the reason that at one time Petitioner happened to be one of the promoters

of a company. Neil Pradeep Mehta held a demat account along with his father Dr. Pradeep Mehta, who was the second holder and his demat account was also freezed.

5. The Petitioner was a medical practitioner, and he had one of the investments made in a company named Shrenuj & Company Limited ('Shrenuj/ the Company') which was promoted in the year 1989 by his father-in-law.

6. In 2016, the Petitioner learnt that there was some litigation in regard to the affiliate of Shrenuj in Hong Kong. It was learnt that Shrenuj was facing financial issues and due to this, Shrenuj could not file its financial results as per the SEBI Regulations.

7. Thereafter on March 2, 2017, respondent no. 3 – BSE issued a letter to Shrenuj in regard to non-submission of financial results under Regulation 33 of the SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015 ('SEBI LODR') inter alia stating that the Company had not submitted to BSE and NSE its quarterly financial results for the period ended in December 2016, and hence, the company was liable to pay a fine of ₹ 1,84,000/. Shrenuj submitted reply vide its letter dt. March 20, 2017, to the BSE and NSE.

8. In the month of March 2017, the Petitioners, received a monthly statement of demat account and found that some of the shares in their demat account maintained with the Stock Holding Corporation of India Limited ('SHCIL') were frozen.

9. NSDL by communications dated March 23, 2017, and April 13, 2017, freezed the demat account of the Petitioner applying Circular No. CIR/CFD/CMD/12/2015 dated November 30, 2015 and Circular No. SEBI/HOCFD/CMD/CIR/P/2016/116 dated October 26, 2016 ('SEBI Circulars'). The NSDL freezed not only the Petitioner's shareholding in Shrenuj & Company but also in ITC Limited.

10. Meanwhile, Shrenuj addressed a letter dated September 27, 2017, to the BSE stating the reasons as to why the company could not submit the quarterly financial results since the quarter ended on June 30, 2016.

11. The Petitioner also addressed a detailed letter dated January 4, 2018, to the SEBI stating that he was never in any direct or indirect control of Shrenuj, and that he never held any post in the company; that he was unaware of the company had allegedly violated the (LODR) Regulations.

12. The Petitioner had appealed before the Securities Appellate Tribunal ('the Tribunal'/'SAT') and an order was passed by the Tribunal dtd April 18, 2018 disposing Petitioner's appeal and directing BSE and NSE to dispose of representation made by the Petitioner's.

13. Pursuant to the order dated April 18, 2018 passed by the Tribunal, Respondent no. 4 - NSE replied to the said representation of the Petitioner by its letter dated May 11, 2018 *inter alia* stating that in accordance with the SEBI circulars which prescribed for SOP, trading is suspended in the securities of Shrenuj, as Shrenuj had defaulted in the filing of its quarterly financial results with the BSE and NSE for the quarters ending on June 2016, September 2016 and December 2016. A fine of ₹ 25,10,815/- also came to be imposed on Shrenuj.

14. Respondent no. 3/BSE replied to the said representation of the Petitioner by its letter dated May 15, 2018, stating that it is not in a position to issue instructions to de-freeze the Petitioner's securities except in accordance with the SEBI circulars and further advised the Petitioner as a promoter to insist upon Shrenuj to comply with the applicable requirements at the earliest.

15. The Petitioner on such backdrop, addressed an e-mail dated May 5, 2021, to the NSDL making a grievance that the action to freeze the Petitioner's demat account and the securities held by him was wholly illegal.

16. NSDL responded to such e-mail by its letter dated June 1, 2021, directing the petitioner to approach BSE and NSE for clarification in regard to the freezing of his account.

17. Lastly, the Petitioners, through advocates addressed a detailed notice dated June 7, 2021, to respondent no. 2 – SEBI setting out its grievances and requesting to immediately take steps to defreeze the Petitioner's demat accounts and the securities held by him. There were an exchange of letters between the parties, however, there was no response from the respondents. Therefore, the Petitioner filed the present petition.

Charges Levied

Freezing of the demat account of the Petitioner who was also a promoter of a listed company Shrenuj, along with his son Neil Mehta's demat account who was joint holder, was it legal and valid in law?

Submissions on Behalf of The Petitioner

1. **Freezing of Demat Accounts & Lack of fair procedure:**

On behalf of the Petitioner, it was submitted that Dr. Pradeep Mehta's demat accounts were frozen by NSDL at the direction of SEBI due to his status as a promoter of Shrenuj & Co. Limited, a company facing financial and compliance issues. The Petitioner claimed that this was in contravention of section 11 of the SEBI Act 1992. Despite having no control over Shrenuj' s operations, his demat account was frozen, including shares unrelated to Shrenuj.

Further, it was submitted that particularly Section 11(4)(e) of the SEBI Act grants SEBI the power to attach bank accounts or property, including demat accounts, for a maximum period of 90 days in cases involving violations of the SEBI Act or its regulations. However, the freezing of a demat account may not be justified in this case, especially if the Petitioner is not directly liable for the actions of the company involved.

It was argued on behalf of the Petitioner that no notice or opportunity for a hearing was provided before the action was taken, violating principles of natural justice. Petitioner further stated that his connection with Shrenuj was limited to being listed as a promoter due to his family relation with the company's founder, and he was unaware of this until his accounts were frozen. He emphasized that he had sold most of his shares in Shrenuj, reducing his holding to below 0.01% by 2016.

2. **Legal Challenges to SEBI's Circulars & Compensation Claims**:

The Petitioner challenged SEBI's authority to issue circulars that resulted in penalties or the freezing of accounts, arguing these were ultra vires (beyond the legal authority of SEBI under the SEBI Act). Dr. Mehta sought the quashing of SEBI regulations and circulars related to these actions, stating they unjustly penalized investors for company failures. The Petitioner sought compensation of ₹ 1 crore each from BSE, NSE, CDSL, and NSDL for illegally freezing his accounts, damaging his reputation, and preventing him from trading in shares.

Arguments by the Respondents

Reply affidavits were filed on behalf of respondents as follows:

1. **SEBI** - The affidavit states that the Petitioner's demat accounts are frozen in pursuance of the Circulars dated November 30, 2015, and October 26, 2016, issued by SEBI which prescribe the 'Standard Operating Procedure', for suspension and revocation of trading of specified securities, detailing the manner in which the exchanges shall deal with non-compliance or contravention of SEBI LODR regulations 2015. It is hence contended that the issuance of impugned Circulars dt. November 30, 2015, and October 26, 2016, is well within the powers of SEBI under Regulations 97, 98, 99 and 102 read with Regulation 101(2) of SEBI (LODR) Regulations 2015. Further, it mentioned that SEBI has wide powers under sec. 11 of the SEBI Act to protect the interests of the investors in securities and to promote the development of and to regulate the securities market. Bye-Laws of the Stock Exchanges inter alia mandate that every listed Company shall comply with the conditions of the Listing Agreement as prescribed from time to time by such Stock Exchanges and/or SEBI and shall be liable to pay such fine(s) as may be prescribed by such Stock Exchanges and/or SEBI for non-compliance of the Listing Agreement or any of the SEBI Regulation dealing with the listing. It was thus contended by the Respondents that the actions taken by respondent nos. 3 to 6 are in consonance with the SEBI (LODR) Regulations 2015 and the aforesaid circulars of SEBI. It was next stated that respondent no. 3 and 4 issued directions to respondent no. 5 and 6 to freeze the demat account of the Petitioners under the aforesaid statutory mechanism.

It was also stated that the freezing of the demat account of the Petitioners is also a consequence of Compulsory Delisting of Shrenuj, under the provisions of the SEBI (Delisting of Equity Shares) Regulations, 2009 ('Delisting Regulations 2009') read with SEBI circular dt. September 7, 2016. It is thereafter stated that Regulation 29 of the Delisting Regulations 2009 itself envisages that the respective recognized stock exchanges shall monitor compliance with the provisions of these regulations and shall report to the Board any instance of non-compliance which comes to their notice. It was further stated that as a result of the compulsory delisting of the securities of Shrenuj, NSDL informed the Petitioner on August 8, 2018, that the Petitioner's account was "Suspended for Debits" in accordance with the Circular dated September 7, 2016.

SEBI further stated that the power to regulate has been delegated to the

recognised Stock Exchanges by the Parliament by virtue of Section 9 of the Securities Contract Regulation Act, 1947 ['SCR Act'] to include the power to levy fees, fines, and penalties. SEBI further stated that if Petitioner is aggrieved by the actions taken by the Stock Exchanges, then under Section 23 of the SCR Act, the statutory remedy lies before the Tribunal.

SEBI further submitted that if the Petitioner is aggrieved by the orders dated April 18, 2018 and September 4, 2018, passed by the Tribunal, then the remedy would lie before the Supreme Court pursuant to Section 15Z of the SEBI Act. Hence the petition is not maintainable.

2. **BSE -** The primary contention urged in the reply affidavit was in regard to the non-compliance of the SEBI (LODR) regulations by Shrenuj, which is stated to have resulted in its compulsorily delisting from the platform of stock exchanges and freezing of the demat account of the promoter and promoter group of the Shrenuj. It is stated that the Petitioner's demat account was frozen on account of non-compliance with the provisions of the SEBI (LODR) Regulations for two consecutive quarters by Shrenuj. Respondent No. 3 contends that the Petitioner had never objected of being classified as a "promoter" until the freezing of his demat account. Further stated that the Petitioner's demat account was frozen in July 2018, hence, the cause of action to file any proceeding had accrued to the Petitioner in the year 2018, however, the Petitioners approached the court in the July/September 2021, that is after 3 years of delay.

   It is next stated that the Petitioner challenged the freezing of the Demat Account in an appeal filed before the Securities Appellate Tribunal, which was disposed of by an order dated April 18, 2018, directing Respondent-BSE to dispose of the representation made by the Petitioner dated January 4, 2018, within 4 weeks therefrom. Accordingly, respondent no. 3-BSE disposed of the Petitioner's representation by its communication dated May 15, 2018, inter alia recording that the Petitioner was a promoter of Shrenuj, hence, the consequences of freezing of the demat account of Shrenuj applied to the Petitioner.

3. **NSE –** Reply affidavit filed by the NSE stated that the appropriate remedy is available to the Petitioner against the order dated May 11, 2018, passed by respondent no. 4, freezing the demat account of the Petitioner lies before the Securities Appellate Tribunal, and the remedy in respect of the order dated September 4, 2018, of the Securities Appellate Tribunal lies before the Supreme Court.

4. **CDSL-** Reply affidavit filed by CDSL mentioned that Petitioner holds no demat account maintained with respondent no. 5, yet the Petitioner has made monetary claims against respondent no. 5. Therefore, the Petitioner's claim for compensation does not arise and be dismissed.

5. **NSDL-** Reply affidavit filed by NSDL stated that NSE addressed emails to NSDL and directed for freezing of certain other securities held by the promoter/promoter group entities of certain listed entities (which included Shrenuj) on account of non-compliance, by such listed entities with the provisions of the "SEBI (LODR) Regulations". It is stated that

accordingly, NSDL initiated an ISIN level freeze in respect of shares of ITC Limited, based on the directions received from NSE. It is further stated that thereafter, on July 9, 2018, BSE informed NSDL that trading notices had been issued by BSE for compulsory delisting of certain companies from the trading platform of the exchange w.e.f. July 4, 2018. BSE also shared a list of such companies along with other details and directed NSDL to freeze all demat accounts of such promoters as per the SEBI Circular dated September 7, 2016. Accordingly, based on PANs of promoter/promoter group of compulsorily delisted companies as received from BSE, the Petitioner's account was marked as 'Suspended for Debit' until further instructions from BSE/SEBI and the same was communicated to the Petitioner vide letters dated August 8, 2018.

It is next stated that NSDL also received an email communication dated August 7, 2018, from NSE forwarding a list of companies which had been compulsorily delisted w.e.f. August 8, 2018. It is hence stated that NSDL acted on the instructions of NSE and BSE and implemented a freeze on the demat accounts of promoters of companies, that have been compulsorily delisted in which Shrenuj was one such company and the Petitioner, was disclosed as a promoter of the company. It is next stated that NSDL, as a depository, acts only on the instructions received from SEBI/stock exchanges and is not involved in the decision-making process relating to the freezing of any individual's demat accounts. It is further stated that as the Petitioner was named as a promoter of Shrenuj, in due compliance with the directions of the stock exchanges, NSDL had initiated a freeze on the demat accounts of the Petitioner.

Decisions by Hon'ble High Court of Bombay

1. **<u>Freezing of Demat Accounts & Lack of fair procedure</u>:**

   The Hon'ble Bombay High Court stated that with respect to the freezing of the demat account, the Hon'ble Bombay High Court is of the view that action against the Petitioner is taken only for the reason that, when such company was formed in the year 1989, the Petitioner was one of the promoters of the company.

   Further, any coercive action in respect of one's property is required to be taken in accordance with law and after complying with the basic principles of natural justice. No show cause notice or a prior opportunity of a hearing was granted to the petitioner before the letters dated March 23, 2017, and April 13, 2017, were addressed to the SHCIL by NDSL, freezing not only the petitioner's shares in Shrenuj but also the other shareholding of the petitioner in ITC Limited. For such reason, the impugned action on the part of NSDL is required to be held to be brazenly illegal, unreasonable, and arbitrary.

2. **<u>Legal Challenges to SEBI's Circulars & Compensation Claims</u>:**

   The Hon'ble Bombay High Court clarified that SEBI's circulars from September 7, 2016, and October 26, 2016, did not provide legal authority to freeze the demat accounts of promoters for shares they hold in companies other than the one that violated compliance rules. Paragraph 2.2 of the October

circular, which allowed for freezing shares in other companies based on quarterly calculated liabilities, was found to be beyond SEBI's legal powers as outlined in the SEBI Act. The Hon'ble Bombay High Court stated that such drastic actions, like freezing someone's demat account, have serious civil consequences and must be based on substantive law, not just circulars. Furthermore, SEBI should have provided the promoter with a chance to be heard before freezing their account, as required by the principles of natural justice. The Hon'ble Bombay High Court concluded that SEBI's actions were illegal, arbitrary, and violated constitutional protections under Articles 14 (equality before the law), 21 (right to life and personal liberty), and 300A (protection of property rights), as circulars cannot override statutory law or the SEBI Act. The Hon'ble Bombay High Court stated that circulars cannot have an overriding effect on the statutory provision under which it is issued and cannot be implemented in defiance of principles of natural justice. The Hon'ble Bombay High Court examined SEBI's authority to freeze the demat accounts of promoters and referred to Regulation 98(1)(c) and (d) of the SEBI (LODR) Regulations, 2015. These regulations state that if a listed company violates SEBI rules, actions like imposing fines, suspending trading, or freezing the holdings of promoters in that company can be taken. However, the Hon'ble Bombay High Court pointed out that these actions should only apply to the promoter's holdings in the specific company that violated the rules. In this case, SEBI and NSDL froze the Petitioner's other shareholdings (e.g., in ITC Limited), which the court found to be unjust and illegal since the Petitioner's role as a promoter was limited to Shrenuj, the defaulting company. The Hon'ble Bombay High Court also emphasized that the Petitioner was simply a shareholder of Shrenuj, and no evidence was provided to show that he had an active role in managing the company or in its non-compliance with SEBI regulations. As a result, freezing the Petitioner's other assets could not be justified. The freezing of shares beyond those related to the defaulting company was deemed arbitrary, illegal, and without legal basis.

Conclusion

The Hon'ble Bombay High Court found SEBI's actions unjust because they were based on an outdated and irrelevant classification of Dr. Mehta as a 'promoter'. The Hon'ble Bombay High Court further stated that decisions were taken without following due process or providing a reasoned order and were disproportionate in their impact on Petitioner's other investments. The Hon'ble Bombay High Court also held that SEBI had overstepped its legal authority in issuing the circulars that led to the freeze. The Petitioners lost valuable trading opportunities to deal with his property as entitled to him under Article 300A of the Constitution of India.

Held

1. Freezing of the demat account of the Petitioners was declared to be illegal and invalid.

2. The Petitioners shall be free to deal with all his shares as held in the Demat accounts in question.

3. The SEBI/BSE/NSE are directed to jointly pay to the Petitioners cost of ₹ 80 lakhs within a period of two weeks from the date of passing of this judgement.

CASE – 3 Companies Act

In the matter of the scheme of Azim Premji Trust Services Private Limited and its respective shareholders - NCLT Bengaluru Bench order dated 4th September 2024.

Facts of the case

- The **Azim Premji Trust Services Private Limited** (hereinafter called as Petitioner company), has filed a second motion application under sections 230 read with sections 18 and 66 of the Companies Act 2013 ('the Act'), before NCLT to obtain its approval for conversion of a company limited by shares into company limited by guaranty without share capital.

- As per the petition, the objectives of the Petitioner company are to carry on the business to undertake the office of and act as the trustee, judicial trustee, fiscal agent, represent fiduciary, intermediary, administrator, manager, registrar, paying agent, adviser, agent of attorney of or for any person or persons, company, corporation, Partnership, Limited Liability Partnerships, association, institution and all other natural and artificial person etc.

- The NCLT Bengaluru Bench through its order dated 18th October 2022 in the first motion application, allowed the dispensations of shareholder meetings and meetings of secured and unsecured creditors. Also, the NCLT ordered the petitioners to give a public notice in newspapers and to give notice of the proposed scheme to all the regulators and call for their objections if any. The scheme got approved by the shareholders of the Petitioner company.

- Accordingly, the Registrar of Companies (ROC) and the Regional Director (RD) have raised some objections to the said conversion.

ROC/RD's ('Respondent's')

- In view of section 4(e) of the Act, in respect of a company having share capital each subscriber/shareholder should hold a minimum of one share. Therefore, the power to reduce the capital under section 66 of the Act cannot be exercised by the company to reduce the paid-up equity capital of the company from ₹ 1,00,000 to zero. Such a proposal is contrary to the provisions of Section 66 of the Act.

- Section 18 of the Act permits a company of any class registered under this Act may convert itself as a company of other class under this Act by alteration of memorandum and articles of the company in accordance with the provisions of this Chapter. This Petitioner company has been registered as a company limited by shares. Therefore, the company limited by shares can be converted into a company limited by guarantee only in accordance with the chapter II of the Act and Rules made there under.

- Rules made under chapter 2 of the Act, (i.e. companies (Incorporation) rules 2014) provide for the conversion of a company limited by guarantee into a company limited by shares but does not talk about the conversion of a company

limited by shares into a company limited by guarantee. Therefore, a scheme under section 230 of the Act cannot propounded as short circuit mechanism substituting the power of the Central Government to prescribe rules relating to the conversion of a company Limited by Shares into a Company Limited by Guarantee.

Petitioner company's contentions

- The scheme approved by the shareholders envisages converting the company limited by shares to a company limited by guarantee without capital. Hence the requirement of holding a minimum one share as provided in Section 4(1)(e) of the Act is not applicable after such conversion. Company limited by guarantee without capital is permitted as per Section 4(1)(d) of the Act,
- Under sub-section 68 of Section 2 of the Act, a Private Company need not have share capital at all. Table B to Schedule 1 of the Act also permits the Memorandum of Association of a Company Limited by Guarantee not to have any share capital at all. The Scheme does not result in the Petitioner Company being without Members, which alone is not permitted under the provisions of the Act.
- Conversion of company limited by shares into company limited by guarantee without capital is not barred by any provision of the law and it is expressly permitted under section 18 of the Act.
- Submissions only state that the Regional Director or the ROC do not have such powers, it does implicitly concede that the Tribunal is empowered to permit the Scheme. It is a settled position that Section 230 of the Act is a complete code in itself and sanctioning the Scheme of the Petitioner company is well within the plenary powers conferred upon the Tribunal.
- While there is a restriction to the Tribunal permitting a scheme under sub-section 10 of Section 230 in case of buyback of shares unless such buyback is in accordance with Section 68 of the Act, there are no such restrictions on the Tribunal's powers for sanctioning the scheme under any other Section.
- A scheme of compromise or arrangement may involve an increase, consolidation, or sub-division of shares or reduction of share capital or reorganization of the capital in any manner. Therefore, changing the characteristic of the capital from equity shares to guarantee and consequent change in the character of the company into a company limited by guarantee without capital as sought by the Petitioner company under the Scheme cannot be deemed to be impermissible under Section 230 of the Act. The proposed Scheme cannot be considered as a short-circuit mechanism.
- The Petitioner company acts as a Trustee of philanthropic trusts, a company limited by guarantee is more suitable as it will ensure that no property rights are created while discharging the fiduciary responsibilities of a Trustee.

Held

- The ROC has conveniently ignored the provision of Section 4(1)(d) read

with Section 2(21) of the Act, in which the definition of a company limited by guarantee is given and it has been provided as to what will be stated in the Memorandum of such company. Thus, the restrictions cited by the ROC in the report is relying on the Section 4(1)(e) and Section 66 of the Act are not in respect of a company limited by guarantee without capital; whereas considering the provision of Section 4(1)(d) read with Section 2(21) of the Act, there is no such requirement that the Company should hold at least a minimum of one share if it is a Company limited by guarantee. Thus, this objection is not legally tenable.

- It is a fact that such a conversion as requested by the Petitioner has been duly incorporated under Section 18 of the Act which expressly allows such conversion.

- Rule 39 of the Companies (Incorporation) Rules, 2014 has been notified for "Conversion of a Company Limited by guarantee into a company limited by shares". However, no rules have been prescribed so far for allowing the conversion in the reverse direction, from the Company limited by shares into a company limited by guarantee.

- Merely because the rules have not yet been notified for the conversion of the company limited by shares into a company limited by guarantee, it does not mean that such conversion cannot be allowed when it is allowable under the provisions of Section 18 of the Act. This is covered within the scope of 'arrangement' between the company and its members,

- In view of the facts and circumstances of the case, we are of the considered opinion that the conversion as requested by the Petitioner company is liable to be allowed under the provisions of Section 230 of the Act read with Section 18 and Section 66 of the Act and read with Rule 11 of the NCLT Rules, 2016.

- Accordingly, the scheme of arrangement in question as annexed at Annexure – A is approved and from the Appointed Date, the Petitioner company will be a company limited by guarantee without share capital. While approving the Scheme, it is clarified that this order should not be construed as an order in anyway granting exemption from payment of any stamp duty, taxes, or any other charges, if any, and payment in accordance with law or in respect of any permission/compliance with any other requirement which may be specifically required under any law.

- As requested by the Petitioner company, the following directions are issued:

  1. With effect from the appointed date, the Memorandum of Association of the Petitioner company henceforth shall be in the form of Table-B of Schedule I of the Act or such other form as may be applicable.

  2. With effect from the appointed date the Articles of Association of the Petitioner company henceforth shall be in the form of Table-H of Schedule I of the Act or such other form as may be applicable.

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OTHER LAWS
FEMA – Updates and Analysis

CA Hardik Mehta CA Tanvi Vora

In this article, we have discussed recent amendments made in FEMA through Notifications, Circulars, Master Directions, Press Notes & Press Releases.

A. Update through Notifications

1. Foreign Exchange (Compounding Proceedings) Rules, 2024

The Foreign Exchange (Compounding Proceedings) Rules, 2024 (New Rules) have superseded the Foreign Exchange (Compounding Proceedings) Rules, 2000 (Erstwhile Rules) with the following amendments explained below:

a) Changes in the monetary limits

The revised monetary limits for RBI officials who have the power to compound are as follows:

RBI officials	*Erstwhile limits*	*New limits*
Assistant General Manager	10 lakh	60 lakh
Deputy General Manager	40 lakh	2.5 crore
General Manager	1 crore	5 crore
Chief General Manager	Above 1 crore	Above 5 crore

The monetary limits for authorities of the Enforcement Directorate (ED) have remained unchanged.

b) Increase in compounding fees and digitization of payment

The fee for filing compounding application is now ₹ 10,000 + applicable GST.

Further, these fees can now be paid by NEFT/RTGS or other permissible electronic or online modes of payment.

Under the Erstwhile Rules, the fee was ₹ 5,000 and payment could be made only by way of a demand draft.

c) Contraventions not to be compounded in certain cases

Under the Erstwhile Rules following cases were excluded from the ambit of compounding regulations:

i. If the amount of contravention is not quantifiable;

ii. An appeal has been filed under section 17 or section 19 of the Foreign Exchange Management Act, 1999 (the Act);

iii. If the ED is of the view that the proceedings relate to serious

contravention suspected of money laundering, terror financing or affecting the sovereignty and integrity of the nation – in such cases the matter was to be remitted to the appropriate adjudicating authority.

Rule 9 of the new rules now specifically lists contraventions that cannot be compounded. The list includes the following additional cases:

i. Cases where provisions of section 37A of the Act are applicable;

ii. Where the adjudicating authority has already passed an order imposing penalty under section 13 of the Act;

iii. Where the compounding authority is of the view that the contravention involved requires further investigation by the ED to ascertain the amount of contravention.

However, cases where an appeal has been filed under section 17 or section 19 of the Act no longer find mention in the list of exclusions under the new Rule 9.

d) Changes in the application form

The Form for Compounding Application has also undergone a change and is now more detailed. The Form now requires details of any compounding order passed in connection with a previous compounding application submitted by the applicant. Further, the Undertaking on ED investigation and ECS mandate which were earlier submitted as Annexures to the Compounding Form are now made a part of the main form.

Any compounding application pending before the compounding authority as on the date of commencement of the New Rules shall be governed by the provisions of the Erstwhile Rules.

Notification G.S.R. 566 (E), dated 12-09-2024 – [[F. No. 1/10/2023-EM] issued by the Department of Economic Affairs

(*Comment*: Due to the amendments explained above it appears that minor violations may now be disposed off in a timely manner by way of fines without significant intervention by ED. This will also improve ease of investing and doing business in India. Permitting online payment of fees is also a welcome change, making the process simpler.

Compounding authorities have been given the authority to not compound contraventions if they believe ED intervention is necessary.

Rule 9 (Contraventions not to be compounded in certain cases) does not refer to cases where "an appeal has been filed under section 17 or section 19 of the FEMA, 1999" and includes cases "where the adjudicating authority has already passed an order imposing penalty under section 13 of the Act". This would mean that compounding application may be filed after the filing of complaint by adjudicating officer and during pendency of the adjudication proceedings. However once an adjudication order has been passed, compounding cannot be undertaken irrespective of appeal.)

B. Update through Master Directions

1. Directions – Compounding of Contraventions under FEMA, 1999

On 1st October 2024, RBI issued Directions – Compounding of Contraventions under FEMA, 1999. These directions are issued

pursuant to the revised Foreign Exchange (Compounding Proceedings) Rules, 2024 issued on 12th September 2024. While majority of the new directions have remained similar in comparison to the erstwhile Master Direction – Compounding of Contraventions under FEMA, 1999 [FED Master Direction No.4/2015-16, 1st January 2016], we have listed below important amendments:

a) Restriction to jurisdiction of Panaji and Kochi

Under erstwhile directions, contraventions for amounts of Rupees one hundred lakh (₹ 1,00,00,000/-) or more under Panaji and Kochi offices were required to be compounded at Mumbai and Thiruvananthapuram Regional Offices respectively if the Panaji and Kochi offices were headed by an officer below the rank of a Chief General Manager.

This restriction has now been removed; thus, contraventions for amounts of Rupees one hundred lakh (₹ 1,00,00,000/-) may be compounded at regional offices itself, irrespective of the rank of the officer heading these regional offices.

b) Clarification w.r.t. jurisdiction of regional office

The new compounding directions specifies that compounding application related to foreign investment-related contraventions is to be submitted to the Regional Office that has jurisdiction over the registered office of the investee Indian company.

c) Address of Cell for Effective implementation of FEMA (CEFA)

The address of CEFA has been updated from CEFA, Foreign Exchange Department, Reserve Bank of India, 5th floor, Amar Building, Sir P. M. Road, Fort, Mumbai 400001 to CEFA, Foreign Exchange Department, Reserve Bank of India, 11th floor, Central Office Building, Shahid Bhagat Singh Road, Fort, Mumbai-400001.

d) Changes in relation to Submission of Application

- RBI has permitted submission of physical compounding application or virtually on PRAVAAH portal which was recently launched in May 2024.
- Compounding application fee which was earlier ₹ 5000 is now increased to ₹ 10,000 + GST = ₹ 11800.
- Payment of compounding fee which could only be paid by demand draft may now be paid by way of DD, NEFT or RTGS. In case of online payment through NEFT or RTGS the applicant is required to intimate the RBI via email in prescribed template within 2 hours from payment. The UTR number should then be mentioned in the compounding application.
- Annexures II submitted until now detailing the FDI/ODI/ECB and other details has remained unchanged.

- Annexure III format has been amended and has been discussed in Pt (e) below.
- As per the new directions, latest audited financial statements removed from compulsory documents list. However in our opinion, if the financial statements are relevant to the contravention they should be submitted.
- As per the new direction, application may be submitted suo moto or based on a Memorandum of Contraventions (MoC) issued by RBI. It is therefore important to note that in absence of MoC, the applicant may make the application *suo moto* if it is aware that there has been a contravention.
- Under the erstwhile directions, in case an application was returned because required approvals were not obtained/application was incomplete/any other reason, the application fees of ₹ 5,000/-, were to be returned by crediting the same to the applicant's account through NEFT as per the ECS mandate. However, under the new directions, the application fee shall not be returned in case of return of the compounding application. However, in case such applications are re-submitted, then the application fee need not be paid again.

e) ***Undertaking in Annex III***

Under the erstwhile declaration, the applicant was required to declare that "I/We further undertake and confirm that no appeal has been filed by me/us under section 17 or section 19 of FEMA, 1999".

Whereas in line with Rule 9 of the new FEM (Compounding Proceedings) Rules, 2024, the declaration has been changed to "I/We further undertake and confirm that no adjudication order has been passed by the Adjudicating Authority in respect of the contraventions for which this compounding application is being submitted. I/We further undertake to inform to the Compounding Authority/ Reserve Bank of India immediately, in writing, if any such order is passed at any time hereafter but on or before the date of issuance of the compounding order in respect of the compounding application filed by me/us".

This change confirms our understanding explained in the comments above that now even after filing of complaint by ED officer and during the pendency of adjudication proceedings before the adjudicating authority, compounding application can still be filed. Further, even if an appeal has not been filed but adjudication order has been passed, you cannot apply for compounding. Therefore, it should be understood that any compounding application may not be filed before passing of adjudication authority order.

f) ***Three Year restriction for compounding***

The restriction from compounding within three (3) years of previous compounding continues in the new directions which leaves some questions unanswered. Further clarity in this regard from RBI would be welcome.

g) Meaning of Administrative Action

Under the compounding regulations, no compounding application can be processed unless administrative action is completed by the applicant. The new direction has defined administrative action to mean "such action as may be necessary with respect to the transactions involved in such contravention (as per Rule 8(1) of the Compounding Rules, 2024) and shall include such corrective action that shall be undertaken by the applicant to bring the transaction involved in contravention in compliance with applicable provisions of FEMA. An indicative (but not exhaustive) list of such administrative actions include:

(i) Obtaining requisite approvals/ permissions from the Government or RBI or any other statutory authority concerned, as case may be;

(ii) Unwinding/reversing the transaction;

(iii) Repatriating the receivables due;

(iv) Compliance with pricing guidelines or submission of valuation certificate;

(v) Compliance with reporting requirements;

(vi) any other such corrective action as may be required"

h) Changes in Computation Matrix

Overall there has been no material change in the guidance note on compounding matrix. The new directions have streamlined the inclusion of FEMA 20(R), FEMA 395, FEMA 3(R) and FEMA 400 in reporting contraventions list in Sr. No.1 of the matrix. The reference to the above notification in residual category in the erstwhile directions which appeared to be a mistake is now corrected. Lastly, new matrix has been reorganized to keep the residual category of compounding type as the last item. There is no change in the amount formula/amounts prescribed in the computation matrix.

i) Appearance for personal hearing

The new directions continue to encourage the attendance of hearings by the applicant himself instead of legal experts or consultants. However, as a welcome move, the direction now also permits attendance through virtual mode.

j) Payment of Compounding Penalty/ Amount

Along with the option of payment by demand draft, the new directions now permit online payment of compounding penalty amount by way of NEFT or RTGS within 15 days. The payment needs to be intimated to RBI within 2 hours of payment in the prescribed template.

Under the erstwhile directions, the RBI enhanced the penalty by 50% in case a party who has been compounded earlier applies for compounding again for similar contravention. However, under the new directions, the enhancement of 50% is restricted to cases where an order has been passed and the applicant did not pay the compounding amount and then reapplies for compounding the same transaction.

It should be checked if the same enhancement applies in LSF cases wherein the LSF was not paid by the applicant within the permitted timeline, who is then required to approach for compounding.

C. Update through FAQs

On 1st October 2024, RBI issued FAQs on Compounding of Contraventions under FEMA, 1999. These replaced the erstwhile FAQs on Compounding of Contraventions issued by RBI which was last updated on 16th February 2021.

On an overall comparison, the questions addressed in the updated FAQs remain the same. Reference to the new Directions – Compounding of Contraventions under FEMA, 1999 is made in the FAQs.

Certain changes noted in the FAQs relate to:

- Submission of physical application or on the PRAVAAH portal
- Increase in fees from ₹ 5,000 to ₹ 10,000 +GST along with option of payment option through NEFT/RTGS. The FAQ also reiterates that that the fee would not be returned in case of return of compounding application.
- Reference to meaning of administrative action as defined in the Master Directions
- Sensitive contraventions shall not be compounded by RBI
- Personal hearing permitted in physical or virtual mode

D. Update through Circulars

1. Monthly return by Authorized Dealer for remittances under Liberalised Remittance Scheme (LRS) discontinued

Until now, AD Category-I banks were required to furnish information on the number of applications received and total amount remitted under LRS by Resident Individuals. This was to be done on a monthly basis (Return code: R089) in the Centralized Information Management System (CIMS).

The requirement for submission of LRS monthly return by AD Category-I banks is set to be discontinued from September 2024. Henceforth, AD Category-I banks will be required to upload only transaction-wise information under LRS daily return (CIMS return code: R010) at the close of business of the next working day on CIMS. In case no data is to be furnished, AD Category-I banks shall upload a 'NIL' report.

A.P. (DIR Series) Circular No. 16, Dated 6 September 2024

(Comment: This relaxation comes as an amendment to A.P. (DIR Series) Circular No. 11 dated 22nd December 2023 which required AD Category-I banks to upload the LRS monthly return on or before fifth of the succeeding month and LRS daily return on the next working day on CIMS portal.

Henceforth, inorder to reduce compliance burdens, AD Category-I banks, will be required to upload only transaction-wise information under LRS daily return.)

Best of The Rest

Rahul Hakani
Advocate

Niyati Mankad
Advocate

V. SENTHIL BALAJI VS. THE DEPUTY DIRECTOR, DIRECTORATE OF ENFORCEMENT – ORDER DT. 26/09/2024 PASSED IN CRIMINAL APPEAL NO. 4011 OF 2024 [SUPREME COURT]

Section 3, 45 of the Prevention of Money Laundering Act, 2002 ("PMLA") - while stringent bail conditions are provided under statutes like the PMLA, prolonged incarceration without trial constitutes a violation of the right to a speedy trial under Article 21 - The judiciary must balance the gravity of allegations with the constitutional rights of the accused when trials are likely to face significant delays

Facts

The Appellant, V. Senthil Balaji, a former Transport Minister of Tamil Nadu, was involved in multiple corruption and money laundering charges. The allegations primarily concerned the Appellant promising jobs in the Transport Department in exchange for money between 2011 and 2016. Several FIRs were registered, and investigations led to charges under the Indian Penal Code (IPC) and the Prevention of Corruption Act, 1988. The Directorate of Enforcement (ED) also registered a case under the Prevention of Money Laundering Act (PMLA) following these offenses. The Appellant was arrested and sought bail, which was denied by the High Court of Madras.

Issue Involved

Whether the Appellant, having been in judicial custody for over 15 months without significant progress in the trial, should be granted bail under the PMLA despite the stringent provisions of Section 45 of the Act?

Held

The Supreme Court allowed the appeal, granting bail to the appellant. The Court acknowledged that while there is prima facie evidence against the Appellant under the PMLA, the prolonged incarceration and the likelihood of delays in concluding the trial violated the Appellant's right to a speedy trial under Article 21 of the Constitution. The Court imposed stringent conditions for bail, including restrictions on contacting witnesses, regular attendance with enforcement authorities, and the surrender of the appellant's passport. In granting bail to the Appellant, the Supreme Court interpreted and relied on key provisions from the PMLA, particularly Sections 3 (defining the offense of money laundering) and Section 45 (which sets stringent conditions for granting bail, requiring that the court be satisfied there are reasonable grounds for believing the accused is not guilty and unlikely to commit an offense, if released). The Court emphasized that Section 21 of the Constitution, guaranteeing the right to a speedy trial, remains paramount even in cases involving the PMLA. Additionally, the

Court referred to provisions under the Code of Criminal Procedure (**"CrPC"**)—specifically Sections 437 to 439 governing bail. The Court also place reliance upon the decision in the case of ***K.A. Najeeb vs. Union of India (2021) 3 SCC 713***, wherein it was held that statutory restrictions on bail, such as those in the **Unlawful Activities Prevention Act (UAPA)**, should not override the constitutional right to liberty under Article 21, especially when trials face undue delays. The Court harmonized these principles to grant bail, asserting that the prolonged incarceration of the appellant—over 15 months without significant trial progress—violated his fundamental rights, requiring judicial intervention to prevent excessive pre-trial detention.

THE AHMEDNAGAR DISTRICT CENTRAL COOPERATIVE BANK LTD. VS. THE STATE OF MAHARASHTRA AND ORS. - ORDER DT. SEPTEMBER 27, 2024 PASSED IN CIVIL APPEAL NO. 8343 OF 2024 (ARISING OUT OF SLP (C) NO. 16901 OF 2024) [SUPREME COURT] [2024 INSC 741]

Maharashtra Cooperative Societies Act, 1960 ("MCS Act") - procedural irregularities in the auction process do not automatically invalidate an auction if the party challenging the process fails to act promptly and is aware of the proceedings - Additionally, while statutory procedures under the MCS Act must be adhered to, the Court can use its discretion under Article 142 of the Constitution to balance fairness and ensure justice when procedural lapses exist - Parties should not challenge settled transactions belatedly unless they can demonstrate significant harm or malafide intent

Facts

The Appellant, Ahmednagar District Central Cooperative Bank, provided a cash credit loan to Mula Sahakari Soot Girni Ltd. ("the society"). After the society defaulted, the Appellant obtained an award entitling them to recover the loan with interest. The society, however, was ordered to be liquidated, and the auction of its immovable property was initiated by the liquidator. The Appellant challenged the auction process, arguing that the property had been undervalued and that fewer than three bidders participated, making the auction invalid. The High Court rejected the challenge, and the Appellant approached the Supreme Court.

Issue Involved

Whether the auction sale of the society's property, valued and sold at a significantly lower price than initially estimated, was valid, given the Appellant's claim of undervaluation and procedural irregularities?

Held

The Supreme Court dismissed the appeal, upholding the auction sale but invoked its powers under Article 142 of the Constitution to do complete justice. The Court directed the Respondent to pay the Appellant ₹ 1,05,98,710 without interest within three months as full settlement of the Appellant's dues. Procedural lapses, while noted, were attributed to the Appellant's delayed challenge, which prevented them from questioning the process earlier. While passing the present Judgment, the Court interpreted the provisions under the Maharashtra Cooperative Societies Act, 1960 regarding the auction process in liquidation proceedings. Specifically, Section 91 dealt with disputes and recoveries, and Section 102 concerned the winding up of societies. The Court also referenced its powers under Article 142 of the Constitution to ensure justice by ordering a fair settlement for the Appellant despite rejecting their claims of auction invalidity. The court referred to the principle that auction processes in liquidation must adhere strictly to statutory procedures but also emphasized that challenges must

be timely to prevent disruption of settled transactions.

PUNJAB STATE CIVIL SUPPLIES CORPORATION LTD. & ANR. VS. M/S SANMAN RICE MILLS & ORS. – JUDGMENT DT SEPTEMBER 27, 2024 PASSED IN CIVIL APPEAL NO. ____ OF 2024 (ARISING OUT OF SLP (C) NO. 27699 OF 2018) [SUPREME COURT] [2024 INSC 742]

Section 37 of the Arbitration and Conciliation Act, 1996 ("the Act") - The Supreme Court reaffirmed the principle that the power of judicial intervention in arbitration matters, especially under Section 37, is narrow and must align with the grounds for setting aside an award under Section 34 - Courts should not interfere with arbitral awards unless there is clear evidence of illegality, perversity, or violation of public policy - Judicial reappraisal of evidence or findings is not permissible merely because the court prefers an alternative view

Facts

Punjab State Civil Supplies Corporation Ltd. (the Appellant) entered into an agreement with M/s Sanman Rice Mills (the Respondent) to supply paddy for milling. The rice mill was to return the processed rice to the appellant. However, a shortfall of 35,110.39 quintals of rice, valued at ₹ 7,16,15,716, was noted. The Respondent partially settled the amount but left an outstanding sum of ₹ 2,16,15,716, leading to a dispute. The matter was referred to arbitration, where an award of ₹ 2,67,66,804 plus interest was granted to the Appellant. The Respondent challenged the award under Section 34 of the Arbitration and Conciliation Act, 1996, but the challenge was dismissed. However, the Respondent succeeded in an appeal under Section 37 before the High Court, leading the Appellant to approach the Supreme Court.

Issue Involved

Whether the High Court was justified in setting aside the arbitral award under Section 37 of the Arbitration and Conciliation Act, 1996, after it had been upheld under Section 34?

Held

The Supreme Court allowed the appeal and restored the arbitral award. The Court interpreted Section 34 and Section 37 of the Act, emphasizing the limited scope of judicial interference. Under Section 34, an award can be set aside only if it is in conflict with the public policy of India, contravenes the fundamental policy of Indian law, or violates the principles of natural justice. The Court made it clear that reappraisal of evidence or finding a different view is not a valid ground for interference under Section 37. The appellate jurisdiction under Section 37 is confined to ensuring that the lower court's decision under Section 34 was within its limited scope. The Court reiterated that judicial intervention in arbitral matters should be minimal, as the object of the Arbitration Act is to ensure the finality of arbitral awards. The Court relied on several precedents to support its conclusion. It referred to ***Bharat Coking Coal Ltd. vs. L.K. Ahuja (2001) 4 SCC 86***, which clarified that courts should not reappraise the evidence presented in arbitration and should accept the arbitrator's view if it is reasonable. In ***Dyna Technology Pvt. Ltd. vs. Crompton Greaves Ltd. (2019) 20 SCC 1***, the Court reinforced that interference should be avoided unless the arbitral award is perverse or goes to the root of the matter. The Court also cited ***MMTC Ltd. vs. Vedanta Ltd. (2019) 4 SCC 163***, emphasizing that the appellate court's jurisdiction under Section 37 is limited to examining whether the lower court properly applied Section 34 without reassessing the merits.

CA Mehul Sheth
Hon. Jt. Secretary

CA Neha Gada
Hon. Jt. Secretary

THE CHAMBER NEWS

Important events and happenings that took place online/physical between **September 1, 2024 to September 30, 2024** are being reported as under:

I. ADMISSION OF NEW MEMBERS

The details of new members who were admitted in the Managing Council Meeting held on September 13, 2024 are as under:

Type of Membership	No. of Members
Life Member	9
Ordinary Member	17
Student Member	14
Associate	0
Total	**40**

II. PAST PROGRAMMES

Sr. No.	*Date*	*Topics*	*Speakers*
STUDENT			
1	**Articleship Accelerator: Tax & Audit Essentials**		
1	2.9.2024	Basics of Income tax, Return filing and Basics of TDS/TCS & Advance Tax	CA Harshal Bhagat
2	2.9.2024	Strategies for a Successful Articleship	CA Atul Bheda

Sr. No.	*Date*	*Topics*	*Speakers*
3	2.9.2024	Basics of GST and Annual Return	CA Raj Khona
4	3.9.2024	Tax Audit: Do's and Don'ts	CA Yogesh Amal
5	3.9.2024	Statutory Audit: Do's and Don'ts	CA Mehul Shah
2	**Certificate course on Practical Income Tax & Litigation (Contd.)**		
1	2.9.2024	Taxation of Unaccounted Income [Section 68 – 69D], Section 115BBE [Rate of Tax], Section 271AAC & Clubbing of Income	CA Jagdish Punjabi
2	4.9.2024	Aggregation of Income, set-off & carry forward of losses	CA Ravi Sawana
3	5.9.2024	Deductions from Gross Total Income & other Exemptions	CA Shailesh Bandi
4	11.9.2024	Tax Deducted & Collected at Source & Advance Tax	CA Mahendra Sanghvi
5	13.9.2024	Rate of tax & Special scheme of Taxation	CA Shashank Mehta
6	19.9.2024	Return of Income and Tax Audit Forms	CA Avinash Rawani
7	20.9.2024	ADR in Tax	CA Anish Thacker
8	23.9.2024	Assessment, Re-Assessment, Revision & Rectification	Mr. Shashi Bekal, Advocate
9	24.9.2024	Assessment, Re-Assessment, Revision & Rectification (continued)	Mr. Shashi Bekal, Advocate
10	25.9.2024	Overview of the Provisions of Search & Seizure	Mr. Ajay Singh, Advocate
11	27.9.2024	Prohibited Transactions, Penalty & Prosecution, Fees	Mr. Paras S. Savla, Advocate
12	28.9.2024	Advocacy & Drafting : A Judicial Perspective	Hon'ble Shri Justice Abhay Ahuja
13	30.9.2024	Dispute Resolution	Mr. Rahul Hakani, Advocate

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<tr><td colspan="5">INTERNATIONAL TAXATION</td></tr>
<tr><td rowspan="8">1</td><td colspan="4">Online Transfer Pricing Master Class 2024 (Contd.)</td></tr>
<tr><td>a</td><td>6.9.2024</td><td>Benchmarking of unique transactions (financial transactions – post LIBOR era, management fees, cost contribution arrangement, cash pooling, etc.)</td><td>Ms. Shefali Shah, MBA (Finance)</td></tr>
<tr><td>b</td><td>10.9.2024</td><td>Interplay of TP with Pillar 1 and Pillar 2
Discussion on Amount B in Pillar 1</td><td>CA Radhakishan Rawal
CA Sanjay Mistry</td></tr>
<tr><td>c</td><td>14.9.2024</td><td>TP assessment procedure and various dispute resolution forums (DRP, CIT(A), ITAT, APA, MAP)</td><td>Mr. Harsh Shah, Advocate</td></tr>
<tr><td>d</td><td>14.9.2024</td><td>TP in corporate governance (SEBI LODR, Companies Act 188, etc)</td><td>CA Munjal Almoula</td></tr>
<tr><td>e</td><td>18.9.2024</td><td>TP for IP (alongwith benchmarking) and business restructuring</td><td>CA Bhavesh Dedhia</td></tr>
<tr><td rowspan="2">f</td><td rowspan="2">21.9.2024</td><td>Panel Discussion on Key transfer pricing issues for new age industry (Digital, ESG, financial transactions, etc)</td><td>Moderator:
CA Vijay Iyer
Panelists:
1. CA Rahul Mitra
2. CA Eric Mehta
3. CA Shikha Gupta
4. CA Dhinal Dedhia</td></tr>
<tr><td>Panel Discussion on Key transfer pricing controversies including resolution under APA and MAP</td><td>Moderator:
CA Vispi T. Patel
Panelists:
1. Mr. Promod Kumar (Ex ITAT Vice President)
2. Mr. Sobhan Kar – Ex IRS – Director (APA), CBDT
3. CA Navin Jain (HUL, Tax Head)
4. CA Karishma R. Phatarphekar</td></tr>
</table>

Sr. No.	*Date*	*Topics*	*Speakers*
2	20.9.2024	FEMA SC - Liaison Office, Project Office and Branch Office	CA Ankita Shethia
PUNE STUDY CIRCLE			
1	8.9.2024	Changing Horizons of Fiscal and Criminal Laws and it's Interplay	CA & Advocate Sagar Tilak
STUDY CIRCLE – DIRECT TAXES			
1	10.9.2024	Issues in Tax Audit	CA Mahendra Sanghvi
2	14.9.2024	Audit Report in case of Charitable Trust Form 10B and 10 BB and Filing of Income Tax Return – Form ITR 7	*Group Leader:* CA Deven Shah *Chairman:* CA Vipin Batavia
DIRECT TAXES			
1	20.9.2024	ISG - Recent Important Decisions Under Direct Tax	Mr. S. Sriram, Advocate

"Non-cooperation with evil is as much a duty as is cooperation with good."

— *Mahatma Gandhi*

"When the body is sufficiently controlled, we can attempt the manipulation of the mind."

— *Swami Vivekananda*

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