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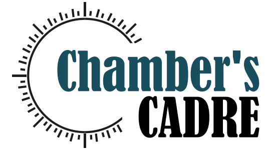

THE CHAMBER'S JOURNAL

Your Monthly Companion on Tax & Allied Subjects

Vol. XII | No. 5 | February 2024

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Editorial

Dear Readers,

The interim budget for F.Y. 2024-25 – A "Vote on Account" was presented by Hon. Finance Minister Nirmala Sitharaman on 1 February 2024. As expected, there was no fireworks or avalanche of freebies, this being not a full budget. Refraining from the dole out of freebies or generous allocation to various sectors to gain popularity and influence the voters, is indeed praiseworthy. The Hon. Finance Minister, deserves commendation for the restraint observed and for steering through the budget exercise admirably, to maintain the tempo of growth, and financial stability.

'Vikasit Bharat by 2047.' remains the main theme of the Govt's economic development agenda with the Vision of Prosperous Bharat in harmony with nature, modern infrastructure and opportunities for all.

Mrs. Sitharaman has kept the economy on a sustainable path towards fiscal stability after being forced to deal with a huge fiscal deficit during Covid. Buoyant tax revenue has enabled her to cut the fiscal deficit marginally from the budgeted 5.9% of GDP to 5.8%. She has aimed for 5.1% next year, and for under 4.5% the year after, meeting her target decided after the derailment due to the Covid-19 pandemic. To succeed in this endeavour of bringing the deficit down despite the ravages of Covid-19, the Ukraine War, and El Nino will be a praiseworthy feat and our best wishes are due to the Government for succeeding in this attempt.

Widening disparity in wealth holding and income levels, problems of unemployment of a large work force, stresses in the rural economy, however remain the areas of concern needing effective and innovative solutions.

India remains the world's fastest growing major economy and is now the fifth largest economy. In fact, in terms of purchasing power parity (PPP), India is already the world's third largest economy. The International Monetary Fund (IMF) has projected that India's contribution to the world's growth will rise from the current 16 per cent to 18 per cent by 2028. Strong domestic demand remains the main driver of growth, although there has been a significant increase in

Indian economy’s global integration through trade and financial channels. Higher reliance on domestic demand has cushioned India from multiple external headwinds.

The Government’s decision to appoint a committee to study Demographic trends, is a step in right direction, that could envision measures and action required to be taken for the optimum use of India’s very large growing population and also to suggest voluntary controls, if any, required in future to regulate the population growth.

RBI, on Jan 31, asked Paytm Payments Bank to stop fresh business. The situation is the outcome of compliance related issues. It is not the first time the bank has had problems. It faced a similar situation at the hands of RBI in 2022. Consistent repetition of non compliance, point to a systemic problem in a financial entity. Dumb bravado on Paytm’s part has unfortunately led to it’s present precarious situation.

RBI’s actions also clearly demonstrate the approach of the regulator to ensure that the system remains safe for the various stakeholders. Lapses in regulatory compliance will not be spared. This is a clear message to the entities within RBI’s oversight, no matter how influential or connected their owners may be.

Incidentally, this year happens to be Birth Centenary Year of Late professor Madhu Dandawate, a politician of rare quality. He held a cabinet ministerial position in the Janata Party’s rule as minster of Railways and also Minister of Finance. In both the portfolios he left his indelible mark of superlative performance. He was the main architect of the Konkan Railway project. Prof. Dandawate personified simplicity in living and dealings, was a freedom fighter and a true servant leader of the people. His value based life could be a definite lesson for those now in politics and those who wish to enter the political field.

As a nation, we celebrate Republic Day every year on 26 January to commemorate the day when the Constitution of India came into effect (in 1950). And this year was a significant milestone marking the 75th Republic Day of our Country. It signifies the moment when India became a republic by adopting the Constitution which gave the citizens of India the power to choose their own Government and paved the way for democracy and also granting them certain fundamental rights as citizens of India that is Bharat. It is a day to honour India’s unique trait of unity in, diversity and its rich and deep rooted values it has nurtured relentlessly.

Did you know that while the Constitution was adopted on November 26, 1949 by the Constituent Assembly, it was January 26, 1950 that was chosen as the day it would come into effect? This is due to the fact that in the history of our country's freedom struggle, this date holds remarkable significance. It was in 1929 that the idea of “Poorna Swaraj” i.e. “Total Self-Rule/Sovereignty" was embraced and a resolution to that effect was passed on 26th January, 1930. From 1930 till India finally won its independence in 1947, the date January 26, was held

in the hearts of Indians with reverence and was therefore chosen as the ideal date to reaffirm our commitment towards sovereignty. Our Constitution, in many ways reflect the declaration of "Poorna Swaraj".

As we enthusiastically hold on to the promises that this new year has in store for us, we must never forget that significant days like these serve as a reminder of the rights and responsibilities bestowed upon every citizen by the Constitution. We must appreciate the sacrifices made by the freedom fighters and to reaffirm our commitment towards building a strong and inclusive nation.

India, a Country with an agrarian economy base ranks second worldwide in farm output. As per the Indian economic survey of 2022-23, agriculture contributed 17% of Country's GDP and is the largest employment-providing sector in India and also provides food surplus to our ever expanding population. Thus agriculture forms one pivotal segment of our economy and there are multiple issues which are faced by stakeholders as well as professionals while dealing with agriculture related transactions.

I must therefore generously compliment the Journal Committee for bringing out this issue on the subject of Agriculture on which not enough material is available. Perhaps, an issue of Chamber's Journal on this subject is being published for the first time. Special mention must be made of Sachin Bangre, Member of the Journal Committee, who has been instrumental in designing the sub topics of the issue. I am sure, readers would find this issue very useful and it would find a permanent place in their library I would like to express my gratitude to all the experts on the subject for sparing their valuable time and sharing their knowledge through their incisive articles.

Generally, the February issue of the Journal is on the analysis of Finance Bill but due to the interim budget, this issue is on a different subject. However, its very thoughtful of the Journal Committee to have thought of important article titled "**Five Finance Bills of the 21st Century that shaped Tax Jurisprudence in India**" by Mr. S. K. Gupta, Former Member – CBDT, which the readers would find quite insightful.

'Basant Panchami', which marks the arrival of spring, is just around the corner. It marks the end of the dull and gloomy winter and the beginning of the vibrant spring season, thus symbolising renewed commitment, growth, and rejuvenation. I wish the readers the very best for the upcoming spring.

VIPUL K. CHOKSI
Editor

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From the President

Dear Friends

As we commemorate the 75th anniversary of India's Constitution and the establishment of the Supreme Court, this marks a pivotal moment for us as professionals to reflect on our roles and responsibilities. This occasion not only honors our historical achievements but also outlines the future path for our professions. The Constitution and the Supreme Court stand at the core of our democratic values and professional practices. Our duty to uphold these principles is more crucial than ever, ensuring we remain steadfast guardians of legal integrity. The recent emphasis on the modernization of our judicial system, including the adoption of digital tools and updated legal frameworks, is transforming the way justice is served. This evolution calls for our active participation and adaptability to uphold excellence in our fields. Our expertise and foresight will be key in navigating the changing legal landscape. Our dedication to justice and equity remains essential as we face new challenges and opportunities. This moment isn't just for reflection—it's a call to action. We must lead with integrity, contributing to the efficiency, accessibility, and fairness of our legal system. As we move forward, let's renew our commitment to the ideals of our Constitution and continue our pursuit of justice.

The Interim Union Budget 2024, while ensuring fiscal continuity, notably overlooks substantial tax reforms and legal system enhancements, essential for professionals in tax, law, and policy sectors. It perpetuates existing tax frameworks and extends benefits for startups and investments, missing an opportunity to simplify tax complexities and adapt to the digital economy's needs. Despite highlighting digitalization and infrastructure, the budget sidesteps critical issues like data privacy and cybersecurity, leaving gaps in policy direction for emerging technologies. Moreover, while it proposes measures to ease compliance burdens, broader challenges in tax litigation and administrative processes remain unaddressed. This scenario underscores the need for future-focused legislative attention to streamline dispute resolution, enhance regulatory environments, and foster economic growth, urging professionals to engage in advocacy for comprehensive reform. The government will cancel 1.1 crore disputed tax demands worth Rs 3,500 crore up to FY 2014-15, benefiting one crore small taxpayers. Announced in the Interim Budget, this action targets demands

less than Rs 25,000 up to FY 2009-10 and less than Rs 10,000 for FY 2010-11 to 2014-15. It aims to alleviate stress from old, unresolved demands, some dating to 1962, and streamline refunds. Revenue Secretary Sanjay Malhotra and tax professionals praised the initiative for reducing taxpayer harassment and improving services, emphasizing the importance of addressing and preventing such issues in the future.

The 12th GST Residential Refresher Course (RRC), held at Ananta Spa & Resorts in Jaipur and organized by Chamber, was notably enhanced by an impromptu session titled "Chai pe Charcha – GST Investigation" by Shri O.P. Dadhich. His extensive experience, including his role as a Senior Advisor to Reliance Industries Limited and a retired member of the CBIC, provided participants with deep insights into GST investigation, search, and compliance, significantly contributing to their professional development. Additionally, a keynote by Supreme Court senior Advocate Shri Sanjay Jhanwar on GST legalities further enriched the learning experience, offering clarity and depth on tax law. This event exemplified the importance of adaptability and excellence in professional growth, leaving attendees with valuable knowledge and fostering a sense of community among them. The contributions of Shri Dadhich and Shri Jhanwar not only facilitated a deeper understanding of GST complexities but also highlighted the enriching potential of unexpected changes in educational settings.

The countdown to the 47th Regional Representatives Conference (RRC) has begun! Set against the stunning backdrop of the Taj Hotel & Convention Centre in Agra from February 29 to March 3, 2024, our preparations are in high gear. Under the vibrant leadership of Shri Ankit Sanghavi, our dedicated committee is working tirelessly to ensure a memorable event. We're also going the extra mile to accommodate those on the waitlist, ensuring everyone gets a chance to be part of this special gathering. Get ready to experience the perfect mix of learning and fun. This year, we're thrilled to introduce the "Know Your Paper" initiative, a game-changer for our discussion sessions. With 30-45 minute online presentations by our Paper Writers, this initiative promises to deepen your understanding of key topics and spark more engaging and well-informed discussions. Don't miss out on this opportunity to blend education with entertainment. Join us to make the 47th RRC a landmark event!

Join us for Joint free webinar with Taxmann on February 16th on "Beneficial Ownership – Concept & Recent Trends with Indian & Foreign Case Laws | Case Studies," led by CA Anish Thacker. This session will delve into the intricate concept of beneficial ownership, distinguishing it from legal ownership across various income streams and assets, in light of recent Indian and foreign judicial precedents. Discover the impact under BEPS, explore case studies, and understand the significance in tax treaties and capital gains. This is an exceptional opportunity to deepen your knowledge in international taxation, with the added benefit of complimentary virtual access to Taxmann's International Taxation Ready Rec for one week. An essential program for those looking to stay ahead in their field.

Delve into the world of mediation with our hands-on Mediation Training in Commercial Disputes on February 17th & 18th. This comprehensive program, set under the Mediation Act, 2023, promises engaging insights from legal experts, interactive workshops, and practical exercises like role-play. It's an invaluable chance for professionals and students across fields—lawyers, law students, management professionals, chartered accountants, and company secretaries—to master mediation skills. No prior experience needed! Join us for this transformative experience and earn a certification in mediation. Don't miss this unique opportunity to enhance your dispute resolution skills.

Apart from above, the Chamber has organized a series of forthcoming events ranging from study circle meetings, webinars on taxation and legal issues, to a mediation training workshop and a seminar on business restructuring. Events cover diverse topics such as transfer pricing in UAE, beneficial ownership, commercial disputes mediation, and critical issues on payments to MSMEs. The details are available in the Newsletter as well as website of the Chamber. These events are designed to cater to professionals and students interested in taxation, law, and business practices, offering both virtual and in-person participation options.

This month, we had the privilege of diving deep into the world of agriculture, a topic that's both timeless and timely. Our Chamber's Journal proudly embarks on an enlightening journey this month, illuminating the myriad facets of agriculture that profoundly influence our lives. I want to take this moment to express my heartfelt appreciation to our Journal Committee for their dedication and hard work in bringing this special story to life. A big thank you goes out to all the authors who poured their knowledge and insights into this issue. In addition to the feature on agriculture, the Journal Committee presents an essential article titled "Five Finance Bills of the 21st Century that Shaped Tax Jurisprudence in India" by Mr. S.K. Gupta, a distinguished former CBDT member. This insightful piece explores significant legislation impacting India's tax jurisprudence, reflecting the Committee's dedication to providing impactful and relevant content. I urge all our members not to miss this month's issue of the Chamber's Journal. It's more than just a publication; it's a conversation starter, an enlightening guide, and a reflection of the topics that matter to us and the world around us. Let's dive in together, read, reflect, and discuss the insights and stories shared in these pages. Your engagement makes our journey through these topics all the more rewarding.

With best wishes,

HARESH KENIA
President

Shri S. K. Gupta
Former Member - CBDT

FIVE FINANCE BILLS OF THE 21ST CENTURY THAT SHAPED TAX JURISPRUDENCE IN INDIA

Jurisprudence is concerned primarily with what the law is and what it ought to be. Tax jurisprudence is a key tool of fiscal policy. The subject is very wide and vast. Therefore, keeping in mind the limitations of space in this article, I would confine myself to how five finance bills presented by the Finance Ministers from the year 2001 onwards have shaped and took forward the Direct Tax policy of India. However, wherever context required, I have used references from some other Finance Bills as well. In this regard a discussion on the changes of not only the substantive law but also the procedural law would be fruitful.

The Finance Bill, 2001

While presenting the Finance Bill, 2001, the Finance Minister stated that during the last three years his thrust has been on providing stability of tax rates, widening the tax base, rationalising and simplifying the tax laws and giving impetus to economic growth. In this bill he introduced a major taxation policy in the form of Transfer Pricing (TP) Regulations. He also initiated major reforms for expediting Refunds and a move towards bringing finality to assessment by reducing the time for reopening of assessments.

TP Regulations – This was an epoch making reform which for the first time introduced the taxation of profits of multinational companies from transactions entered into between two or more enterprises belonging to the same multinational group known in common terms as taxation of TP transactions. While laying the Finance Bill, the Finance Minister in his speech said and I quote him hereunder:–

> ***176.*** *The presence of multinational enterprises in India and their ability to allocate profits in different jurisdictions by controlling prices in intra-group transactions has made the issue of*

> *Transfer Pricing a matter of serious concern. I had set up an Expert Group in November 1999 to examine the issues relating to Transfer Pricing. Their report has been received, proposing a detailed structure for Transfer Pricing legislation. Necessary legislative changes are being made in the Finance Bill based on these recommendations.*
>
> ***177.*** *The foreign telecasting channels will henceforth be taxed in India, on their income computed in accordance with the provisions of the Income-tax Act.*

In the Memorandum explaining the provisions of the bill it was stated that the increasing participation of multinational groups in economic activities in the country has given rise to new and complex issues emerging from transactions entered into between two or more enterprises belonging to the same multinational group. The profits derived by such enterprises carrying on business in India can be controlled by the multinational group, by manipulating the prices charged and paid in such intra-group transactions, thereby, leading to erosion of tax revenues.

In order to provide a statutory framework for computation of reasonable, fair and equitable profits in India in the case of such multinational enterprises new provisions were introduced in the Income-tax Act. Section 92 was substituted by a new section 92, and new sections 92A, 92B, 92C, 92D, 92E and 92F and Rules 10A to 10E were introduced in the Act and Rules respectively creating legislative framework to provide that any income arising from an international transaction shall be computed having regard to the arms length price. It further provided that the costs or expenses allocated or apportioned between two or more associated enterprises shall be at arms length prices. It was provided that the arms length price in relation to an international transaction shall be determined by one of the prescribed methods which shall be the most appropriate method which shall be applied for computation of arms length price in the manner as may be specified by the rules to be made by the Board in this behalf. In a case where more than one price can be determined by the most appropriate method, the arms length price shall be the arithmetical mean of such two or more prices.

Expediting the issuance of Refunds – The Act was amended to provide that intimation shall be sent within one year so that refunds to most of the assesses were given in less than one year compared to two years earlier. This reform has since been taken forward by the computerisation of the department to such an extent that as per the latest data, unveiled by the Ministry of Finance on September 5, 2023, the ITR processing time and issuance of refunds has been slashed to just 10 days, compared to 82 days for AY 2019-20 and 16 days for AY 2022-23.

Reopening of assessment – Earlier the notice for reopening of the assessments could be issued up to 10 years. A major policy initiative was taken towards achieving finality of assessment process. In order to provide certainty of finalisation of assessment within a smaller period, the period of 10 years was reduced to four years, or six years in those cases where the income escaping assessment amounted to rupees one lakh or more for that year. This time limit has further been reduced to 3 years except in some cases of major tax evasion of more than ₹ 50 lakhs by the Finance Bill 2021 where the period is 10 years.

Restructuring of the Department – In the year 2001, the department witnessed a major restructuring in the form of creation and abolition of large number of posts and rationalisation of assessment and other jurisdictions. Many higher posts were created for better supervision. Creation of new posts removed the stagnation in the department. New posts and divisions for overseeing International Taxation, Research and Infrastructure were brought in the department. All these boosted the morale of the officers leading to more efficient tax administration.

The Finance (No. 2) Bill, 2004

This bill introduced taxation of gifts in the hands of the receiver, changed the taxation policy of long term and short term capital gains on securities transactions and introduced Securities Transaction Tax (STT).

Gift Tax in the hands of receiver – The Finance Minister said that he had abolished the gift tax in 1997 but a loophole was required to be plugged to prevent money laundering. Accordingly section 56 was amended to tax the purported gifts from unrelated persons, above the threshold limit of ₹ 25,000, as income in the hands of the receiver. Gifts received from blood relations, lineal ascendants and lineal descendants, and gifts received on certain occasions like marriage, however, continued to be totally exempt.

Introduction of STT and reduction of tax rate on short term capital gains arising from securities transactions – The Finance Minister said that the Capital gains tax on securities transactions was a vexed issue. When applied to capital market transactions, the issue becomes more complex. Questions have been raised about the definitions of long-term and short-term, and the differential tax treatment meted to the two kinds of gains. In order to boost the capital market the Finance Act 2004 abolished the tax on long-term capital gains from securities transactions altogether. Instead, a small tax on transactions in securities on stock exchanges to the extent of 0.15 per cent of the value of security was levied. Further, In the case of short-term capital gains from securities, the tax was reduced to flat rate of 10 per cent. This was a very welcome move for the capital market.

The Finance Bill, 2012

This finance bill for the first time introduced three new concepts which were to bring substantial changes in the provisions of TP and methodology to combat Tax avoidance schemes. It introduced the concept of Domestic TP, Advance Pricing Agreement (APA) and General Anti-Avoidance Rule (GAAR).

Domestic TP Regulations – While the finance act, 2001 introduced TP law in India on international transactions through sections 92A to 92F in the Act and rules 10A to 10E in the rules, the Finance Bill, 2012 expanded the scope of TP regulations by inserting a new section 92BA in the Act, to include specified domestic transactions (SDTs). SDTs would include, transactions entered into by domestic related parties, or by an undertaking with another undertaking of the same tax payer. However, the threshold for this to trigger was INR 50 million.

Advance Pricing Agreement (APA) – In order to rationalise TP provisions, the Act was amended to introduce APA which is an agreement between a taxpayer and a taxing authority on an appropriate TP methodology for a set of transactions over a fixed time period in future. The APAs offer better assurance on TP methods and are conducive in providing certainty and unanimity of approach. Sections 92CC and 92CD were inserted in the Act to provide a framework for advance pricing agreement under the Act. These provisions empowered Board to enter into an advance pricing agreement with any person undertaking an international transaction. The APA is binding on the person and the officers in the income tax department in respect of the transaction in relation to which the agreement has been entered into. The APA is not binding if there is any change in law or facts having bearing on such APA. The person entering in to such APA was required to furnish a modified return within a period of three months from the end of the month in which the said APA was entered in respect of the return of income already filed for a previous year to which the APA applied. The modified return has to reflect modification to the income only in respect of the issues arising from the APA and in accordance with it.

General Anti-Avoidance Rule (GAAR) – This principle has resonated in Indian Courts in the rulings of the Azadi Bachao Andolan and the Vodafone cases. However, the Courts have also held that where transactions were found to be 'colourable' or 'dubious', such transactions could be disregarded by applying various doctrines including piercing of the corporate veil and substance over form. Therefore, the introduction of GAAR as a codified law was imperative to address widespread issues of tax avoidance as against tax mitigation. The existences of anti-avoidance principles are based on various judicial pronouncements. There are some specific anti-avoidance rules (SAAR) in the Act but general anti-avoidance has been dealt only through judicial decisions in individual cases. GAAR has been enacted in many countries such as Australia, the Netherlands, Canada, New Zealand, China, Poland, the United Kingdom, the United States, France and Germany, and over the years, some of these countries have developed and implemented jurisprudence on the subject. Therefore, in an environment of moderate rates of tax, it was necessary that the correct tax base be subject to tax in the face of aggressive tax planning and use of opaque low tax jurisdictions for residence as well as for sourcing capital. The basic criticism of statutory GAAR that it provides a wide discretion and authority to the tax administration which at times is prone to be misused needed to be incorporated in any GAAR regime. Keeping all these issues in mind Chapter X-A has been introduced in the Act consisting of Sections 95 to 102 which provides the entire framework to implement the GAAR regime. This has become effective from 1st April 2018.

The Finance Bill, 2016

Reduction of corporate tax rate and phasing out the deductions and exemption – In his Budget speech of the Finance Bill, 2015, the Finance minister initiated major reforms to boost the economy and started the process of reduction of corporate tax rate and phasing out the deductions and exemption which were linked to income/profit. In his speech, while laying down The Finance Bill, 2015, the Finance Minister stated that he has carried out major reforms like GST and others in Indirect Tax and he also wished to carry out matching reforms in Direct Tax as well. He said:-

> ***97.*** *We need to match this transformative piece of legislation in indirect taxation with transformative measures in direct taxation. The basic rate of Corporate Tax in India at 30% is higher than the rates prevalent in the other major Asian economies, making our domestic industry uncompetitive. Moreover, the effective collection of Corporate Tax is about 23%. We lose out on both counts, i.e. we are considered as having a high Corporate Tax regime but we do not get that tax due to excessive exemptions. A regime of exemptions has led to pressure groups, litigation and loss of revenue. It also gives room for avoidable discretion. I, therefore, propose to reduce the rate of Corporate Tax from 30% to 25% over the next 4 years. This will lead to higher level of investment, higher growth and more jobs. This process of reduction has to be necessarily accompanied by rationalisation and removal of various kinds of tax exemptions and incentives for corporate taxpayers, which incidentally account for a large number of tax disputes.*
>
> ***98.*** *I wanted to start the phased reduction of corporate tax rate and phased elimination of exemptions right away; but I thought it would be appropriate to give advance notice that these changes will start from the next financial year. Our stated policy is to avoid sudden surprises and instability in tax policy. Exemptions to individual taxpayers will, however, continue since they facilitate savings which get transferred to investment and economic growth.*

Having given the advance notice in the Finance Bill, 2015 the Finance Minister in his Finance Bill 2016 started the process of reduction of rate of corporate tax and phasing out the income based deductions and exemptions. To quote him –

> ***122.*** *I had, in my last budget speech mooted the proposal to reduce the rate of Corporate Tax from 30% to 25% over a period, accompanied by rationalization and removal of various tax exemptions and incentives. In any case the effective rate of tax paid by companies comes to an average of 24.67% because of various exemptions which they are availing of. A phasing out plan of removing these exemptions and tax incentives was placed in public domain and we have received a large number of constructive suggestions. The final plan of phasing out exemptions is given in Annexure. The highlights are as follows:-*
>
> *(a) The accelerated depreciation provided under IT Act will be limited to maximum 40% from 1.4.2017.*
>
> *(b) The benefit of deductions for Research would be limited to 150% from 1.4.2017 and 100% from 1.4.2020.*
>
> *(c) The benefit of section 10AA to new SEZ units will be available to those units which commence activity before 31.3.2020.*
>
> *(d) The weighted deduction under section 35CCD for skill development will continue up to 1.4.2020.*
>
> ***123.*** *The reduction in corporate tax rate has to be calibrated with additional revenue expected from the incentives being phased out. The benefits from phasing out of exemptions are*

available to Government only gradually. In the first phase, therefore, I propose the following two changes in corporate income-tax rates:–

(a) The new manufacturing companies which are incorporated on or after 1.3.2016 are proposed to be given an option to be taxed at 25% + surcharge and cess provided they do not claim profit linked or investment linked deductions and do not avail of investment allowance and accelerated depreciation.

(b) I also propose to lower the corporate income tax rate for the next financial year of relatively small enterprises i.e. companies with turnover not exceeding ₹ 5 crore (in the financial year ending March 2015), to 29% plus surcharge and cess.

The process of reduction in rate of corporate taxes has since been carried out continuously. Rate of Corporate tax on domestic companies reached an all-time high of 38.95% in 2001 and a record low of 25.168% (basic rate 22% plus 10% surcharge and 4% Cess) in 2019.

Dividend Distribution Tax (DDT) – Since DDT is levied on companies it uniformly applies to all investors irrespective of their income slabs. This is perceived to distort the fairness and progressive nature of taxes. Persons with relatively higher income can bear a higher tax cost. Therefore, the bill proposed that in addition to DDT paid by the companies, tax at the rate of 10% of gross amount of dividend will be payable by the recipients, that is, individuals, HUFs and firms receiving dividend in excess of ₹ 10 lakhs per annum.

Equalisation Levy – In order to tap tax on income accruing to foreign e-commerce companies from India, the bill proposed that a person making payment to a non-resident, who does not have a permanent establishment, exceeding in aggregate 1 lakh in a year, as consideration for online advertisement, will withhold tax at 6% of gross amount paid, as Equalization levy by the Finance Bill 2016. The levy will only apply to B2B transactions.

The Finance Bill, 2019 and 2020

These bills continued the journey of reducing both corporate and personal income tax and introduced revolutionary concepts in the administration of the income tax Act. The new path breaking administrative measures are –

Prefilling of Income Tax Returns using Statement of Financial Transactions (SFT) – Pre-filling of Income-tax Returns was proposed for faster, more accurate tax returns. The returns were to be prefilled with details of several incomes and deductions to be made available. For this purpose information was required to be collected from Banks, Stock exchanges, mutual funds etc. The scope of information collected through SFT was widened for this purpose.

Faceless Assessment and Faceless Appeals – Most of the functions of the Income Tax Department starting from the filing of return, processing of returns and issue of refunds are performed in the electronic mode without any human interface. In order to impart greater efficiency, transparency and accountability to the assessment process, a new faceless assessment scheme was introduced by the Finance Bill, 2019 and a new faceless Appeal Scheme was

introduced by the Finance Bill, 2020. In order to implement the faceless assessment and faceless appeal the organisational structure of the department was completely overhauled.

Reduction in corporate tax – In the Finance Bill, 2020 the Finance Minister further carried the process of lowering of corporate tax. The Finance Minister observed –

> *Mr Speaker, Sir, our Government has spearheaded radical fiscal measures to ensure that India's economy continues to tread the path of high growth. These are times when countries are competing with each other like never before to become the most attractive destination for doing business. Therefore, to make sure that India stays globally competitive and a favoured destination for investment, we took a bold historic decision of reducing the corporate tax rate for new companies in the manufacturing sector to an unprecedented level of 15%. Similarly, for the existing companies, the rate has also been brought down to just 22%. As a result, our corporate tax rates are now amongst the lowest in the world. This will enable companies to expand their businesses and make fresh investments in the coming future.*

Removing dividend distribution tax (DDT) and moving to classical system of taxing dividend in the hands of shareholders/unit holders – The present system of taxation of dividend in the hands of company/mutual funds was introduced by the Finance Act, 2003 (with effect from the assessment year 2004-05) since it was easier to collect tax at a single point and the new system was leading to increase in compliance burden. However, with the advent of technology and easy tracking system available, the justification for current system of taxation of dividend has outlived itself. In view of above the bill amended the Act so that dividend or income from units are taxable in the hands of shareholders or unit holders at the applicable rate and the domestic company or specified company or mutual funds are not required to pay any DDT.

New Scheme of taxation of Personal Income Tax under Section 115BAC – This policy change was brought through the Finance Bill, 2020. While introducing this new tax regime the Finance Minister observed that in order to simplify income tax system, she has reviewed all the exemptions and deductions which got incorporated in the income tax legislation over the past several decades. She observed that it was surprising to know that currently more than one hundred exemptions and deductions of different nature are provided in the Income-tax Act. She stated that she has removed around 70 of them in the new simplified regime. The new tax regime provided that income tax rates will be significantly reduced for the individual taxpayers who forgo certain deductions and exemptions. Under the new regime, an individual shall be required to pay tax as per the following slabs –

- Nil for income up to 2.5 Lakh
- 5% for income between 2.5 lakh to 5 lakh against the current rate of 5%
- 10% for income between 5 Lakh to 7.5 Lakh against the current rate of 20%.
- 15% for income between 7.5 Lakh to 10 Lakh against the current rate of 20%.
- 20% for income between 10 Lakh to 12.5 Lakh against the current rate of 30%.

- 25% for income between 12.5 Lakh to 15 Lakh against the existing rate of 30%.
- Incomes above 15 lakh will be continued to be taxed at the rate of 30%.
- However, those earning up to 5 lakhs shall not pay any tax either in the old regime or in the new regime.

The Finance Bill, 2021

Voluntary compliance – Annual Information System (AIS) portal – Reposing full faith on the taxpayers – In this finance bill, the Finance Minister carried out a major policy reform towards reposing faith in the Indian Taxpayers, making the reopening of assessments absolutely transparent and goading the taxpayers to voluntarily disclose all its income. As has been discussed earlier the income tax department has been collecting data of various financial transactions and incomes through the Statement of Financial Transactions (SFT). Some very basic transactions were being shown to the assesses on the "Traces portal". Earlier, if the tax authorities had reason to believe they would reopen the assessments as per the provisions of section 147 by issuing notice u/s. 148 asking the assesses to file a return showing true and full income and only after the return was filed the assessee was shown the reasons for reopening the assessment. The Finance Minister took a very bold taxpayer friendly step and asked the department to upload the entire data on AIS portal before the end of the financial year so that every assessee, individual or corporate or any other assessee, is able to see full details of all the information that the department has in respect of their financial transactions and incomes. Now no information is hidden from the taxpayers. In this way each and every assessee is nudged to voluntarily file the income tax returns of all their incomes covering all their transactions. In course of time this would reduce the number of cases to be reopened substantially or altogether eliminate the need to reopen assessments.

Further in cases where the assessee has not still disclosed all its income or the transactions in commensurate with the income of the assessee as per the AIS portal, the provisions relating to reopening of the assessment were also amended and made tax payer friendly by incorporating natural justice in the provisions itself. It provided for approval from a specified authority before notice u/s. 148 is issued, the reasons for reopening the assessment were made part of the notice, objections to the issue of notice are invited and thereafter taking into consideration the submission of the assessee, the objections are disposed of in writing by a speaking order and the notice is either dropped or issued for reopening the assessment. These changes have been affected by the introduction of newly amended provisions of sections 147, 148, 148A and 149 in the Income Tax Act. In cases where the taxpayer forgot to file his return correctly the law was amended by the Finance Act, 2022 provided for filing of updated returns of income for a small additional tax.

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CA Pradeep Kasthala CA Rajitha Boorugu

INTERIM FINANCE BUDGET 2024

Owing to upcoming general elections in 2024, the Hon'ble Finance Minister hinted that it would come up with interim budget on February 1. Accordingly, not many proposals were introduced either in direct taxes or indirect taxes. The elected government shall present a full budget, post general elections due to be held in April/May 2024.

Continuing with its focus on macro-economic and fiscal discipline, the government estimates a fiscal deficit of 5.8% of GDP for FY 2023-24, 5.1% of GDP for FY 2024-25 with an aim of reducing it further below 4.5% of GDP by FY 2025-26.

DIRECT TAX PROPOSALS

No changes are proposed to the existing tax rates in the interim budget. Accordingly, the tax rates shall remain unchanged from FY 2023-24. Amendments are proposed primarily on the extension of sunset clauses for IFSC units & eligible startups and harmonization of TCS provisions, which are as follows:

A. Extension of sunset clause for units under International Financial Services Centre ("IFSC")

Currently, the investment division of the offshore banking unit in the IFSC avails tax exemption on certain income under section 10(4D) of Income Tax Act, 1961 ("the Act"), subject to condition that commercial operations begin on or before 31 March 2024.

Further, the income of a non-resident in the nature of royalty or interest, on account of the lease of an aircraft or a ship is tax exempt under section 10(4F) of the Act, where such royalty or interest is paid by a unit of an IFSC, provided such unit of an IFSC has begun its commercial operations

on or before 31 March 2024.

Where an IFSC unit derives an income (as referred to in Section 80LA(2) of the Act), it is entitled to a tax deduction of 100% of such income for a consecutive period of 10 years out of block of 15 years, beginning from the assessment year in which relevant permission was obtained. One of such specified incomes includes income from the transfer of an asset being an aircraft or a ship, provided that IFSC unit has begun its operations on or before 31 March 2024.

It is accordingly proposed to amend Section 10(4D), Section 10(4F) and Section 80LA of the Act to extend the time limit to begin commercial operations from 31 March 2024 to 31 March 2025.

B. Extension of sunset clause for eligible start-ups, investment funds etc.

Currently, an eligible start-up has an option to avail 100% tax deduction on its profits for 3 consecutive years out of a block of 10 years, beginning from the year it was incorporated under section 80IAC of the Act. This benefit is subject to certain conditions and one such condition includes incorporation of the Company on or before 31 March 2024.

It is hereby proposed to extend the deadline for incorporation of eligible start-ups from 31 March 2024 to 31 March 2025.

Further, income derived by wholly owned subsidiary of Abu Dhabi Investment Authority, Sovereign Wealth Fund and Pension funds are exempt from tax, where such income is in the nature of dividend, interest or long-term capital gains arising from investments made by it in India. The said exemption is subject to certain conditions and one such condition is that the investment should have been undertaken between FY 2020-21 and FY 2023-24.

It is hereby proposed to extend the benefits for investments made by above mentioned entities/ funds up to FY 2024-25.

C. No Extension to the time limit prescribed U/s 115BAB

Concessional tax rate has been prescribed for domestic manufacturing companies.

One of the conditions stipulated in the said section is that the company has been set-up and registered on or after the 1st day of October, 2019, and has commenced manufacturing or production of an article or thing on or before the 31st day of March,2024. Unlike extensions mentioned above, the sun set clause applicable u/s 115BAB has not been extended.

D. Harmonization of TCS provisions

Currently, as per provisions of section 206C(1G) of the Act, any authorized dealer who receives money for remittance under Liberalized Remittance Scheme ("LRS") or seller of an overseas tour operator is required to collect 20% of tax from the buyer on the entire amount without any threshold, unless such remittance is being undertaken for purpose of education or medical treatment and doesn't exceed INR 7 lacs.

It is hereby proposed to restore the threshold of INR 7 lacs for all categories of remittances under LRS for the purpose of TCS. Further, the TCS rate is proposed to be restricted to 5% in case of sale of overseas tour program up to INR 7 lacs.

It may be noted that the proposal for harmonization of TCS provisions in interim budget is in line with the Press Release issued on 28 June 2023 and Circular No. 10 of 2023 issued by the Central Board of Direct Taxes ("CBDT").

E. Amendments for better tax administration

To improvise tax governance, the relevant sections of the Act (i.e. Section 92CA, Section 144C, Section 253 and Section 255) provides that CBDT shall issue necessary directions on or before 31 March 2024, to implement faceless litigation in India.

It is proposed to amend the said sections to allow issue of necessary directions before 31 March 2025.

Lastly, as part of the budget speech, the Hon'ble Finance Minister had proposed to withdraw small, unresolved or disputed tax demands up to INR 25,000, where such tax demand is pertaining to FY 2009-10 and prior years and up to INR 10,000, where such tax demand pertains to period between FY 2010-11 to FY 2014-15.

The further details on the scheme and mechanism to avail the above benefits by taxpayers is yet to be notified by CBDT. This important step from the government will likely to benefit approximately 1 crore tax payers.

F. Clarifications by Revenue secretary in post budget interview

In a post-budget interview, the Revenue secretary clarified that the mechanism for waiver of small, disputed demands up to INR 25,000/INR 10,000 pertaining to respective period is underway and shall be applicable to all assessees. It was also clarified that while the assessee can opt for waiver of demands for multiple years, it shall be subject to an overall cap of INR 1 lakh.

The Revenue secretary also mentioned that a committee is setup for the purpose of BEPS-Pillar 2 rules and further clarifications on Pillar 2 shall be provided under the main budget post general elections.

INDIRECT TAX PROPOSALS

The Union Finance Minister emphasized upon the key transformations that GST was able to bring about including optimizing the supply chain, eliminating the tax arbitrage, reduction in tax compliances over the period. However, as predicted, the interim budget introduced meagre amendments in the realm of Indirect taxation i.e., the revision in the concept of Input Service Distributor (hereinafter referred as 'ISD'), manner of distribution of the credits and penal provisions with respect to registration of packing machines for notified goods.

A. Input Service Distributor

Input Service Distributor is a concept that enables the taxpayer to distribute the input tax credit of GST paid on services procured at one location and utilizing the same services at multiple business locations of the taxpayers. The requirement of registration under Input Service Distributor was always an ambiguous decision for the taxpayers having business presence across various States from the inception of GST introduction. Due to this, the taxpayers across India have mixed practices of following the approach of distribution of GST on expenses incurred at Corporate Location used for business operations at multiple locations.

The GST Council in its 50th Meeting recommended to clear the ambiguity prevailing on the concept of ISD, that the ISD registration was optional until it is made mandatory in the provisions of the CGST Act, 2017. Further, the Central Government clarifies the difference between internally generated services i.e., services provided between distinct persons and services procured from third parties for the purpose of business operations in multiple locations.

In line with the above recommendation from GST Council, there are amendments proposed to the CGST Act, 2017 through the Finance Bill 2024 to mandate the process of input service distribution for all the services procured at one location. Further, the Government also includes common supplies which are subject to GST under reverse charge mechanism at corporate office or at any distinct person for invoicing to ISD registration first and then ISD registration shall distribute the same to respective registration as per the prescribed methodologies.

With the above amendment it is an immediate action for the industry to evaluate the current process to make necessary changes including procurement process, changes in their ERP, SOP.

B. Penal provisions with respect to registration of packing machinery under GST

The Central Government notified a procedure for registering the packing machinery and its capacities for certain goods i.e., Pan Masala, Tobacco products including chewing tobacco, branded tobacco products vide Notification No. 30/2023 dated 31st July 2023. This was notified to track the production capacity of these units and control over tax collections on these products.

In the Finance Bill 2024, a new penal section is inserted for any non-compliance of special procedure as indicated above. The penalties notified to be INR 100,000 per machine in addition to seizure and confiscation of such machinery until the compliance under above notification is completed by the respective taxpayer dealing the above referred products.

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Agriculture in India – A Macro Economic Snapshot

CA Rashmin Sanghvi

Overview

*Agriculture is to Indian economy what a **foundation** is to a tower. Public looks at the tower, its façade & interiors. But if the foundation is damaged, whole tower is damaged. Since independence, Indian government, researchers and several charitable trusts have put in great efforts. India has risen from a food scarcity country to a net exporter of agricultural products. In 1947, India could not feed her 33 Crore people. Today, Indian population is 141 Crores and we are **net exporters of food**. There is phenomenal progress over past 76 years.*

*And yet, **farmers commit suicides and poor people die of hunger**. While India is on the right path, Public-Private trust & partnership can go a long way to further improve our agriculture & our farmers' position.*

*US MNCs continue their efforts to spread their markets for **Genetically Modified Food**. It has been established that such business creates monopoly for the MNC & Indian farmer will be in a worse position. This is a political issue. Spirited people keep fighting for protecting India from GM foods.*

*Let us see different issues faced by Indian agriculture, the attempts to resolve the problems and contribution to economy. When some issues are resolved, there will be newer issues. **That is life**. We are at a stage in Indian agriculture – where we can, and we are dealing with most issues with confidence & optimism.*

1. Issue: Condition of Indian farmer:

1.1 **Late Mr. Sharad Joshi of Shetkari Sanghatan**a, Pune wrote about the following incident:

A farmer had produced certain vegetables. He gave the same to Adatiya (Agent) for sale in the market. The agent sold the same in the Mandi and at the end of the transaction, sent a bill to the farmer. The bill read somewhat as under:

Particulars	*Amount (INR)*
Purchase price of farmer's produce	1,000
Less: Adat (commission)	(50)
Less: Interest on loan	(450)
Less: Transport charges	(200)

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Particulars	*Amount (INR)*
Less: Other charges	(400)
Net amount payable by farmer to Adatiya	**(100)**

(Amounts are indicative. The incident shows how the farmer is exploited & impoverished in India.)

1.2 I have personally visited a farmer in Gujarat who had large horticulture plantation. He grew papaya. When the crop was ready for marketing, the price was so low that instead of incurring transport cost, he gave the papaya to his bullocks for eating.

1.3 I have met farmers of Dharampur in South Gujarat. Some of the incidents are as follows: (i) In the year 1998, when I first visited Dharampur, many people could not afford any clothes except a langot. Many men and women in Dharampur could not afford two meals a day and a home. (ii) During Covid lock-down period, a farmer could not get food to eat. Being weak, he slept in his hut. After a few days, he simply died of hunger. This is the position of Indian farmers in some areas.

2. Positive: Indian agricultural progress

In the 1950's, India could not produce enough food for a population of **33 crores**. India had to import food grains from USA and some other countries. The most infamous being the PL 480 agreement with USA. The quality of food we received was so poor that people said that - the wheat sent to India was "fit only for pigs". Even for such food, Indian government had to beg before US government. We were so dependent on imports that India was called to be living on a **"ship to mouth" existence**. Today we have a population of **141 crores** and yet we are a net food exporting country. The agricultural trade surplus during FY 2022-23 was USD 17.46 billion. This is a small amount for India today. But it is significant that we have grown from being import dependent to net exporter.

Issue: the fact that we are net exporter does not mean that all 141 crore Indians get two meals a day. In fact, people do die of hunger even now. The 2022 Global Hunger Index ranks India at 107 out of 121 nations. Malnutrition is the cause of around 70% of infant deaths in India.. Every year more than 10,000 farmers commit suicide all over India. In Maharashtra alone more than 2,000 farmers commit suicide every year.

3. Positive: India is a blessed country: Just see some illustrations

3.1 **Temperature**: Countries like Canada and Russia spend billions of dollars on heating due to extremely cold temperatures. Most of India does not have such an issue. Money not spent is money earned. We can grow food for all twelve months in many parts of the country. In Canada, Russia & other cold countries, they can't grow for six months in a year.

3.2 **Water**: India needs a maximum of 3,000 billion cubic meters (BCM) of water a year; while it receives 4,000 billion cubic meters of rain.

India is blessed by God in the sense that we have the right environment

for best agriculture. Hence, before the Europeans colonised India; India was the richest country in the world. If we count the gold held by Indian individuals & temples; India has largest quantity of gold in the world – 25,000 tonnes. Almost all this gold was historically imported by Indians by selling agricultural products – spices, cotton, etc.

3.3 Issue: Blessings Wasted

We receive annual rainfall for more than we need. But we are utilising only 29% of the total rainfall. [We receive annual rainfall of about 3,880 billion cubic meters (BCM)]. However, the utilizable water is only around 1,126 BCM. Rest of the rainfall goes to the sea & the drains. India has 5,745 nos. of dams. Gross Storage Capacity of constructed dams is 332 BCM (viz. 8.57% of annual rainfall received). This has resulted in 54% of India facing high to extremely high water stress.

3.4 Positive: Attempts to resolve the problem

I am quoting here the instances for which I have direct knowledge. **Vivekanand Research and Institute** (VRTI) based in Kutch, Gujarat has done massive water management in Kutch. Despite being a desert area, today Kutch has got many large plantations for horticulture and I have personally seen farmers who have become very rich. **Vicharta Samuday Samarthan Munch** (VSSM) based in Gujarat and several other similar charitable trusts have done significant water management and ensured that more water is available for agriculture and home purposes.

In the years 1992 to 2001, **Limbdi Seva Mandal** did water management. Government of Gujarat avidly followed and supported the water management and where necessary changed the rules to facilitate water management by charitable trusts. The Small Irrigation Minister, Mr. Nitin Patel and Chairman of Narmada Nigam Mr. Jay Narayan Vyas made special rules for helping the charitable trusts. **Mr. Narendra Modi** became Chief Minister of Gujarat in the year 2001. He liked the scheme and instructed the entire Government machinery to carry out water management. Government started digging hundreds and thousands of lakes every year resulting in significant increase in agricultural production. In the first 10 years of Mr. Modi's rule, Gujarat had recorded the highest decadal agricultural growth rate of 10.97% in the period 2000-01 to 2009-10 as against the target growth rate of 4% set by the Central government. Village women who had to carry water in pots kept on head; got water supply from the taps in the homes. In and around my native place, every summer there used to be serious large-scale fights on account of water. This has become a thing of the past. Due to the benefits of water management, for several years, most of the women folk in Gujarat would vote for BJP irrespective of any ideological issues.

India's history of just the last 25 years, proves that Government and private sector partnership can produce significant results. They have actually produced significant results. This has to be spread all over the country.

India has a dream of significantly large growth in GDP, overall economic progress and elimination of death due to hunger as well as farmers' suicides. All these **dreams are practical**. We can realise all these targets in next ten to twenty years. If we fail in this, our economic progress will be limited; and will be marred by farmers' protests. If agriculture goes down either because of droughts or because of climate change or because of any other reasons; it will be like shaking up the foundation of Indian economy.

4. Issue: Why is agricultural contribution to GDP only 15%?

4.1 In the year 1950-51, agricultural sector contributed to 54% of GDP. During FY 2022-23, it contributed to 1**5% of the GDP**. Agricultural production has gone up from 135 million tons in 1950-51 to more than 1,300 million tons in 2021-22. The foodgrain production has increased from 51 million tons in 1950-51 to 329.69 million tons. However, Industrial production and services have gone up even faster. Hence, while agricultural production has increased, the share of agriculture in total GDP has reduced.

4.2 Another reason is that the farmers get very low price for their produce.. At times they get lower than the cost of production also. The middlemen – the agents, wholesalers and retailers get much larger share of the price. Money lender exploits poor farmers. It is plain common sense that the percentage of GDP for agriculture will be low. In the illustration given by Late Mr. Sharad Joshi, contribution of agriculture was negative. Transport and Trade Services contributed to GDP. The solution clearly means that the price of agricultural production must go up. However, if the price of food goes up, the middle class and the poor people cannot afford food. They protest and no political party can afford adverse reaction from the people. Indian Government has learnt that whenever inflation has gone beyond the tolerance of the people, sitting governments lose elections. The rationing system is a large-scale mechanism to keep the market price of food below or at the tolerance level of the people. In fact, for sugar, pulses and even edible oil, Government does resort to import at substantial cost of foreign exchange to ensure that people do not face food scarcities. While we, the consumers would not face scarcities or inflation, the farmers suffer. In monetary terms, the share of agriculture will remain low. But it does not mean that importance of agriculture in Indian economy is low.

5. Further Action Required to fulfil the Dream: Issues

India can do a lot to improve agricultural production and distribution. The steps to be taken may be listed below:

5.1 **Water management** – availability of water can increase area under cultivation; and also increase agricultural production; make the farmers rich and stop farmers' suicides.

5.2 Reduction in **wastage** of food – grains, fruits, fishes…Wastage is in growing, transport, storage, at homes, 5-star hotels, in parties & marriage functions. We waste food without concern. Food

grain transport in jute gunny bags leak during the transport. Huge quantities are eaten by rodents and other pests when in storage. Hotels and marriage parties are important centres for considerable wastage of food . Around 74 million tonnes of food is lost in India every year, which is 22% of foodgrain output or 10% of total foodgrain and horticulture production, put together, in the country in 2022-23. Wastage prevented amounts to more availability of food.

5.3 Improvement in **yield per acre per crop**. India has achieved good progress in some crops in some states. (Green Revolution in Punjab & Haryana) This improvement needs to be spread across more crops & almost the whole country.

5.4 **New technology**: for example, dwarf rice plants, wheat plants & coconut plants. Government of India in collaborations with good Indian researchers & scientists has achieved good progress for some crops, some states. Again, this needs to spread all over the country.

5.5 Farmers getting **better prices, assured prices.**

5.6 **Fair distribution** of all schemes throughout India.

5.7 Prevention of **Climate Change**.

5.8 Make agriculture **more profitable** – add dairy, biogas production farmers to get higher prices, reduction of middlemen; freedom to the farmer to sell wherever he wants.

5.9 **Positive: Government of India knows & works** on all these steps and has schemes for many more areas which are not even listed here. In fact, the green revolution – (revolution in wheat production in Punjab and Haryana); the white revolution – (tremendous increase in production of milk thanks to late Mr. Kurien of Amul Dairy) are some brilliant illustrations of success of the Government and Private Sector Partnership. Minimum support price and assured purchase of agricultural production is a combined scheme by the Government which has succeeded tremendously. Many times, the Food Corporation of India (FCI) has such massive stocks of food grains that there is no buyer. As on 1st October 2022, FCI had 227.46 Lakh Metric Tonnes (LMT) of wheat and 204.67 LMT rice in the Central pool, as compared to the foodgrains stocking norms of 205.20 LMT of wheat and 102.50 LMT of rice.

6. Issue: A look at some Government schemes

While MSP (Minimum Support Price Mechanism) is a good scheme in principle, Government of India spends ₹ 1,475 Billion on MSP (Figures only for Wheat and Paddy for marketing year 2023). However, this expenditure goes on to finance mainly the farmers of Punjab, Haryana, Chhattisgarh, Madhya Pradesh and a few states. Out of the above-mentioned expenditure of ₹ 1,475 Billion, around ₹ 1,214 Billion (i.e. 82.30%) was towards the farmers of Punjab, Haryana, Chhattisgarh and Madhya Pradesh only. Farmers in the rest of the country do not benefit from the MSP scheme. Clearly, the schemes have not benefitted the citizens evenly throughout the country. This is the reason why Government wanted to scrap

the MSP scheme. In the year 2020, Central Government passed three laws to drastically change MSP & marketing of farm products. Farmers from Punjab and Haryana (richest farmers in India) protested and ultimately just before election in Uttar Pradesh, Government repealed all three laws.

Our old laws prevented farmers from selling their produce outside Mandi. The farmers were exploited by operators of the Mandi. Government wanted to grant freedom to the farmers. Parliament passed Three laws to change markets for agriculture & to change MSP. However, the rich farmers protested. Government could not implement reforms. This is the reality of politics in India.

7. Issue: How do we ensure that the farmer gets higher price?

We, the people of middle class have to be prepared to pay the correct price for the food that we eat and waste. The poor people are getting their food supply in the rationing scheme. Hence, while they will be taken care of, we have to pay more.

Earlier, farmers were forced to sell their produce in the Mandis. Now Government has done away with the restriction of movement of agricultural produce and the farmers are free to sell their produce anywhere. However, the small farmer has no means to transport his goods. The middlemen own trucks and tempos. They go to the farmers and buy their products may be even 100 kilograms or 500 kilograms. For such small quantities farmers cannot arrange for transport.

8. Growth in Agriculture boosts whole Economy

Agriculture is like the foundation of the tower. Everybody looks at the structure of the tower its height, its interiors and the facade but nobody looks at the foundation. In absence of the foundation the tower will collapse. If agriculture suffers the whole economy suffers.

Normally, the growth in agricultural production on an average is around 3 to 4%. Hundred Percent of the industry and services need agricultural produce because everybody needs food to eat. But there are industries like textile industry which are directly affected by agricultural produce. In the years in which agricultural production has increased, in the next year Indian GDP has increased more. In the year when India has suffered wide scale drought, the GDP suffers. Many Indian states faced severe drought in the years 1965-66, 1972-73 and 1979-80. The contribution of agricultural sector in GDP of the Country declined by 13.47%, 5.63% and 13.36% respectively. In the same years the GDP of India declined by 3.65%, 0.32% and 5.20% respectively. Similarly in the year 2002-03, due to drought in many states the agricultural contribution to GDP declined by 8.14% and GDP of India grew only by 3.99% which is lesser than the previous year's growth rate of 5.22%. In the 50's and 60's when there was drought in one area, the people in that area suffered and many people died of hunger. Today with significantly increased transport and management by Government, the drought in one area is taken care of by the supply from other areas and hence

the economy does not suffer. People in general do not die of hunger.

There are certain areas (for example Vidarbha in Maharashtra) which suffer from scarcity of rainfall. This directly affects agriculture and then affects the general welfare of the people. We have rivers like Ganga, Brahmaputra which supply water for all the twelve months. During monsoon, the rainfall provides the water. During summers the ice on the Himalayas melts and provides water for both the rivers. Rivers like Narmada and Tapi in Gujarat caused huge floods every third or fourth year. Both these rivers now have massive dams in fact the Narmada water management involves almost a thousand dams built in MP and Gujarat on the main river Narmada. Such a massive planning has reduced the floods. Now if there is a flood in these rivers, probably it is due to mis-management.

9. Issue: Imports

Pulses requirement and imports: Our annual requirement of Tur dal is 4.5 million tons. For the same, our total imports for FY 2023-24 will be 1.2 million tons. The domestic production of tur dal has reduced in the last few years. Even for Masoor dal, against our annual requirement of 2.3 million tons, we imported 1.47 million tons during 2023. We also imported around 5,80,000 tons of Urad dal during 2023.

Positive: New procurement platform launched by Home Minister Shri Amit Shah: Government of India has reviewed the situation and has planned the corrective action. On 4th January 2023, Union Home Minister Amit Shah launched a tur dal procurement portal through which registered farmers can sell their pulses at the MSP or market price – whichever is higher. Farmers are being encouraged to produce more pulses. The payments will be made as **Direct Benefit Transfers**. They have kept a target that by December 2027, India should become self-reliant in pulses. It is planned that we will not import even 1 kg of pulses from January 2028. The facility has been started for Tur dal as of now. A similar facility will be launched for urad dal, masoor dal and maize as well.

Compare this with **Bengal Famine** of the Year 1943-44. **British Government** forced farmers to grow indigo – which replaced normal food crops. Indigo produced was exported to Britain. In absence of normal food crops, people suffered. During the European Colonial rule in 200 years, there were several famines and millions of Indians died. Colonial Governments were interested in their profits & not at all concerned about millions of Indians dying.

Now as per our Constitution, we have a Welfare Government. Sincere and massive efforts are made to prevent droughts. And if droughts do occur, Government takes efforts to provide relief. Even after all allegations of corruption, wastages, mismanagement etc.; India has come a long way from independence.

10. Urban people have some complaints

10.1 ***Issue:*** Why agricultural income is not subject to **Income-tax**? We all know that the farmers make losses; they are subject to the vagaries of nature – floods

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& droughts. This will probably take out majority of the farmers from tax net. They earn less than ₹ 2,50,000 per person per year. But what about the rich farmers? Some of them earn millions & crores of Rupees. They live a luxurious life that is envy of many taxpayers in India. True, that they do suffer losses in times of floods & droughts. They can set off the losses against future taxable income – just as business people can. Where is the need for total exemption?

I have no answer. Probably, it is a political decision – which is beyond my consideration in this article.

Let me ask a query: In the matter of Professions Tax & GST; why lawyers are given a more favourable treatment as compared to CAs, Cost Accountants & other businessmen?

10.2 ***Issue:*** Government of India subsidises farmers by massive subsidies paid to fertiliser producers. So, their costs go down. Farmers are given guarantees about sale of their production & the Minimum Support Prices (MSP). Most agricultural produce does not suffer GST. It is like a dream: No direct & indirect taxes; subsidy in costs and assurance in sales. These benefits go largely to the rich farmers of India. They become very rich; do not pay any taxes & influence Indian politics.

My responses are as under: As discussed above, large scale fertiliser plants and large dams to supply water for irrigation – together made Indian Agricultural revolution possible. Whereas India had shortage of food in the 1950's; today we are net exporters. Massive increase in production has been possible by all these steps. Can we go back on the policy?

Note: Since 1992, I have worked with farmers at different places in Gujarat & Maharashtra for water management. I have deep interest in economics. Thus, I have some insight of agriculture.

Conclusion

Specific trusts personally known to me have worked in Gujarat for over Thirty years. They have released more than 5,00,000 farmers from the clutches of money lenders & middlemen. Farmers who could not buy cloth & food now have Roti Kapada aur Makaan; and most of them own Two wheelers. Some own Four wheelers. All this happened quietly without ruffling any feathers. Similar work is being done by many NGOs & The Government of India in many areas.

It would be incorrect & unjust to blame government or any single party for the ills of Indian agriculture today. We are in a good position. We have come so far because of good work by Government & private parties. We need to have better distribution & poverty elimination over entire country. This will be an ongoing exercise – where success depends upon The Whole Country working together.

"all misery comes from fear, from unsatisfied desire."

— *Swami Vivekananda*

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Indian Agriculture : Emerging Businesses, Macro & Policy Perspectives

CA Ritesh Alladwar

Overview

The article highlights the pivotal role of AgriTech startups in reshaping Indian agriculture, fuelled by a significant shift towards technology-driven solutions. With diverse challenges such as fragmented land holdings and outdated practices, the sector witnesses a surge in innovation. Government initiatives like PMKSY and digitalization through IoT contribute to macro perspectives, while startups in precision farming, digital marketplaces, finance, and biotechnology play key roles.

Despite the optimism, challenges persist, necessitating widespread tech adoption and collaborative efforts for a sustainable agricultural ecosystem. Funding trends, marked by growing investor interest and government support, underscore the sector's potential, while the need for a major success story awaits to spur further investment and growth.

The transformative landscape of Indian agriculture is driven by AgriTech, offering solutions across the value chain. Challenges like adoption barriers and policy reforms must be addressed through collaborative efforts to ensure sustained growth and long-term success.

Introduction

Indian agriculture has been the backbone of the country's economy for centuries, providing sustenance to close to 58% of its population and contributing 17% to its GDP. In recent years, there has been a noticeable shift in the landscape of Indian agriculture, with a growing emphasis on technology-driven solutions. This shift is primarily driven by the emergence of new-age AgriTech startups that leverage innovative technologies to address the challenges faced by the agricultural sector which has been so far the least disrupted by the technology. This article explores the current state of Indian agriculture, delves into the macro and policy perspectives shaping the sector, and provides an in-depth analysis of the latest business and funding trends in Agri Tech startups over the last ten years.

Current State of Indian Agriculture

Indian agriculture is characterized by its diversity, with a multitude of crops grown across different regions. Despite its significance, the sector faces numerous challenges, including fragmented land holdings, significant dependence on monsoons, inadequate infrastructure, and age-old

farming practices. The need for sustainable and efficient solutions has prompted a surge in technological interventions aimed at transforming the agricultural landscape.

Let's start with Macro Perspectives on Indian Agriculture before we look into emerging trends setting up a background behind the emerging trends in new age AgriTech startups

1. ***Government Initiatives and Policies***

   The Indian government has implemented various initiatives and policies to boost agricultural productivity and ensure the welfare of farmers. Schemes like Pradhan Mantri Krishi Sinchayee Yojana (PMKSY), Pradhan Mantri Fasal Bima Yojana (PMFBY), and e-NAM (National Agriculture Market) aim to address irrigation challenges, provide crop insurance, and create a unified national market for agricultural produce.

2. ***Digitization and Data-driven Agriculture***

   The digitization of agriculture is a crucial aspect of modernising the sector. The use of data analytics, remote sensing, and IoT devices enables farmers to make informed decisions regarding crop selection, irrigation, and pest control. The Digital India campaign has further facilitated the adoption of digital technologies in rural areas. The India stack of Adhaar, digitisation of land records, Aadhaar-enabled payment systems and UPI put together has put agri tech innovation on the fast track!

3. ***Sustainable Agriculture Practices***

   With environmental concerns gaining prominence, there is a growing emphasis on sustainable agricultural practices. Organic farming, precision agriculture, and conservation tillage are gaining traction as farmers seek ways to reduce their environmental impact while maintaining productivity. This area is aggressively contributing towards the export of organic produce out of India.

4. ***Market Linkages and Agri Infrastructure***

   Strengthening market linkages and improving agricultural infrastructure are essential for ensuring that farmers receive fair prices for their produce. Initiatives like the Pradhan Mantri Kisan Sampada Yojana under the Ministry of Food Processing Industries (MOFPI) aim to develop infrastructure for agro-processing clusters and create a seamless supply chain from farm to market. This scheme provides financial and technical support to entrepreneurs across capital, know-how and market access.

Agri Tech Startups: A Catalyst for Change

The emergence of Agri Tech startups has played a pivotal role in revolutionising Indian agriculture. These startups leverage cutting-edge technologies such as artificial intelligence, machine learning, IoT, and data analytics to address the sector's challenges. The last ~10 years have witnessed a surge in the number of AgriTech startups, each focusing on specific aspects of the agricultural value chain.

Currently, there are 3000 plus startups operating in India and the sector has cumulatively raised more than $ 3bn (2018-2022) to solve the problems faced by farmers and other ecosystem players currently.

Broadly AgriTech startups can be broken down into two major segments pre-harvest, post-harvest and allied activities (e.g. Animal husbandry, aquaculture, sericulture etc. To further drill down these broad segments, the following segments can be made to take a quick look into the nature of the activities of these startups. I have tried to cover key startups in each segment for reference.

1. ***Farm Advisory, Crop Management, Precision Farming***

   Startups in this category offer solutions that enable precision farming, optimising resource use (targeted to reduce cost) and increasing crop yields. Technologies such as satellite imagery, drones, and sensor-based monitoring systems are used to provide farmers with real-time insights into crop health, soil conditions, and water usage. In Spite of these high-end solutions like satellites or drones, my personal experience has been that there is a massive knowledge gap among farmers on good agricultural practices and this can be solved by basic and affordable solutions.

   There is an emerging trend seen in this to couple the advisory with products which enables getting better unit economics to these startups. Also, many of the startups in this segment have launched their own products (with innovative partnerships). Some of the prominent names here would be AgroStar, CropIn, BigHaat, Fasal.

2. ***Digital Marketplaces and Supply Chain Solutions***

   Startups in this category focus on creating efficient marketplaces and supply chain solutions, connecting farmers directly with buyers. These platforms aim to eliminate intermediaries and ensure fair prices for farmers. While we all can curse the middlemens in this ecosystem, these middlemen are there for so many years for many reasons! It could be because of informal credit to farmers, ensuring liquidations of all the material that farmers bring to the mandies (irrespective of the quality and quantity of the produce) and many other reasons. Displacing these middlemen is a tall task and so far very few startups at a certain scale have been able to profitably solve this!

   Some of the prominent names here would be Ninjakart, Waycool.

3. ***Agri Finance and Insurance***

   According to me, this is one of the least tech-penetrated and disrupted areas of agriculture so far. Startups in this segment provide financial solutions and insurance products tailored to the needs of farmers. These platforms aim to alleviate financial constraints and protect farmers from the uncertainties of agriculture.

   Companies in this bucket are trying multiple innovative models to bring in a formal financing channel to farmers and ecosystem players. While the government has done a lot of work on this front, still the requirement and importance of the financing is agriculture is so critical that an immense amount of efforts are still needed to make agriculture a successful occupation.

While traditionally warehouse receipt backed or vehicle backed (viz. tractor) financing options have been there for a very long time, these startups are bringing in food processors, agri input players and agri input platforms to bring in a close loop financing for farmers and ecosystem players. Some of the leading names in this segment could be Jai Kisan, Farmart, Unnati Arya.ag.

4. ***Agri Biotechnology and Sustainable Practices***

This is the newest segment of startups that are going deep into solving problems by applying deep research in biologicals and novel molecules. Startups in this category focus on biotechnology solutions and sustainable agricultural practices, aiming to enhance crop resilience, reduce environmental impact, and improve overall agricultural sustainability. With increased focus on sustainable development goals and the impact of harmful chemicals on the environment and human health, this segment is seeing an increased interest from government and investors as well. Some of the leading names in this segment (not just startups but including some of the large players) are Biostat, Bioprime, Agrinos, IPL, Agrilife.

Funding Trends in Agri Tech Startups

The funding landscape for Agri Tech startups in India has witnessed substantial growth over the past decade. Investors are increasingly recognizing the potential of technology-driven solutions to address the challenges in the agricultural sector. Some of the key trends include:

1. ***Growing Investor Interest***

The interest of both domestic and international investors in Agri Tech startups has grown significantly. Venture capital firms, private equity funds, and corporate investors are actively seeking opportunities to support innovative solutions in agriculture. Investors across the globe have invested more than c. $3Bn in this sector in the last five years (2018-2022)

2. ***Government Support and Grants***

Government agencies have also played a role in fostering innovation in agriculture. Various state and central government initiatives provide grants, subsidies, and support to Agri Tech startups, encouraging the development and deployment of technology in the sector. While this may not have created a massive impact but the favourable policy changes and government recognising a need for technology reforms in the sector have played an important role in drawing investor attention to this sector.

3. **Consolidation and Strategic Partnerships**

The Agri Tech ecosystem has witnessed a trend of consolidation through mergers, acquisitions, and strategic partnerships. Established agribusinesses and technology companies are collaborating with startups to leverage their innovative solutions and scale operations. This has also resulted due to the fragmented and extremely unorganised nature of the sector leading to significant challenges in scaling new-age solutions.

4. ***Impact Investment and Social Impact Funds***

   The rise of impact investing and social impact funds has led to increased funding for startups addressing social and environmental challenges in agriculture. Investors are not only looking for financial returns but also for solutions that positively impact farmers and the agricultural ecosystem. Multiple impact funds have invested significant amounts of money across various startups.

5. ***Diversification of Funding Sources***

   Agri Tech startups are diversifying their sources of funding, including crowdfunding platforms, government grants, and corporate partnerships. This diversified approach helps startups secure the necessary capital to fuel their growth.

Takeaway

The landscape of Indian agriculture is undergoing a profound transformation, driven by technological advancements and the innovative solutions provided by Agri Tech startups. From precision farming and digital marketplaces to agri finance and sustainable practices, these startups are addressing the long-standing challenges faced by farmers and the sector as a whole.

While there is optimism surrounding the potential of AgriTech to revolutionise Indian agriculture, challenges remain, including the need for widespread adoption of technology, infrastructure development, and policy reforms. The collaborative efforts of startups, government bodies, and the private sector are crucial to overcoming these challenges and creating a sustainable and technologically advanced agricultural ecosystem.

Also with the current funding winter across the new age companies (not just agri-tech) it is important for AgriTech startups to deliver these solutions to farmers and ecosystem players while generating sustainable profits and focusing on sustainable growth! Currently, the sector is waiting for a large-scale validation and a success story (may be in the form of a new-age startup listing on stock markets) to see more investors signing up and supporting larger numbers of entrepreneurs and creating a further velocity in the agriculture sector.

As the funding trends indicate, the investment community is increasingly recognizing the importance of Agri Tech startups in shaping the future of Indian agriculture. Continued support, both financial and regulatory, will be essential to nurture the growth of these startups and ensure the long-term success of the agricultural sector in India.

> "It teaches that desires and wants are in man, that the power of supply is also in man; and that wherever and whenever a desire, a want, a prayer has been fulfilled, it was out of this infinite magazine that the supply came, and not from any supernatural being."
>
> — *Swami Vivekananda*

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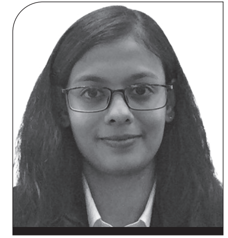

Constitution and Agriculture

Aditi Anil Dani
Advocate

Overview

This article touches upon the circumstances necessitating agrarian reforms before the Constitution came into force. The object of the reforms, primarily the abolition of the Zamindari system and redistribution of wealth, is discussed. The author then examines various provisions of the Constitution relevant to agricultural practices, including Articles and Entries in Lists II and III to the Seventh Schedule. The author also refers to Constituent Assembly Debates, which reflect the thought process and discussion behind these provisions. The focus then shifts to protection of land reform laws passed by various States, and how the process led to multiple amendments and adjudication of those amendments over the years. The transformation of 'right to property' from a fundamental right to a legal right is discussed. The article concludes with a discussion on current challenges, advocating for comprehensive strategies to address farmers' issues, climate change, and technological integration.

Introduction

Agriculture has always held an important place in the socio-economic fabric of our nation. Having freed ourselves from the shackles of British rule, 'We The People' resolved to secure to all citizens justice, equality, liberty and fraternity. The makers of our Constitution were deeply conscious of the need for agrarian reforms, on various counts, to achieve our Constitutional goals and they have succeeded in paving the way for implementing those reforms to a great extent.

Pre-Constitution era

Whether pre-independence or post-independence, the bulk of our working population has been involved in agricultural activities. Under colonial rule, however, the nature of agricultural activity underwent a drastic change; it went from self-sustaining and independent farming to commercialisation with a focus on producing cash crops. In 1793, the Permanent Land Settlement introduced under Lord Cornwallis, initially in Bengal and later in other parts of India, strengthened the Zamindari system with the result that small farmers and cultivators were reduced to landless labourers and pushed into poverty and debt, while the Zamindars, or landlords, effectively became owners in perpetuity. The profits from the trade in cash crops were pocketed by the colonial regime and the Zamindars; but no efforts were taken to improve agricultural methods or develop

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requisite infrastructure. This system also left the population vulnerable to famines, and the plight of the ordinary landless cultivator was reduced to a pitiable condition.

As India achieved independence, various States sought to enact land reforms which broadly covered abolition of intermediaries (rent collectors), regulation of tenancies, imposing ceiling on landholding (so as redistribute surplus land to the landless) and consolidation of fragmented landholding[1]. It is in this backdrop that the makers of our Constitution accorded great importance to agrarian reforms, as reflected from the various provisions of the Constitution enumerated below.

Constitutional provisions

As we all are aware, the Seventh Schedule to the Constitution provides for three lists, demarcating the subjects with regard to which the Union and State Legislatures can make laws. The Union, or Parliament, can make laws pertaining to entries specified in List I (Union List); the State Legislatures can make laws pertaining to entries specified in List II (State List); and both the Union and State Legislatures can make laws pertaining to entries specified in List III (Concurrent List).

Agricultural activity has mostly (and rightly) been placed under List II, as reflected from the following entries:

- 14. Agriculture, including agricultural education and research, protection against pests and prevention of plant diseases.
- 15. Preservation, protection and improvement of stock and prevention of animal diseases; veterinary training and practice.
- 17. Water, that is to say, water supplies, irrigation and canals, drainage and embankments, water storage and water power subject to the provisions of entry 56 of List I.
- 18. Land, that is to say, rights in or over land, land tenures including the relation of landlord and tenant, and the collection of rents; transfer and alienation of agricultural land; land improvement and agricultural loans; colonization.
- 30. Money-lending and money-lenders; relief of agricultural indebtedness.
- 36. Acquisition or requisitioning of property, except for the purposes of the Union, subject to the provisions of entry 42 of List III.
- 45. Land revenue, including the assessment and collection of revenue, the maintenance of land records, survey for revenue purposes and records of rights, and alienation of revenues.
- 46. Taxes on agricultural income.
- 47. Duties in respect of succession to agricultural land.
- 48. Estate duty in respect of agricultural land.

The following entries in List III also cover certain aspects pertaining to agriculture:

- 24. Welfare of labour including conditions of work, provident funds, employers' liability, workmen's

1. See Besley, T. and R. Burgess (2000): "Land Reform, Poverty Reduction, and Growth: Evidence from India", Quarterly Journal of Economics, Vol. 115, No. 2, pp. 389-430.

compensation, invalidity and old age pensions and maternity benefits.

- 33. Trade and commerce in, and the production, supply and distribution of,—
  - (a) the products of any industry where the control of such industry by the Union is declared by Parliament by law to be expedient in the public interest, and imported goods of the same kind as such products;
  - (b) foodstuffs, including edible oilseeds and oils;
  - (c) cattle fodder, including oilcakes and other concentrates;
  - (d) raw cotton, whether ginned or unginned, and cotton seed; and
  - (e) raw jute.
- 33A. Weights and measures except establishment of standards.
- 34. Price control

The Constituent Assembly Debates reflect that a great deal of deliberation went into how the entries should be worded and which entry should be placed in which list. For instance, a heated debate took place on whether a separate entry should be made for the 'welfare of peasants, farmers and agriculturists of all sorts' in List III[2]. A few members were of the opinion that welfare of peasants and farmers seemed to be nobody's concern, whereas Dr. Ambedkar (the Chairman of the Drafting Committee) was of the view that the term 'agriculturist' had no precise meaning and other entries would suffice for dealing with the economic interests of peasants. He was also of the view that 'welfare of labour' (under Entry 24) would include both industrial and agricultural labour. Ultimately, no such entry was adopted. In another instance, the suggestion that entries pertaining to land and agriculture be moved to List III (for having uniform systems of maintaining land records and uniform rates of land revenue) was negatived[3].

Abolition of the Zamindari system, redistribution of resources among farmers and improving their standard of life was evidently of prime importance to the Constitution makers. Treatment of land reform legislation is dealt with in greater detail below. The Directive Principles of State Policy contained in Chapter IV of the Constitution show how concerns surrounding agriculture have been considered:

- Article 38(1) - The State shall strive to promote the welfare of the people by securing and protecting as effectively as it may a social order in which justice, social, economic and political, shall inform all the institutions of the national life.
- Article 38(2)[4] - The State shall, in particular, strive to minimise the inequalities in income, and endeavour to eliminate inequalities in status, facilities and opportunities, not only amongst individuals but also amongst groups of people residing in different areas or engaged in different vocations.

2. See CONSTITUENT ASSEMBLY DEBATES, Volume 9, 03 Sep 1949.
3. See CONSTITUENT ASSEMBLY DEBATES, Volume 9, 02 Sep 1949.
4. Inserted by the Constitution (Forty-Fourth Amendment) Act, 1978.

- 39. Certain principles of policy to be followed by the State.—The State shall, in particular, direct its policy towards securing—

  (a) that the citizens, men and women equally, have the right to an adequate means of livelihood;

  (b) that the ownership and control of the material resources of the community are so distributed as best to subserve the common good;

  (c) that the operation of the economic system does not result in the concentration of wealth and means of production to the common detriment;

  (d) that there is equal pay for equal work for both men and women;

  (e) that the health and strength of workers, men and women, and the tender age of children are not abused and that citizens are not forced by economic necessity to enter avocations unsuited to their age or strength;

- 40. Organisation of village panchayats.—The State shall take steps to organise village panchayats and endow them with such powers and authority as may be necessary to enable them to function as units of self-government.

- 41. Right to work, to education and to public assistance in certain cases.—The State shall, within the limits of its economic capacity and development, make effective provision for securing the right to work, to education and to public assistance in cases of unemployment, old age, sickness and disablement, and in other cases of undeserved want.

- 42. Provision for just and humane conditions of work and maternity relief.—The State shall make provision for securing just and humane conditions of work and for maternity relief.

- 43. Living wage, etc., for workers.—The State shall endeavour to secure, by suitable legislation or economic organisation or in any other way, to all workers, agricultural, industrial or otherwise work, a living wage, conditions of work ensuring a decent standard of life and full enjoyment of leisure and social and cultural opportunities and, in particular, the State shall endeavour to promote cottage industries on an individual or co-operative basis in rural areas.

- 43B. Promotion of co-operative societies.—The State shall endeavour to promote voluntary formation, autonomous functioning, democratic control and professional management of co-operative societies[5].

- 48. Organisation of agriculture and animal husbandry.—The State shall endeavour to organise agriculture and animal husbandry on modern and scientific lines and shall, in particular, take steps for preserving and improving the breeds, and prohibiting the slaughter, of cows and calves and other milch and draught cattle.

5. Inserted by the Constitution (Ninety-seventh Amendment) Act, 2011.

Cow protection was also a subject matter of much discussion in the Constituent Assembly. The argument in favour of prohibiting cow slaughter was not only on account of religious considerations but was also based on cultural and economic viewpoints[6].

Apart from the above, Article 23 also provides that traffic in human beings and beggar and other similar forms of forced labour are prohibited, and any contravention of this provision shall be an offence punishable in accordance with law. In ***Bandhua Mukti Morcha vs. Union of India***[7], the Supreme Court, while dealing with the aspect of release and rehabilitation of bonded labourers, observed that:

> "There are still a number of bonded labourers in various parts of the country and significantly, as pointed out in the Report of the National Seminar on "Identification and Rehabilitation of Bonded Labour" a large number of them belong to Scheduled Castes and Scheduled Tribes account for the next largest number while the few who are not from Scheduled Castes or Scheduled Tribes are generally landless agricultural labourers. It is absolutely essential we would unhesitatingly declare that it is a constitutional imperative-that the bonded labourers must be identified and released from the shackles of bondage so that they can assimilate themselves in the main stream of civilised human society and realise the dignity, beauty and worth of human existence."

Interplay with the Right to Property and Saving of Land Reform Legislation

The Constitution, at the time of its enactment in 1950, protected the 'right to property' as a fundamental right. Article 19(1)(f) provided that every citizen shall have the right to acquire, hold and dispose of property, while Article 31 provided that no person shall be deprived of their property without the authority of law, and shall be compensated for the property acquired or requisitioned for a public purpose. To protect the land reform legislations passed (or in the process of being passed) by various States from being challenged as violative of Articles 14, 19 and 31, Articles 31A and 31B[8] were introduced by the Constitution (First Amendment) Act, 1951. The validity of the First Amendment was challenged by Zamindars and upheld by the Supreme Court in ***Sankari Prasad Singh Deo vs. Union of India***[9].

In ***State of Bihar vs. Kameshwar Singh***[10], the Supreme Court upheld the validity of laws passed by Bihar, Uttar Pradesh and Madhya Pradesh, for abolishing Zamindaries and other proprietary estates and tenures, so as to eliminate intermediaries by means

6. See CONSTITUENT ASSEMBLY DEBATES, Volume 7, 24 Nov 1948.
7. 1984 SCR (2) 67.
8. Article 31A saved laws providing for acquisition of estates, etc. from being challenged on the ground of inconsistency with or infringement of Articles 14, 19 and 31. Article 31B protected laws specified in the Ninth Schedule from being challenged on the ground of inconsistency with or infringement of any provision of Part III of the Constitution, and it added that notwithstanding any judgment, decree or order of any Court or tribunal to the contrary, each of the said Acts and Regulations shall subject to the power of any competent legislature to repeal or amend, continue in force.
9. [1952] SCR 89.
10 [1952] S.C.R. 889.

of compulsory acquisition of their rights and interests, and to bring the raiyats and other occupants of lands in those areas into direct relation with the Government. One of the arguments advanced on behalf of the Zamindars was that these statutes were not enacted for any public purpose; their only purpose and effect was to destroy the class of Zamindars and tenure-holders and make the Government a "super-landlord". Interestingly, Dr. Ambedkar also appeared and argued on behalf of some Zamindars in Uttar Pradesh, submitting that a constitutional prohibition against compulsory acquisition of property without public necessity and payment of compensation was deducible from the "spirit of the Constitution." Rejecting these arguments, Mahajan J. (forming part of the majority) observed:

> "It may be conceded that the present statute does not disclose the legislature's mind as to what it would ultimately do after the estates are vested in the State Government. Perhaps the State Government has not yet made up its mind how and for what purposes the lands and the tenures acquired will be utilized. … Be that as it may, it seems to me that in spite of the criticism levelled against the Act by the learned counsel, it cannot be said that the Act would fall because it fails to postulate a public purpose. … Now it is obvious that concentration of big blocks of land in the hands of a few individuals is contrary to the principle on which the Constitution of India is based. The purpose of the acquisition contemplated by the impugned Act therefore is to do away with the concentration of big blocks of land and means of production in the hands of a few individuals and to so distribute the ownership and control of the material resources which come in the hands of the State as to subserve the common good as best as possible. … The legislature is the best judge of what is good for the community, by whose suffrage it comes into existence and it is not possible for this Court to say that there was no public purpose behind the acquisition contemplated by the impugned statute. The purpose of the statute certainly is in accordance with the letter and spirit of the Constitution of India. It is fallacious to contend that the object of the Act is to ruin five and a half million people in Bihar. … The phrase "public purpose" has to be construed according to the spirit of the times in which particular legislation is enacted and so construed, the acquisition of the estates has to be held to have been made for a public purpose."

The judgment in ***Sankari Prasad's*** case incidentally formed the starting point of the tussle between the Legislature and Judiciary over the power to amend the Constitution, which finally culminated in the judgment of the Supreme Court in ***Kesavananda Bharati Sripadagalvaru vs. State of Kerala***[11].

Notwithstanding Articles 31A and 31B, certain other legislative measures adopted by different States for giving effect to the agrarian policy of the party in power, were challenged, and struck down by the Supreme Court[12]. Articles

11. (1973) 4 SCC 225.
12. See *Karimbil Kunhikoman vs. State of Kerala 1962 SCR SUPL. (1) 829; A. P. Krishnaswami Naidu vs. State of Madras 1964 SCR (7) 82*.

31 and 31A thus became the subject matter of further amendments[13] which effectively sought to expand the definition of 'estate' (to include any jagir, inam or muafi or other similar grant; any land held under ryotwari settlement; any land held or let for purposes of agriculture or for purposes ancillary thereto, including waste land, forest land, land for pasture or sites of buildings and other structures occupied by cultivators of land, agricultural labourers and village artisans), and protect more land reform laws from being challenged in courts. A new Article 31C[14] was also introduced to save laws giving effect to State policy towards securing principles specified in Articles 39(b) or (c) from being challenged on grounds of inconsistency with or infringement of Articles 14, 19 or 31[15].

The Supreme Court in ***Sajjan Singh vs. State of Rajasthan***[16] refused to reconsider Sankari Prasad's case, which had been followed by different High Courts in a large number of cases, and upheld the validity of the Constitution (Seventeenth Amendment) Act, 1964[17]. In ***I.C. Golaknath vs. State of Punjab***[18], an 11-judge bench of the Supreme Court (by a majority of 6:5), held that fundamental rights could not be abridged or taken away by way of amendment to the Constitution, in light of Article 13(2)[19], but accepted the validity of Article 31A. A 13-judge bench of the Supreme Court, (by a majority of 7:6), in Kesavananda Bharati's case then held that the power to amend the Constitution does not enable Parliament to alter the basic structure or framework of the Constitution, while invalidating the portion of Article 31C which provided that the law sought to be saved thereunder cannot be called into question in any court on the ground that such law does not give effect to the State's policy.

In ***Minerva Mills vs. Union of India***[20], the Supreme Court cemented the validity of Article 31A, categorically observing that:

> "clause (a) of Article 31A protects a law of agrarian reform which is clearly in the context of the socio-economic conditions prevailing in India, a basic requirement of social and economic justice and is covered by the Directive Principles set out in clauses (b) and (c) of Article 39 and it is difficult to see how it can possibly be regarded as violating the basic structure of the Constitution. On the contrary, agrarian reform leading to social and economic justice to the rural population is an objective which strengthens the basic structure of the Constitution. Clause (a) of Article 31A must therefore be held

13. Constitution (Seventeenth Amendment) Act, 1964 and Constitution (Twenty-Fifth Amendment) Act, 1971.
14. Constitution (Twenty-Fifth Amendment) Act, 1971.
15. This provision was subsequently amended by the Constitution (Forty-Second Amendment) Act, substituting Articles 39(b) or (c) with 'all or any of the principles laid down in Part IV.' This amendment was held to be void by the Supreme Court in *Minerva Mills vs. Union of India 1981 SCR (1) 206*.
16. 1965 SCR (1) 933.
17. See 13 above.
18. 1967 SCR (2) 762.
19. The State shall not make any law which takes away or abridges the rights conferred by Part III and any law made in contravention of this clause shall, to the extent of the contravention, be void.
20. 1981 SCR (1) 206.

> to be constitutionally valid even on the application of the basic structure test. … for over 28 years, since the decision in ***Shankari Prasad's*** case Article 31A has been recognised as valid and on this view, laws of several States relating to agrarian reform have been held to be valid and as pointed out by Khanna, J. in ***Keshavananda Bharati***'s case "millions of acres of land have changed hands and millions of new titles in agricultural lands have been created". If the question of validity of Article 31A were reopened and the earlier decisions upholding its validity were reconsidered in the light of the basic structure doctrine, these various agrarian reform laws which have brought about a near socio-economic revolution in the agrarian, sector might be exposed to jeopardy and that might put the clock back by settling at naught all changes that have been brought about in agrarian relationship during these years and create chaos in the lives of millions of people who have benefitted by these laws."

Ultimately, by way of the Constitution (Forty-Fourth Amendment) Act, 1978, Articles 19(1)(f) and 31 were repealed. The Statement of Objects and Reasons therefore states that *"in view of the special position sought to be given to fundamental rights, the right to property, which has been the occasion for more than one amendment of the Constitution, would cease to be a fundamental right and become only a legal right."* Article 300-A came to be inserted instead, providing that *"No person shall be deprived of his property save by authority of law"*, with the result that property, while ceasing to be a fundamental right, was given express recognition as a legal right.

Conclusion

While answering questions put to him at a gathering at the Hansraj P. Thackersey College, Nasik, Dr. Ambedkar said, *"The money the Government was raising in the form of taxes must be utilised to relieve the farmers of their debts, to fight poverty and to impart education."*[21] Given the innumerable instances of farmer suicides in the past decade, there is an urgent need to redress the cause of their misery so as to achieve the Constitutional goals set out above. The nation requires more effective laws to tackle indebtedness of farmers, address contingencies brought about by climate change, subsidize technology for better crop yield, improve infrastructure, promote sustainable and organic farming, etc. The share of agriculture in total Gross Value Added (GVA) of the economy has declined from 35% in 1990- 91 to 15% in 2022-23.[22] Both, the farm and the farmer, are vital for our progress as a nation. The Constitution provides the guiding light; it is up to the Legislature and Executive to realize its vision.

21. See DR. BABASAHEB AMBEDKAR WRITINGS AND SPEECHES, VOL. 17, PART THREE at pg. 56.
22. See https://economictimes.indiatimes.com/news/economy/agriculture/share-of-agriculture-in-indias-gdp-declined-to-15-in-fy23-govt/articleshow/106124466.cms.

Agricultural Income and Tax Exemption

CA Subodh Shah

Overview

Basics of Agricultural Income

Income derived from land

- *Dividend*
- *Salary of partners*
- *Bonsai plants*
- *Hydroponic farming*
- *Contract Farming*
- *Seed companies*
- *Mushrooms*
- *Aloe cultivation*

Composite Income

Aggregation and clubbing

Expected litigation

Probably one of the first things we read in tax laws was that there is no income tax on agricultural income. India has a huge population which earns agricultural income and that makes it all the more important to understand exactly what is agricultural income and the various issues surrounding the same.

Every year many of our home tax experts voice their opinion that agricultural income should be taxed. What is not appreciated that the Constitution of India gives exclusive power to the States only to levy tax on agricultural income. Thus the Union Government does not have any legal right to levy tax on agricultural income. It is therefore interesting that the Income-Tax Act exempts agricultural income u/s 10(1) when actually it has no right to tax the same. The Constitution of India however refers to the Income-Tax Act for sourcing the definition of agricultural income.

Lets delve into the basic definition of agricultural income. Section 2(1A) of the Income-Tax Act, 1961 reads as follows

agricultural income" means—

(a) *any rent or revenue derived from land which is situated in India and is used for agricultural purposes;*

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(b) any income derived from such land by—

(i) agriculture; or

(ii) the performance by a cultivator or receiver of rent-in-kind of any process ordinarily employed by a cultivator or receiver of rent-in-kind to render the produce raised or received by him fit to be taken to market; or

(iii) the sale by a cultivator or receiver of rent-in-kind of the produce raised or received by him, in respect of which no process has been performed other than a process of the nature described in paragraph (ii) of this sub-clause;

(c) any income derived from any building owned and occupied by the receiver of the rent or revenue of any such land, or occupied by the cultivator or the receiver of rent-in-kind, of any land with respect to which, or the produce of which, any process mentioned in paragraphs (ii) and (iii) of sub-clause (b) is carried on:

***Provided** that—*

(i) the building is on or in the immediate vicinity of the land, and is a building which the receiver of the rent or revenue or the cultivator, or the receiver of rent-in-kind, by reason of his connection with the land, requires as a dwelling house, or as a store-house, or other out-building, and

(ii) the land is either assessed to land revenue in India or is subject to a local rate assessed and collected by officers of the Government as such or where the land is not so assessed to land revenue or subject to a local rate, it is not situated—

(A) in any area which is comprised within the jurisdiction of a municipality (whether known as a municipality, municipal corporation, notified area committee, town area committee, town committee or by any other name) or a cantonment board and which has a population of not less than ten thousand; or

(B) in any area within the distance, measured aerially,—

(I) not being more than two kilometres, from the local limits of any municipality or cantonment board referred to in item (A) and which has a population of more than ten thousand but not exceeding one lakh; or

(II) not being more than six kilometres, from the local limits of any municipality or cantonment board referred to in item (A) and which has a population of more than one lakh but not exceeding ten lakh; or

(III) not being more than eight kilometres, from the local limits of any municipality or cantonment board referred to in item (A) and which has a

population of more than ten lakh.

Explanation 1.—For the removal of doubts, it is hereby declared that revenue derived from land shall not include and shall be deemed never to have included any income arising from the transfer of any land referred to in item (a) or item (b) of sub-clause (iii) of clause (14) of this section.

Explanation 2.—For the removal of doubts, it is hereby declared that income derived from any building or land referred to in sub-clause (c) arising from the use of such building or land for any purpose (including letting for residential purpose or for the purpose of any business or profession) other than agriculture falling under sub-clause (a) or sub-clause (b) shall not be agricultural income.

Explanation 3.—For the purposes of this clause, any income derived from saplings or seedlings grown in a nursery shall be deemed to be agricultural income.

Explanation 4.—For the purposes of clause (ii) of the proviso to sub-clause (c), "population" means the population according to the last preceding census of which the relevant figures have been published before the first day of the previous year;

Broadly speaking we can identify the 4 classes of agricultural income and the required conditions as follows:

A. Rent or revenue from land

For income to be covered under clause a of Sec. 2(1A) 3 conditions should be satisfied

1. The rent or revenue should be derived from land
2. The land should be situated in India
3. The land is used for agricultural operations.

B. Income is derived from

1. Agriculture
2. Carrying out any process ordinarily employed to render the produce raised or received by him fit to be taken to market
3. Sale of agricultural produce raised or received by the person.

C. Income is from farm building

i. The building should be on or in the immediate vicinity of the land

ii. It must be required as a dwelling house or store house or as an outhouse by landholder or cultivator.

iii. The land is either assessed to land revenue in India or is subject to a local rate assessed and collected by officers of the Government as such or where the land is not so assessed to land revenue or subject to a local rate, it is not situated in urban area.

D. Income is from saplings or seedlings grown in a nursery

Lets analyse a few situations to test whether the income is derived from land and/or whether the income was from agriculture.

i. **Dividend out of agricultural income**: The company was earning only agricultural income and paid

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dividend to its shareholders. The SC in the case of ***Mrs. Bacha F.Guzdar vs. CIT AIR 1955 SC 74*** held that the shareholder earned income on account of the investment made and hence the dividend could not be impressed with the character of agricultural income.

ii. **Interest on arrears of rent**: Assessee had let out agricultural land on rent for agriculture. Clearly the rent received from the tenant was agricultural income. However since the tenant had delayed the payment of rent some interest was charged on the arrears of rent. This is in the nature of compensation for late payment and not derived from land. ***CIT vs. Raja Bahadur Kamakhya Narayan Singh and Ors. 16 ITR 325 PC***.

iii. **Contract Farming**: In the case of ***Namdhari Seeds P Ltd 341 ITR 342 (Kar)*** the assessee had entered into contracts with farmers who would cultivate the seeds on their land and sell them to the assessee at specified rates. The entire agricultural operations were done by the farmers on their own lands. Here the lands were not leased to the company and this was held to be merely a business arrangement which did not result in any agricultural income for the Company.

However in a scenario if the assessee takes the agricultural land on lease and does the agricultural activities then the income could be treated as agricultural income.

iv. **Insurance compensation received for crop loss:** The agriculturist had insured the crop under the crop insurance scheme. Due to weather conditions his entire crop was destroyed and he got insurance compensation from the insurance company. It was held that such compensation was nothing but a substitute for sale proceeds of the crop and hence agricultural income. ***Midland Rubber and Produce Co Ltd vs. State of Kerala 301 ITR 369 (Ker)***.

v. **Salary of a partner from a firm having only agricultural income:** Salaries earned by partners from their partnership firms were held to be merely a share of profits known by a different name and should be treated as such for taxation purposes. Similarly interest on capital earned by the partner would partake the character of agricultural income. It may be noted that after the change in the taxation of firms from 1992 the salary and interest are no longer representing share of profits. In fact they are allowable deductions from business income. However since agricultural income would be exempt in the hands of the firm it would not enter the computation and consequently no deduction would be allowed for interest and salary to partners. As per proviso to section 28(va) such amounts would not be included in the income of the partners as they were not deductible in the hands of the firm.

vi. **Income of seed companies:** The assessee was cultivating basic foundation seeds by performing agricultural operation. The said foundation seeds were distributed to farmers for the purpose of generating further seeds. The seeds purchased from the farmers were also sold. In the case of ***Prabhat Agri Biotech Ltd 44 CCH 614 (Hyd Trib)*** it was held that may be a few

hybrid seeds could be produced by artificial method in a laboratory but seeds so produced with non-agricultural activity again will have to be sown in the agriculture field to have a larger quantity for sale in the market. Such foundation seeds were a product of agricultural activity. Only income generated on cultivation of basic/ foundation seeds has to be treated as agricultural income. At the same time the profit on purchase and sale of seeds procured from farmers would not constitute agricultural income.

vii. **Growing and Sale of Bonsai plants:** Bonsai are trees and plants grown in containers in such a way so that they look their most beautiful – even prettier than those growing in the wild. It was held that the bonsai tree is nothing but a product on which primary and basic operation of agriculture is carried insofar as in order to make the biological change in it, it had to make eligible continue to live within a limited area. This clearly indicates that the trees/plant uprooted from soil and taken to farm in pot or polythene bags filled with soil for sale or transportation will not affect or change the nature of agricultural operations. *Smt Reena Panda vs. ITO (2011) 30 CCH 0436 Cuttack Trib.*

viii. **Growing and sale of mushrooms:**

The assessee company was growing and selling mushrooms. The assessing officer raised an objection that since the mushrooms were grown in trays it would not be treated as agricultural income. In the case of ***DCIT vs. Inventaa Industries Pvt. Ltd (2018) 194 TTJ 0657 (Hyd) ((SB)*** following important observations were made

A. Use of land and performing activity on land itself, is the requirement specified for a natural product that raises from land itself, to be an agricultural product, the income from which is exempt from tax

B. 'Soil' is a part of the land. Land is also part of earth. The upper strata of the land is soil and this is cultured and made fit for production of crops, vegetables and fruits etc., by enriching the soil. When such soil is placed on trays, it does not cease to be land and when operations are carried out on this "soil", it would be agricultural activity carried upon land itself.

C. In view of the above discussion, we conclude that "soil", even when separated from land and placed in trays, pots, containers, terraces, compound walls etc., continues to be a specie of land and hence "land" for the sole purpose of determining whether activity performed on such land is for production of an agricultural product.

D. With the advancement of modern technology, we find that most of the crops, fruits, vegetables and flowers are being grown in controlled conditions, in green houses and in pots. In these advanced scientific agricultural techniques, soil is removed from the land and is placed in different containers such as pots, trays and stands etc. and agricultural operations are performed on them to yield the desired results of

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production of products which have some utility.

An important take away from this judgement is that soil even when removed from land would still be treated as land and therefore any agricultural operations on such soil would be treated as agricultural operations on land.

ix. **Hydroponic farming:** Hydroponics, means the cultivation of plants in nutrient-enriched water, with or without the mechanical support of an inert medium such as sand, gravel, or perlite. This issue was discussed in the case of ***DCIT vs. Best Roses Biotech Ltd. Ahd -ITAT 144 TTJ 0645.***

The Assessee had taken agricultural land on lease from farmer for the purpose growing roses. These roses were grown in a greenhouse by employing hydroponic system, where rose plants are planted two feet above ground level with the use of MS stands and plastic trays. The primary reason for using hydroponic system for growing roses was due to the fact it requires well-aerated soil with drainage system. The plastic trays are filled with soil and rose plants are planted on such trays which has proper drainage system in order to avoid excess storage of water in such trays. Apart from planting the rose plants other agricultural activities like pest and disease control etc. were also carried out to ensure best quality of roses. The assessee claimed the income from growing roses as agricultural income which was not accepted by the Assessing Officer.

It was explained that the root stocks of the rose plants are brought from the market and placed in the green house. The plantation and the generation of sapling was nothing but agricultural activities. The mother plants were grown on the land. For the purpose of rearing the mother plants human labour was involved. Further, the primary agricultural activities like tiling of soil, watering etc. for the purpose of growing mother plant. Subsequently these saplings were shifted the green house. It was explained that the purpose of growing the rose plants at the height is primarily avoid the pest and to develop in a controlled atmosphere. It was held that considering the advancement of technology and the use of the advanced equipment in cultivation, coupled with the conventional cultivation method, put together, made the operation carried out by the assessee as agricultural operation in nature.

x. **Income from Aloe cultivation:** The assessee in question was cultivating aloe plants and from them by means of machinery was preparing sisal fibre which he sold in the market. While it is beyond doubt that cultivation of aloe plants is agriculture the issue here was that is the subsequent processing of the produce into fibre to be treated as a process ordinarily employed to make the produce fit for the market. The primary argument of the assessee was that there was no market in existence at all for the aloe leaves. Only on conversion into fibre could it be utilised for making ropes, mats etc. Hence the assessee argued that this process is one which is ordinarily employed to make the

produce marketable. In ***J. M. Casey vs. CIT (Pat) AIR 1930 Patna 44***, the High Court accepted this proposition. It held that "*the process ordinarily employed by the cultivator of the aloe plant in order to render his produce fit to be taken to market is that in fact employed by the assessee and the whole of the profits derived by him from the manufacture of sisal fibre is agricultural income and as such is exempt from taxation.*". However it also stated that in future if a market got created for purchase of aloe leaves then such process would cease to be an agricultural activity. Though it is a very old judgement the principle laid down is quite relevant.

Composite income

Whenever the assessee is carrying out a composite activity which is partly agricultural and partly non agricultural then there is a need to split the composite income into 2 parts. Income Tax Rules provide for a methodology to split such income.

Rule 7A : Income from growing and manufacture of rubber

Rule 7B : Income from growing and manufacture of coffee

Rule 8 : Income from growing and manufacture of tea

Rule 7 : Income from growing and manufacture of other crops like growing sugarcane but converting it into sugar and selling it or growing tobacco leaves and processing them to sell cigarettes etc.

By and large most of the controversies around composite income have been more or less settled and there is sufficient clarity on the same.

Aggregation of agricultural income

Though the Central Government cannot tax agricultural income, the lawmakers devised an ingenious method to indirectly get higher tax from the tax payer by introducing the concept of aggregation of agricultural income for rate purposes. This process results in the taxpayer paying a higher income tax on his income than what otherwise he was liable to. It may be appreciated that the aggregation of agricultural income is provided for in the Annual Finance Act and not in the Income Tax Act.

Aggregation of agricultural income is applicable when the assessee satisfies 3 conditions

1. The assessee is an individual or HUF or specified AOP/BOI or Artificial Juridical Person.
2. The total income exceeds basic exemption limit
3. The net agricultural income exceeds Rs. 5,000

Procedure of aggregation

1. Compute tax on (Total income + Agricultural income).
2. Compute tax on (Basic exemption + agricultural income)
3. Net tax liability = 1 - 2
4. Add: Surcharge and Education cess as applicable

An interesting matter came before the Mumbai Tribunal on the issue of clubbing of income and aggregation in the case of ***Smt. Babita***

P. Kanungo vs. DCIT (2005) 96 ITD 0091. The assessee in question had minor children who in addition to regular income also had agricultural income. The regular income of the minors was clubbed in the hands of the assessee u/s 64(1A). However the agricultural income of the minor children was not clubbed and ignored for aggregation purpose. The Assessing Officer computed the tax of the assessee after clubbing the agricultural income of the minor children. The ITAT held that *"in computing total income of an assessee, all such income as arises or accrues to his minor child is to be clubbed. The words "all such income" in s. 64(1A) refer to total income and for giving effect to this section, first the total income of the minor children is to be computed and then such total income only of the minor children is to be clubbed with the income of the parent. In view of the finding that agricultural income does not form part of total income as defined in s. 2(45) r/w s. 10(1), s. 64(1A) cannot be applied to agricultural income of "minor children'. For including the agricultural income for rate purposes, it has to be done as per s. 2(2) of the Finance Act, 1997. In Chapter III, s. 10(1) of the IT Act clearly says that agricultural income is not to be included in total income. Here, it is pertinent to note that as per s. 2(2) of the Finance Act, 1997, also, only agricultural income of the assessee has to be considered for rate purposes and it does not say that agricultural income of minor children is also to be considered for rate purposes. In view of this, the agricultural income of the minor children of the assessee cannot be clubbed with the agricultural income of the assessee under s. 64(1A) and it cannot be said that the agricultural income of the minor children of the assessee is agricultural income of the assessee and, therefore, in view of s. 2(2) of the Finance Act, 1997, this agricultural income of the minor children of the assessee cannot be included into the income of the assessee for rate purposes."* This proposition holds true even at the current date.

On account of the misuse of the exemption granted to agricultural income, tax authorities tend to look at agricultural income with a high degree of suspicion. The assessee is well advised to have proper documentary evidence of the existence of agricultural income. Invoices for sale, bank entries, proof of expenses, notation of crop grown on 7/12 extract would be some of the supporting evidences to justify the claim of agricultural income.

Concluding remarks

Day by day more and more agricultural land is getting converted into non agricultural land due to the urban development. This is giving rise to innovative technologies. In the future there could be a scenario whereby we would have 3D printing of fruits and vegetables where there would be no agricultural land nor any agricultural operations. Already 3D printing of carrots has been done successfully. These have been stated to be as nutritious as actual carrots grown in the soil. It would be really interesting to see whether and how the definition of agricultural income evolves with the development of technology. The traditional understanding of agriculture is undergoing a change and I foresee a lot of tax litigation in the days to come.

Capital Asset and Capital Gains Analysis for Agriculture Issues under Income-Tax Law

CA Rajan Vora CA Nishit Shah CA Lekh Mehta

Overview

Agricultural land, vital to India's economy, supports over 70% of rural households. Contributing 17% to the GDP, it employs 58% of the population. Tax exemptions apply to farmers for income from agricultural land, distinguishing between rural and urban plots. Rural land remains exempt from capital gains tax, while urban agricultural land is taxable. Section 194-IA introduces withholding tax for urban land transactions.

Agricultural activities include various operations, and income from nursery activities is considered agricultural post the Finance Act, 2008. Taxability of land sales differs for rural and urban areas. Rural agricultural land is excluded from capital gains tax, while urban land has tax consequences. Exemptions under sections 54B, 54F, and 54EC can alleviate tax burdens for specific cases, and TDS implications apply for urban agricultural land transactions.

Section 56(2)(vii)(b) and 56(2)(x), introduced in 2017, tax gifts of immovable property exceeding ₹ 50,000. Application to rural agricultural land remains debated. Compulsory acquisition under the RFCTLAAR Act, 2013, is exempt from income tax. Section 10(37) provides relief for compulsory acquisition of agricultural land. Understanding these distinctions is crucial for navigating the tax landscape effectively.

India is an agrarian country, where agriculture holds a significant position in the economy, supporting over 70% of rural households for their livelihoods. As a critical sector, agriculture contributes around 17% to the total GDP and offers employment to approximately 58% of the population. Given India's predominantly agrarian economy, individuals earning a living from agriculture enjoy various incentives and benefits. For example, farmers in India are exempt from paying taxes on their agricultural income from under the country's income tax regulations. To further encourage farmers, specific exemptions from capital gains tax arising from the transfer of agricultural lands are provided in the Income-tax Act (the Act), which is discussed below.

However, it's essential to clarify that this exemption does not imply a complete absence of tax on agricultural land. Only the agricultural income generated from such lands is exempted from taxes under this law. The landowner is responsible for paying the taxes. Therefore, understanding the distinctions and the laws related to the taxation of such lands

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is crucial. The rules regarding the taxation of land sales differ. Through this article, our aim is to shed light on controversies and recent trends surrounding gains arising from the sale of agricultural land.

The agriculture income is exempted from tax through Section 10(1) of the Act, however, at the state level certain crops produced for agriculture operations are taxable. Further, It is also worth noting that while agriculture income is exempt from income tax, it is still taken into account for the purposes of determining the tax rate applicable to a person's non-agricultural income.

What is Agricultural Land

The term 'agricultural land' has not been defined under the Act. According to the Act, there are two categories of agricultural land: rural and urban agricultural land... Both types of lands are considered differently and any gains from the sales of these lands are taxed differently. Urban Agriculture Land is a capital asset under the Act and is taxable like other assets. Rural agriculture land is not considered a capital asset under the Act and is not taxable. The first and foremost thing to understand is the definition under section 2(14) of the Act. There has been a major amendment in the definition of Capital assets w.e.f. 01.04.2013. Let's study both the definitions in detail.

Before Finance Act, 2013 (upto Assessment Year 2013-14)

Originally, agricultural land, wherever situated, was not included in the definition of 'capital asset' as per section 2(14) of the Act. However, the Finance Act of 1970, with effect from April 1, 1970, defined agricultural land as

- o land not situated in any area within the jurisdiction of a municipality or cantonment board having a population of not less than ten thousand; or
- o within eight kilometres from the local limits of any municipality or cantonment board (for this purpose, the Central Government had issued a Notification No. SO – 9447 dated 06 January 1994 wherein more than 400 cities have been listed and corresponding relevant distances have been mentioned - any transfer of agricultural land falling within the relevant distance of the cities mentioned in the notification would be subject to capital gains tax.)

Under the erstwhile provision, measurement of distance from the nearest municipality was a grey area as the taxpayers would face challenges in the below scenarios;

- o by road, the distance may be more but by rail route, the distance may be less;
- o the distance measured by road or by rail route is more but the aerial route is less;
- o in certain territories, e.g., the island territories, it may not be possible to measure distance by the road route or by the rail route because they may be non-existent there;
- o In hilly areas where it is possible that distance by road would be significantly more but by aerial route it would generally be less.

The measurement of distance from the nearest municipality was also a subject matter of dispute in cases such as ***Nitish Rameshchandra Chond [(2015) 374 ITR 531 (Bom HC)], Satinder Pal Singh[(2010) 195 Taxman 420 (Pun & Har.)], Lal Singh [(2010) 195 Taxman 420 (Pun & Har.)***] and ***Laukik***

Developers [(2007) 105 ITD 657 (Mumbai ITAT)] wherein it was held the distance of the agricultural land had to be measured in terms of the approach by road and not by a straight-line distance on a horizontal plane or as per crow flight distance.

A peculiar case came up for consideration in ***Sheo Ram [(2001) 117 Taxman 347 (Delhi HC)***] wherein the agricultural land in question was situated within the jurisdiction of two municipalities - one having population of more than 10,000 (Delhi) and the other having population of less than 10,000 (Nangal Dehat) and it was held that it cannot be a capital asset under section 2(14)(iii) of the Act.

The Principal of the decisions has been accepted by CBDT which has clarified that no appeals will be filed on this ground by the Department and appeals already filed, if any, on this issue before various Courts/Tribunals may be withdrawn/not pressed upon (refer CBDT Circular No. 17/2015 dated 6 October 2015).

After Finance Act, 2013 (From Assessment Year 2013-14)

The Finance Act, 2013 has amended section 2(14). Under the amended provisions, rural agricultural land means agricultural land in India:

a) If situated in any area which is comprised within the jurisdiction of a municipality or cantonment board and its population is less than 10,000; or

b) If situated outside the limits of the municipality or cantonment board, then situated at a distance measured aerially-

   i. more than 2 kms, from the local limits of the municipality and which has a population of more than 10,000 but not exceeding 1,00,000; or

   ii. more than 6 kms, from the local limits of the municipality and which has a population of more than 1,00,000 but not exceeding 10,00,000; or

   iii. more than 8 kms, from the local limits of the municipality and which has a population of more than 10,00,000.

In the case of ***Nitish Rameshchandra Chordia & others. [(2015) 374 ITR 531 (Bom HC)***] it has held that the amendment prescribing distance to be measured aerially, applies prospectively i.e. AY 2014-15 onwards.

Urban agricultural land is land located in a specified location i.e. it is not rural agricultural land and is in an urban area, even if used for agricultural purposes.

What are Agricultural Activities

Agriculture means the basic and applied sciences of soil and water management, crop management, and crop production including production of all garden crops, plants, horticulture, floriculture, animal husbandry, fisheries, processing and marketing of agricultural products, land use and management, etc. Therefore, all such activities, manual or otherwise, all the agricultural processes would be included.

Article 366(1) of the Constitution provides the definition for the purposes of enactments related to Indian income tax. Additionally, Section 2(1A) of the Act defines the term "agriculture" which inter-alia includes any rent or revenue derived from a land situated in India used for agricultural purposes, rent received by a tenant from a sub-tenant,

by agriculture or cultivation to render the produce fit for sale.

The burden of proof lies on the assessee to prove that the income derived by him is agricultural income as held in ***Mrs. Bacha F. Guzdar [(1955) 27 ITR 1 (SC)***] and ***R. Venkataswamy Naidu [(1956) 29 ITR 529 (SC)***].

The meaning of the term 'agriculture' and 'agricultural purposes' was explained by the Hon'ble Supreme Court in ***Raja Benoy Kumar Sahas Roy [(1957) 32 ITR 466 (SC)***] wherein the following principles were laid down:

- The term 'agriculture' extends beyond the mere production of grain and food items, encompassing all land products with utility for consumption or trade. This includes forest products like timber, sal and piyasal trees, casuarina plantations, tendu leaves, horranuts, etc. Further sale of forests, trees, wild grasses, fruits and flowers grown spontaneously and without human effort;
- In its primary sense, 'agriculture' involves basic land operations such as tilling, seeding, and planting. Subsequent activities like weeding and removal of undergrowth are not standalone agricultural operations; they must be integrated with the fundamental processes to constitute 'agriculture.'
- The relevance of the product's nature is negligible; agriculture includes all land products useful for consumption or commerce.
- However, 'agriculture' cannot be extended to activities merely related to or connected with the land that fails to meet the fundamental test of cultivation on the land.
- Also, the mere performance of subsequent operations as agriculture operations would not be enough to characterise the said subsequent operations as agriculture operations.

An illustrative list of taxable non-agricultural incomes from various judicial precedents is as follows:

- Sale of forests, trees, wild grasses, fruits and flowers grown spontaneously and without human effort.
- Salt produced by flooding of the land with seawater and then extracting salt therefrom.
- Stone quarries.
- Breeding of livestock.
- Dairy farming, butter and cheese making.
- Poultry farming and fisheries.
- Preservation of potatoes by refrigeration.
- Brick making.
- Supplying surplus water to other agriculturists.
- Selling of standing crops, agricultural produce purchased by the assessee.
- Letting out of land and Godowns for storing crops.
- Royalty of mines.
- Income is derived from agricultural land situated in a foreign land, then whole such income though purely from agricultural activities, will be taxed under Section 28 of the Act as income from Business or Profession.
- Dividends paid by the company out of agricultural income.

Prior to the amendment to the definition of agricultural income under section 2(1A) by the Finance Act, 2008 with effect from 1 April 2009, the inclusion of nursery activities as agriculture was a debated issue. In decisions such as ***Talshibhai B. Narola [ITA No. 1689/ Ahd./2018 dated 25 August 2023 (Ahmedabad ITAT)]*** and ***Sudisha Farm Nursery [88 ITD 638 (Delhi ITAT)]***, ***Inventaa Industries (P.) Ltd [(2018) 172 ITD 1 (Hyderabad Tribunal Special Bench)],*** pursuant to the amendment, Explanation 3 to section 2(1A) of the Act which refers to any income derived from saplings or seedlings grown in a nursery as agricultural income; it was held that the agricultural income includes nursery activities. While introducing explanation 3 to Section 2(1A) of the Act, in the explanatory note it was stated:

> "*With a view to giving finality to the issue, and Explanation in Section 2 of the Income-tax Act, has been inserted providing that any income derived from saplings or seedlings grown in a nursery shall be deemed to be agricultural income. Accordingly, irrespective of whether the basic operations have been carried out on land, such income will be treated as agricultural income, thus qualifying for exemption under sub-section(1) of Section 10 of the Act.*"

Pursuant to the amendment, Explanation 3 to Section 2(1A) of the Act now deems any income derived from saplings or seedlings grown in a nursery as agricultural income.

Taxability on Sale of Agricultural Land

Whilst rural agricultural land is excluded from the definition of capital asset and consequently gains arising on its disposal are not chargeable to capital gains tax, urban agricultural land qualifies as a capital asset. Accordingly, capital gains arising on the transfer of urban agricultural land shall be chargeable to tax. The nature of the gains viz. long term or short term will depend upon the number of years the asset has been held for by the assessee. Where the period of holding exceeds 2 years, then the gains/ loss shall be long-term capital gain/loss; long term capital gain will be taxable under at 20% with indexation benefits. If the holding period is 2 years or less, then the gain/loss arising is termed as short-term capital gain/loss and short-term capital gain will be taxable at slab rate.

Further, details on gains/loss on the sale of urban agricultural land should be disclosed in the Capital Gain Schedule in the ITR, and gains arising on the transfer or sale of rural agricultural land should be disclosed in the Schedule Exempt Income in the ITR.

Land held as commodity/stock in trade

If the land has been held as stock in trade, any gains from such sale shall be taxable as income from business & profession and not as capital gains. i.e., no capital gains shall be chargeable on such land. It would make no difference if the land held is urban or rural agricultural land. Further, being stock in trade, the same would be outside the purview of capital asset in terms of section 2(14)(i) of the Act.

Exemptions Available on Sale of Agricultural Land

While gains arising on the transfer of agricultural land satisfying the conditions laid down under section 2(14) of the Act are exempt for tax, the land not satisfying the conditions shall be considered to be a capital asset gains arising from whose transfer is chargeable to tax.

However, the exemption can be claimed against gains arising on the transfer of such capital asset under section 54B of the Act introduced by the Finance Act, 1970 with effect from 1 April 1970. The provision grants relief to a taxpayer who sells his agricultural land and from the sale proceeds he acquires another agricultural land.

The following conditions should be satisfied to claim the benefit of section 54B of the Act:

- The exemption is available only to individuals and HUFs.
- The asset transferred should be agricultural land which may be a long-term or short-term capital asset.
- The agricultural land should be used by the individual or his parents for agricultural purposes at least for a period of two years immediately preceding the date of transfer. In the case of HUF, the land should be used by any member of HUF.
- Within a period of two years from the date of transfer of old land the taxpayer should acquire/another agricultural land. In case of compulsory acquisition, the period of acquisition of new agricultural land will be determined from the date of receipt of compensation. However, as per section 10(37), no capital gain would be chargeable to tax in the case of an individual or HUF if agricultural land is compulsorily acquired under any law and the consideration of which is approved by the Central Government or RBI and received on or after 01-04-2004.

If the amount of capital gain is not utilised by the assessee for the purchase of new asset before the date of furnishing the return of income under section 139 of the Act, it shall be deposited by him before furnishing of such return in an account in any such bank or institution as may be specified and utilised in accordance with any scheme which the Central Government may, by notification in the *Official Gazette*, frame in this behalf and such return will be accompanied by proof of such deposit. If the amount deposited in the bank is not utilised within a period of 2 years after the date of transfer of original land or is not fully utilised, the whole or the balance will be treated as capital gain in the previous year in which the stipulated time expires.

When land could be treated as 'Agriculture Land'

It must be noted that before the land in question can become the subject of a claim for exemption, it should be proved that it was agricultural land in reality. For this purpose, it is not enough that it is entered in revenue records as agricultural land. Agricultural operations should have been carried on over it continuously and not as a stop-gap measure. The agricultural operations may include, besides agriculture, horticulture, floriculture, silviculture, tea and coffee growing and rubber plantation. It is not necessary that the assessee-owner of land should himself carry out operations on the land. Agricultural land given on lease or sharing the produce of the land if it is given for cultivation to others, would also be treated as agricultural operations. In case no agricultural operations are carried on over the land, it would not be treated as agricultural land and on transfer of the same, neither the exemption nor the benefit of section 54B would be available.

In ***Kalpaka Oil Mills [(1985) 21 Taxman 138 (Kerala HC)]***, it was held that where the assessee simply plucked coconuts from

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the trees standing on the land, it was not considered an agricultural operation and the land was not held to be agricultural. Refer observation of the Hon'ble SC in ***Raja Benoy Kumar Sahas Roy (supra)***. Further, in ***Krishan Kumar Kapoor[(2001) 251 ITR 150 (Delhi HC)]***, the land used for agriculture was requisitioned by the Government in 1949-50 for extracting earth for brick manufacture and was derequisitioned in 1970 pursuant to which it was sold. Since the land was agricultural before requisitioning, no change was held to have been effected in its character and when derequisitioned, it was again agricultural land and was held to be eligible for exemption.

Exemption under section 54B of the Act is available with respect to the rollover of capital gains arising on the transfer of agricultural land into another agricultural land. However, to keep a check on the misutilisation of this benefit a restriction in the form of a prohibition of sale of the new agricultural land is inserted.

If a taxpayer purchases new agricultural land to claim exemption and subsequently transfers the new agricultural land within a period of 3 years from the date of its acquisition, then the benefit granted under section 54B will be withdrawn. The ultimate impact of the restriction is as follows:

- The restriction will be attracted if, after claiming exemption, the new agricultural land is sold within a period of 3 years from the date of its purchase.
- If the agricultural land is sold within a period of 3 years from the date of its purchase, then at the time of computation of capital gain arising on transfer of the new land, the amount of capital gain claimed as exemption will be deducted from the cost of acquisition of the new agricultural land.

Exemption Available on Sale of Urban Agriculture Land

As mentioned above, the capital gains arising from the sale of urban agricultural land are taxed as per income tax laws. However, there are certain exemptions provided under the Act, which can help in reducing or eliminating the tax liability on the capital gains arising from the sale of urban agricultural land. Some of these exemptions are:

- Capital gains from the sale of urban agricultural land are invested in a residential house property within a specified period. In that case, the amount invested is eligible for exemption from capital gains tax. The exemption is available under section 54F of the Income Tax Act, subject to certain conditions.
- The capital gains from the sale of urban agricultural land can be exempted if the amount is invested in specified bonds within a specified period. The exemption is available under section 54EC of the Act.
- The capital gains from the sale of urban agricultural land can be exempted if the amount is invested in agricultural land within a specified period. The exemption is available under section 54B of the Act.
- From Assessment Year 2005-06, as per section 10(37), no capital gain would be chargeable to tax in case of an individual or HUF if agricultural land is compulsorily acquired under any law and the consideration of which is

approved by the Central Government or RBI and received on or after 01-04-2004.

Taxability of Compensation Received under The Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 (RFCTLAAR Act)

The Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 is an Act that regulates land acquisition and lays down the procedure and rules for granting compensation, rehabilitation and resettlement to the affected persons in India and has provisions to provide fair compensation to those whose land is taken away, brings transparency to the process of acquisition of land to set up factories or buildings, infrastructural projects and assures rehabilitation of those affected. The Act has come into force from 1 January 2014.

Section 96 of the RFCTLAAR Act provides an exemption to all compulsory acquisition irrespective of whether agricultural land (urban or rural) is owned by an individual, HUF or any other person. This exemption would also extend to land held as Stock-in-trade.(To be confirmed with author)

Accordingly, the CBDT vide Circular No. 36/2016 dated 25 October 2016 has clarified that every award or agreement which has been exempted from levy of Income Tax vide section 96 of RFCTLAAR Act, 2013 shall also not be taxable under the provisions of the Act even if there is no specific provision for exemption.

In ***Seema Jagdish Patil [(2022) 288 Taxman 26 (Bombay HC)]*** it has been held that where the land of the petitioner was acquired through direct purchase after private negotiation for the implementation of a public project on the basis of policy of State Government, compensation received by petitioner for such acquisition would be exempt under section 96 of RFCTLAAR Act and TDS could not be deducted from compensation paid to petitioner.

It must also be noted for acquisition under specific statutes, specific notification is required to be issued by the Central Government to extend the benefit of the RFCTLARR Act, 2013 in the absence of which the income cannot be considered to be exempt. Refer to ***Jagdish Arora [93 ITR(T) 233 (Agra Tribunal)] and Heritage Buildcon (P.) Ltd. [155 taxmann.com 68 (Raipur Tribunal)]***.

TDS Implications

No TDS implications arises in the hands of the buyer in case of purchase of rural agricultural land [i.e. land not being a land referred to in section 2(14)(iii) of the Act] and which is not chargeable to tax.

However, in the case of urban agricultural land withholding implications arise under section 194-IA of the Act introduced vide the Finance Act, 2013 with effect from 1 June 2013. The provision provides that any person, being a transferee, responsible for paying to a resident transferor any sum by way of consideration for the transfer of any immovable property (other than rural agricultural land) shall deduct tax at source @ 1% at the time of credit of such sum to the account of the transferor or at the time of payment of such sum in cash or by issue of cheque or draft or by any other mode, whichever is earlier. However, no deduction shall be made if the consideration for the transfer of an immovable property and the stamp duty value of such property, both, is less than ₹ 50,00,000.

In case of compulsory acquisitions of any immovable property (other than agricultural land), tax shall be deducted @ 10% of the compensation or consideration (including enhanced compensation or consideration) under section 194LA at the time of payment of such sum in cash or by issue of a cheque or draft or by any other mode, whichever is earlier. However, no deduction shall be made where the payment or aggregate of such payments is less than ₹ 2,50,000. Further, no deduction shall be made under this section where such payment is made in respect of any award or agreement which has been exempted from levy of income tax under section 96 of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013.

Implications under Section 56(2) of the Act to Rural Agricultural Land

Section 56(2)(vii)(b) was inserted vide the Finance Act, 2017 with a view to tax any sum of money or property received by an individual or HUF without consideration (i.e., as a gift) is taxable under the head “Income from Other Sources” if the aggregate value of such gifts exceeds ₹ 50,000 in a financial year.

Vide Finance Act, 2017, section 56(2)(x) was introduced which sought to, inter-alia, tax an assessee in receipt of any immovable property without any consideration, the stamp duty value of which exceeds ₹ 50,000 or any immovable property with the consideration which is less than stamp duty value by an amount exceeding ₹ 50,000.

The term 'immovable property' is not defined for the purpose of section 56(2) of the Act. However, the term 'Property' is defined for the purpose of this clause. The term 'Property' "means the following capital asset of the assessee, namely immovable property being land or building or both, shares and securities, jewellery, archaeological collections, drawings, paintings, sculptures, any work of an art or bullion. From the above definition, it is evident that 'property' covers only the immovable properties which are in the nature of 'capital asset'. However, Section 56(2)(vii)/(x) of the Act has used the word any immovable property while enacting the taxation. Now, the challenge is whether we should interpret the phrase ’any' in light of 'capital asset' or ’any' in its normal meaning. If we adopt the former, only such immovable properties which are in nature of capital assets are covered under the ambit of Section 56(2) of the Act. If we adopt the latter, any kind of immovable property is covered and there is no necessity to go and examine whether such immovable property would fit under the definition of capital asset.

Since, the provisions do not specifically carve out any exceptions for rural agricultural land which is not a capital asset defined under section 2(14) of the Act, the application of these provisions in the case of rural agricultural land is a subject matter of debate.

Whilst proponents argue that in the absence of any specific exception, rural agricultural land can be covered within the scope of section 56(2) of the Act and that ‘capital asset’ defined under section 2(14) of the Act is in respect of capital gains tax, the exclusion may be defended as under:

o Further, when rural agricultural land is sold for less than the stamp duty value, the purchaser is subject to taxation on notional income as per the calculation in section 56(2)(x) of the Act. For any asset facing such a notional increment in value, the cost of the asset is deemed

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to be the value adopted for section 56(2)(x) purposes, according to section 49(4) of the Act. However, after the purchase of rural agricultural land, any future sale is not taxable. Consequently, the assessee cannot benefit from section 49(4), leading to hardship for the assessee.

- The legislative intent behind the introduction of section 56(2)(vii) and 56(2)(x) of the Act was as an anti-abuse measure to tax unscrupulous transactions entered into with the intention to evade tax. Blanket application to also cover rural agricultural land creates hardships to *bona fide* transactions.

- As has been held by various courts, if a strict interpretation results in an absurd situation by which legislative intent is defeated, then it is imperative to look at the legislative intent. When there is doubt about the meaning of a statute, it is to be understood in the sense in which it best harmonizes with the subject of the enactment and the object that the legislature had in view. No interpretation should lead to absurd results as held in ***Ombalika Das vs. Hulisa Shaw [(2002) 4 SCC 539 (SC)] and Poppatlal Shah vs. State of Madras [AIR 1953 SC 274)***.

Whilst, in the case of ***Trilok Chand Sain (174 ITD 729) (Jaipur ITAT)*** it has been held that agricultural lands fall under the definition of an immovable property, hence, covered under ambit of section 56(2)(vii)(b) of the Act, favourable views have been adopted in ***Yogesh Maheshwari (187 ITD 618) (Jaipur ITAT), Mubarak Gafur Korabu (117 taxmann.com 828) (Pune ITAT)*** and ***Ram Prasad Meena (119 taxmann.com 217) (Jaipur ITAT)*** Though these decisions are in the context of section 56(2)(vii) of the Act, they are equally applicable to sections 50C of the Act and 56(2)(x) of the Act.

Conclusion

The taxation of agricultural land in India involves a nuanced understanding of urban and rural distinctions. Urban agricultural land is considered a capital asset and is subject to capital gains tax, with the tax rate depending on the holding period. On the other hand, rural agricultural land, exempted from capital gains tax, stands as a vital source of livelihood for a significant portion of the population. As tax regulations evolve and amendments shape the landscape, it becomes crucial for landowners, policymakers, and stakeholders to stay informed about the intricacies of these laws. This knowledge not only ensures compliance but also fosters a balanced and sustainable approach to the taxation of agricultural lands, aligning with India's agrarian identity and economic priorities.

"If there is sin, this is the only sin — to say that you are weak, or others are weak."

— *Swami Vivekananda*

Accounting Considerations and Issues related to Agriculture Accounting

CA Parveen Kumar

Overview

There had been challenges in Agriculture accounting due to conceptual advantage to Agriculture Industries in our constitution including tax advantages. Accounting Standards in India had little guidance till the time Indian Government decided to implement Ind-AS (Accounting standards converged with IFRS). Ind-AS 41 explains various aspects of accounting related to Agriculture. This article will provide you a snapshot of Ind-AS 41 along with few examples including recognition and measurement besides disclosures. Matters like accounting for biological assets, agriculture produce and other items to be included in Statement of Profit and Loss or Balance sheet also have been dealt with. Key considerations like measurement of fair valuation, conditions of government grants, importance of seasons in revenue recognition, contingencies and interplay of other standards have also been debated. Some snapshots from published accounts have also been considered and shared for immediate reference. One may argue about challenges in agriculture accounting, but the fact remains that India is in direction of aligning globally and accounting for agriculture is a major step in the direction.

Accounting for Agriculture has been a matter of debate since beginning. In this article we will discuss guidance given in the accounting standards related to Agriculture along with key considerations and issues therein.

In India, only after convergence with IFRS, an accounting standard came into play (Ind-AS 41) which set the standards for Agriculture accounting in India for entities adopting Ind AS.

This is almost similar to IAS 41 with variation like using the word *'Balance Sheet'* and *'Statement of Profit and Loss'* in India, while in IFRS the terms *'Statement of Financial Position'* and *'Statement of Profit and Loss and comprehensive income'* are used. For entities other than those adopting Ind-AS there is no separate standard dealing with accounting of agriculture.

IFRS (IAS 41) provides standards for accounting treatment for recognition, measurement, and disclosure criteria in case of Agriculture. This standard was initially issued in the December 2000 and then was amended for discount rates effective January 2009. Then further amendment was effective January 2016 due to consequential impact of lease accounting in IFRS 16. The amendment

excluded right of use assets arising from lease of land related to agriculture activity.

Further as part of annual improvements to IFRS (2018-2020) another amendment removed a requirement to exclude cash flows from taxation when measuring the fair value to align with other standards. This amendment was effective January 2022.

Before we delved into the details of subjectivity in agriculture accounting, let us have a look at the snapshot of contents of this Ind-AS 41 (which is almost replica of IAS 41).

Snapshot of the Standard (Ind AS 41)

The standard deals with accounting of biological assets (like Living plants and animals), agriculture produce at the time of harvest and specific government grants (mentioned in para 34 and 35 of the standard).

The standard has scoped out accounting of land related to agriculture activity, bearer plants related to agriculture activity and intangible assets related to agriculture activity besides Government grants. The standard also does not deal with processing of agriculture produce after harvest.

The standard provides an example of a vintner who has grown the grapes. While processing of grapes into wine may be a logical and natural extension of agricultural activity and the events taking place may bear some similarity to biological transformation, such processing is not included within the definition of agricultural activity in this standard[1].

The standard has also explained various biological assets and their agriculture produce and products that are the result of processing after harvest with the help of a table in para 4. For example, Sheep is a biological asset, which will have agriculture produce as wool and items like yarn and carpets are products that are results of processing after harvest. Similarly examples of Trees, Dairy cattle, pigs, cotton plants, sugarcane, Tobacco plants, tea bushes, Grape vines, Fruit trees, oils palms and Rubber trees have been given in the standard. In the note to the table, it clarifies that produce growing on bearer plants are within the scope of Ind-AS 41.

Definitions

The standard has defined Agriculture related terms like Agricultural activity, Agriculture produce, bearer plant, Biological asset, Biological transformation, cost to sell and group of biological assets and harvest etc in para 5. Further clarifications have been given on bearer plants and produce growing on bearer plant besides agriculture activity and outcome of Biological transformation. Besides terms like carrying amount and fair value have also been defined.

Recognition and measurement

Para 10 of the standard mentioned that an entity shall recognize a biological asset or agricultural produce ‘when and only when’

a) *The entity controls the assets as a result of past events;*

1. Para 3 of Ind AS 41 (https://www.mca.gov.in/Ministry/pdf/INDAS41.pdf).

b) *It is probable that further economic benefits associated with the assets will flow to the entity; and*

c) *The fair value or cost of the asset can be measured reliably.*

As you may see, the language used in the standard is strict and leaves no ambiguity on when asset shall be recognized.

The measurement of a biological asset shall be initially recognised and at the end of each reporting period at its 'fair value' less cost to sell. Para 30 describes situations where the fair value cannot be measured reliably.

Agriculture produce harvested from an entity's biological assets shall also be measured at its 'fair value' less cost to sell at the point of harvest.

The standard clarifies that contract prices might not be relevant in measuring fair value, as there might be onerous contracts (as defined in Ind AS 37). Standard also deals with the issues like Biological assets are often physically attached to land (for example trees in a plantation forest).

Gains and Losses

As per para 26 of the standard, a gain or loss arising on initial recognition of a biological asset at fair value less cost to sell and from change in fair value less cost to sell of a biological asset shall be included in ***'Profit or Loss'*** for the period in which it arises.

While the basic presumption is that fair value can be measured reliably, the standard recognizes the subjectivity and situation where initial fair value of the asset cannot be measured reliably. In such case, the biological asset shall be measured at its cost less any accumulated depreciation and any accumulated impairment losses. Once the fair value of such a biological asset becomes reliably measurable, an entity shall measure it at its fair value less costs to sell.

The standard mentions that in all cases, an entity measures agricultural produce at the point of harvest at its fair value less costs to sell. The standard reflects the view that the fair value of agricultural produce at the point of harvest can always be measured reliably[2].

Government Grants Another important aspect is grants. Its common to have government grants in agriculture activities. The standard says that An unconditional government grant related to a biological asset measured at its fair value less costs to sell shall be recognized in profit or loss when, and only when, the government grant becomes receivable[3]. If the grant is conditional, the recognition will be when and only when conditions attached to the grant are met. In certain conditions, Ind AS 20 – 'Government Grants' will need to be applied depending on applicability of conditions of the grants, if not activities are not agriculture related.

Disclosure requirements of the standard include aggregate gain or loss arising during the current period on initial recognition and change in fair value besides description of each of the biological assets, including details where the titles of biological assets are

2. Para 32 of Ind AS 41.
3. Para 34 of Ind AS 41.

restricted, or the assets are pledged. Also, the entity will provide reconciliation of changes in carrying amounts of biological assets and reasons thereof.

Additional disclosures are required where fair value could not be measured reliably and an entity has used other method with detail of depreciation method, impairment related information and other descriptions. Requirement of Government grant related disclosures are also quite detailed.

Now let us look at key consideration in Agriculture accounting:

1. ***Fair value measurements***

   While US GAAP provide guidance on agriculture related accounting, the concept there is primarily cost model and change in fair value is not recognized till the time of point of sale. Fair value measurement has its own subjectivity and this is a matter of debate and discussions.

2. ***Government grants – conditions***

   In India (and elsewhere globally) various conditions are attached with government grants, which needs close attention and careful consideration. Interplay of other standards

3. ***Revenue Recognition – seasons***

   One must understand the impact of seasons while accounting for agriculture. Revenue recognition is tricky area, keeping in mind the agricultural produce in various cases depends on season, which might have a different time gap.

4. ***Inter play of other standards***

   Inventory, government grants, fair valuation – there are various other standards which might have an inter play with agriculture accounting. One needs to be careful and implement guidance accordingly.

5. ***Contingencies***

   Various contingencies are involved with biological assets, its produce and harvesting. Guidance from global literature should be considered while dealing with specific issues.

6. ***No standard in non Ind AS environment***

   India has its own challenges while accounting for Agriculture. Historically there had been no direct guidance and this area had been on low priority as far as accounting is concerned. Further, Ind-AS is required to be followed only by the corporate entities meeting the threshold limits.

7. ***Segment of biological assets***

   Though directions and guidance is given in the standard, careful consideration is required while defining segments of biological assets.

Various accounting issues might appear due to uncertainties. For example, subjectivity in fair value measurement may directly impact the financial results besides exact timing of recognition of revenue and especially when the crop season spread between two financial years. Not to forget interplay of other standards like Government grants or inventory. One must look at industry practices before taking final calls.

Implementation Example

To give example, here are some extracts of key disclosures of accounting policies of a public company for immediate reference:

> ***Government Grants and Incentives***
>
> *.....Government incentives are recognised at fair value when there is a reasonable assurance that the company will comply with the relevant conditions and the grant will be received. The government incentives are recognised in profit or loss on a systematic basis over the period in which the company recognises the related costs for which the incentives are intended to compensate as expense or immediately if the cost have already been incurred ...*[4]
>
> ***Biological assets***[5]
>
> *.... A biological asset is a living animal or plant.*
>
> *An entity shall recognise a biological asset when and only when;*
>
> *a) the entity controls the asset as a result of past events;*
>
> *b) it is probable that future economic benefits associated with the asset will flow to the entity; and*
>
> *c) the fair value or cost of the asset can be measured reliably.*
>
> *A biological asset shall be measured on initial recognition and at the end of each reporting period at its fair value less costs to sell.*
>
> *Costs to sell are the incremental costs directly attributable to the disposal of an asset excluding financial finance costs and income taxes.*
>
> *A gain or loss arising on initial recognition of a biological asset at fair value less costs to sell and from a change in fair value less costs to sell of a biological asset shall be included in profit or loss for the period in which it arises.*
>
> *Biological assets i.e. livestock (cows) are measured at fair value less costs to sell, with any change therein recognised in statement of profit and loss....*

As you can see, the drafting is primarily as per suggestions of the standard only. While Indian companies are implementing standard related to accounting of Agriculture, various matters require careful considerations. lack of literature and detailed guidance remains a challenge in Indian environment.

4. Page 181 of Annual report 2022-23 of Parag Milk Foods Limited.
5. Page 252 of Annual report 2022-23 of Parag Milk Foods Limited.

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FEMA Implications on Agricultural Sector and Allied activities

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Advocate

Overview

An NRI or an OCI is not permitted under the Rules to acquire agricultural land/farm house/plantation property in any manner even jointly with his/her spouse who is not an NRI/OCI. The only possibility is acquisition by 'inheritance' either from a person resident in India or from a person resident outside India. NRIs or OCIs should not also be citizens of Countries prohibited under Rule 31, as stated above, to acquire immovable property without the prior approval of RBI.

When there is a specific bar on NRIs repatriating the sale proceeds of agricultural land or plantation property or farm house under Rule 29(2) such a bar cannot be circumvented by reading the general provision permitting repatriation of sale proceeds of assets acquired by way of inheritance or legacy. Regulation 4(2) should be read harmoniously to conclude remittance of sale proceeds of all assets are permitted other than sale proceeds of agricultural land or farm house or plantation property.

Introduction

Foreign Exchange Management Act, 1999 [referred to herein as "Act" for short] is basically designed to consolidate and amend the law relating the foreign exchange with the objective of facilitating external trade and payments and for promoting the orderly development and maintenance of foreign exchange market in India.

Chapter II to the Act deals with Regulation and Management of Foreign Exchange. Transactions under the Act is devised into two broader heads (i) Current Account Transaction regulated under Section 5 and (ii) capital account transaction regulated under Section 6 of the Act.

For the sake of brevity the expressions "current account" and "capital account" defined under the Act is not dealt with in detail. Agricultural as Sector has the following two broader aspects:

a. Buying/holding of agricultural land [Capital Account Transaction]

b. Investing in India under the FDI Rules in Agricultural Sector [Capital Account Transaction]

Administration of the Law of Foreign Exchange

As seen above transactions which is categorised as "current account transaction"

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is administered by the Central Government in consultation with RBI. Scheme of the Act allows a person to sell or draw foreign exchange to undertake current account transactions freely unless there are any reasonable restrictions imposed by the Government in public interest. [Section 5]

If a transaction falls under "capital account" sale or drawal of foreign exchange is subject to the general permission granted or specific approval obtained from the Reserve Bank of India under various regulations framed in consultation with the Central Government under Section 6 of the Act.

Land as State Subject

The Constitution under Art. 246 read with List II of Seventh Schedule deals with matters relating to State who would have the exclusive powers to Legislate and administer the stated subject which is as follows:

a. Agriculture, including agricultural education and research, protection against pests and prevention of plant diseases. [Sl. No. 14]

b. Land, that is to say, right in or over land, land tenures including the relation of landlord and tenant, and the collection of rents; transfer and alienation of agricultural land; land improvement and agricultural loans; colonization. [Sl. No. 18]

This would mean that every State would formulate their own Laws relating to agriculture and agricultural land. It is also seen that certain States have very stringent rules to acquire agricultural land. Few states allow only individuals to acquire agricultural land and few other States permit individuals as well as Companies to acquire agricultural land for undertaking agricultural activities. Hence, it would be advisable to ascertain the local laws before venturing into acquisition of agricultural land for undertaking activities that is permitted under Foreign Exchange Management Act, 1999.

Important Definitions

Law of Foreign Exchange applies to "person" as defined under Section 2(u) of the Act. Person is further defined to mean "person resident in India" and "person resident outside India" under Section 2(v) and 2(w) respectively.

It would therefore be very crucial to primarily determine the "residential status" of a Person. Residential status decides the permissibility or impermissibility of undertaking a transaction under this Act.

Person Resident in India- Section 2(v)

In case of Individuals [irrespective of their Nationality] if such person is residing in India in the preceding financial year for a period of 182 days or more, he would be construed as "person resident in India". The following additional conditions should also be satisfied, i.e., —

a. he should not have gone outside India for or on taking up employment outside India;

b. for carrying on a business or profession outside India; or

c. his purpose of going out of India or the circumstances in which he has gone out of India indicates that he intends to stay outside India for an uncertain period.

If any of the above three conditions are satisfied, then even though such Individual had stayed in the preceding financial year for a period of 182 days, he would still be categorised as "Person resident outside India".

Likewise if an Individual has come to India for or on taking up employment in India or for carrying on a business or vocation in India or for any other purpose, which circumstances

indicate that he intends to stay in India for an uncertain period they would become "person resident in India" even though they do not satisfy being resident in India in the preceding financial year for a period of 182 days or more. If persons come to India for purposes other than the three situations stated above, would be construed as "person resident in India" he such individual satisfies the primary condition of stay of more than 182 days in the preceding financial year.

Person Resident outside India – Section 2(w)

The expression "person resident outside India" is defined to mean a person who is not resident in India.

Non Resident Indian and Overseas Citizen of India

"NRI'- Rule 2(aj) of Non-Debt Instrument Rules, 2019 defines the expression NRI or Non-Resident Indian to mean an individual resident outside India who is a citizen of India by virtue of the Constitution of India or the Citizenship Act, 1955

"OCI" – Rule 2(ak) of Non-Debt Instrument Rules, 2019 defines OCI or Overseas Citizen of India means an individual resident outside India who is registered as an Overseas Citizen of India Cardholder under Section 7A of the Citizenship Act, 1955.

Non-Debt Instruments

Rule 2(ai) of NDI Rules defines "non-debt instruments" to mean the following instruments; namely:—

(i) All investments in equity instruments in incorporated entities; public, private, listed and unlisted;

(ii) Capital participation in LLP;

(iii) All instruments of investment recognised in the FDI policy notified from time to time;

(iv) Investment in units of Alternative Investment Funds (AIFs), Real Estate Investment Trust (REITs) and Infrastructure Investment Trusts (InvIts);

(v) Investment in units of mutual funds or Exchange-Traded Fund (ETFs) which invest more than fifty per cent in equity;

(vi) Junior-most layer (i.e. equity tranche) of securitisation structure;

(vii) **Acquisition, sale or dealing directly in immovable property;**

(viii) Contribution to trusts; and

(ix) Depository receipts issued against equity instruments.

Acquisition/Holding/Sale of Agricultural Land/ Farm House/Plantation Property by a Person Resident Outside India

A PROI can continue to hold agricultural land/farm house/plantation property, if he has acquired such property, when he was a 'person resident in India' in accordance with the prevalent laws at the time of acquisition. [Refer Section 6(5) of Foreign Exchange Management Act, 1999.]

A PROI can also **inherit** agricultural land/farm house/plantation property, from a person who was resident in India. [Section 6(5) of the Act]. Other than by way of inheritance, PROI are not permitted to buy agricultural land/farm house and plantation property in India.

However, as per Rule 31 of Non-Debt Instrument Rules all persons, whether resident in India or outside India who are citizens [defined to include natural persons and legal entities] of Pakistan, Bangladesh, Sri Lanka, Afghanistan, China, Iran, Nepal, Bhutan, Hong Kong or Macau or DPR Korea require prior permission of Reserve Bank for also inheriting any immovable property in India. This prohibition does not however, apply to an OCI.

There is no reporting requirement contemplated under the Master Direction on Reporting under FEMA, 1999 (as amended from time to time) on change of residential status from PRI to PROI of his assets and properties held in India.

There is also no reporting requirement when a PROI inherits immovable property situated in India.

Acquistion of Agricutural Land/Farm House/ Plantation Property by Person Resident Outside India by Way of Purchase/Gift

Chapter IX of Foreign Exchange Management (Non-Debt Instruments) Rules, 2019 [hereinafter referred to as 'NDI Rules' for short] deal with 'Acquisition and Transfer of Immovable Property in India'.

Rule 24 deals with "Acquisition and transfer of property in India by a NRI or an OCI".

Rule 24(a) permits an NRI or an OCI to acquire immovable property in India other than **agricultural land or farm house or plantation property** either by way of purchase or by way of gift from a person resident in India or an NRI or an OCI. The person who is gifting the immovable property should be a 'relative' within the meaning of Section 2(77) of the Companies Act, 2013.

Rule 24(c) permits NRI or OCI can acquire any immovable property by way of **inheritance** from a person resident outside India, if such property was acquired:

(i) In accordance with the foreign exchange law in force at the time of acquisition or in accordance with the provisions of the prevailing rules or,

(ii) from a person resident in India

There is no restriction on such NRI or OCI to also inherit agricultural land or farm house or plantation property from a person resident outside India. However, the absolute prohibition under section 31 should override the permission accorded under this Rule. The prohibition is on a person being a citizen of Pakistan, Bangladesh, Sri Lanka, Afghanistan, China, Iran, Nepal, Bhutan, Hong Kong or Macau or DPR Korea to acquire or transfer immovable property in India without the prior permission of the Reserve Bank of India.

Rule 25 deals with "Joint Acquisition by the spouse of NRI or an OCI".

If the spouse of NRI/OCI, not being an NRI/ OCI cannot acquire agricultural land or farm house or plantation property jointly with his or her NRI/OCI spouse.

Summary

Going by the extant provisions, an NRI or an OCI is not permitted under the Rules to acquire agricultural land/farm house/plantation property in any manner even jointly with his/her spouse who is not an NRI/OCI. The only possibility is acquisition by 'inheritance' either from a person resident in India or from a person resident outside India. NRIs or OCIs should not also be citizens of Countries prohibited under Rule 31, as stated above, to acquire immovable property without the prior approval of RBI.

However, the moot question that would arise is whether an NRI or an OCI can seek specific approval from the Reserve Bank of India to acquire agricultural land/farm house/plantation property [presuming that the State laws permit such an acquisition].

Specific Permission can be sought from RBI for acquiring agricultural land/farm house/ plantation property by adhering to the conditions that may be imposed by RBI. It is the sole prerogative of the RBI either to grant or reject the application. There are no prior guidelines for making such application nor any pre-defined basis or criteria that is to be adhered to, while making the application.

Sale of Immovable Property and Its Repatriation

Sale of agricultural land/farm house/plantation property acquired or owned by a person resident outside India when he was a person resident in India or inherited, is permitted to be sold to Indian Residents only. Repatriation of the sale proceeds has to be with general or specific permission of the Reserve Bank of India.

As we are dealing with "agricultural land/farm house/plantation property", sub-rule (2) to Rule 29 provides repatriation of sale proceeds by an NRI or an OCI of an immovable property other than agricultural land or farm house or plantation property. Hence there is an absolute bar on the person repatriating such sale proceeds relating to agricultural property.

Interestingly Regulation 4 of Foreign Exchange Management (Remittance of Assets) Regulations, 2017 deals with "Permission for remittance of assets in certain cases". Sub-Regulation (2) states that a Non-Resident Indian (NRI) or a Person of Indian Origin (PIO) may remit through an authorised dealer an amount, not exceeding USD 1,000,000 (US Dollar One million only) per financial year,

(i) out of the balances held in the Non-Resident (Ordinary) Accounts (NRO Accounts) opened in terms of Foreign Exchange Management (Deposit) Regulations, 2016/**sale proceeds of assets/the assets acquired by him out of inheritance/legacy on production of documentary evidence in support of acquisition, inheritance or legacy of assets by the remitter**;

A question can be posed by reading the provisions of Rule 31(2) of the NDI Rules as well as Regulation 4(2) of Remittance of Assets Regulation, 2016 as to whether an NRI who had acquired agricultural land or plantation property or farm house when he was a resident in India or by way of inheritance, would be permitted to repatriate the sale proceeds by reading Regulation 4(2)?

This is a debatable issue; the author is of the Opinion that when there is a specific bar on NRIs repatriating the sale proceeds of agricultural land or plantation property or farm house under Rule 29(2) such a bar cannot be circumvented by reading the general provision permitting repatriation of sale proceeds of assets acquired by way of inheritance or legacy. Regulation 4(2) should be read harmoniously to conclude remittance of sale proceeds of all assets are permitted other than sale proceeds of agricultural land or farm house or plantation property.

Compounding Orders where NRIs had acquired agricultural land in violation of the Provisions of the Act

CASE 1- Compounding Application was filed by an Individual who had acquired Agricultural Land in India before the Compounding Authority of RBI admitting violation of Regulation 8 of Notification No. 21/2000-RB dated May 03, 2000, as amended read with Regulation 3(a) of Notification No. FEMA.21/2000-RB dated May 03, 2000. The land parcels were acquired during the period from 2003 to 2007. The total consideration paid was ₹ 9,75,000/-. The Compounding Authority on receipt of the Application directed the Applicant to sell the Agricultural Land to a person resident in India who is a Citizen of India within six months. The direction was also given not to repatriate the sale proceeds outside India without the prior approval of the RBI and to also seek compounding of the violation of the provisions of the Rules. On receiving the permission of the RBI the property was transferred to a person resident in India who is also a citizen of India. The compounding order records a finding that the violation was continued for a period of 15 years and on considering the provisions of section 13 of FEMA, 1999

which empowers the authorities to impose a penalty of three times the amount involved, the compounding authority imposes a fine of ₹ 29,25,000/- for compounding the violation admitted in the application. The order of the Compounding Authority did not provide any basis for arriving at the fine amount and it was the sole discretion of the Compounding Authority to impose such a compounding fine based on the nature of contravention and the period for which such contravention continued.

CASE-2 Facts were that the Applicant was working for a Brazilian Company in high seas from the year 2007 onwards and during the previous financial years 2011-12 and 2012-13. He was outside India for a period of 195 days and 177 days in the preceding financial years. He acquired agricultural land during 2012 when he was an NRI. He was also directed to sell the agricultural land to a person resident in India who is also a citizen of India. On sale the Applicant earned profit of ₹ 23,91,300/-. The total cost of acquisition of the agricultural land was for ₹ 16,38,700/- which was construed as amount involved in the contravention. The period of contravention was over five years. Based on the above facts, the Compounding Authority holds that the violation will be compounded on payment of an amount of ₹ 24,53,900/-.

CASE-3 In this case contravention was also of acquisition of agricultural land by an NRI who had acquired it for ₹ 4,70,000/- for about few months and then gifted the land to Citizen of India residing in India and the appreciation of the land at the time of Gift deed was considered at ₹ 1000/- and the compounding fine imposed was ₹ 53,350/- by the Compounding Authority.

Conclusion Based on Compounding Orders

By analysing the orders of the Compounding Authority it is seen that the act of buying Agricultural land by NRIs, the transaction would not be construed as 'void' under the Act. As it is observed by the Hon'ble Supreme Court in the case of ***Vijay Karia & Ors vs. Prysmian Cavi E Sistemi SRL and Ors., (2020) 11 SCC 1***, it was observed that Section 47 of FERA no longer exists in FEMA, so that transactions that violate FEMA cannot be held to be void.

The purport of the expression 'void' and 'voidable' was analysed by the Hon'ble Supreme Court in the case of ***Asha John Divianathan vs. Vikram Malhotra & Ors., reported in 2021 SCC Online SC 147*** wherein at Para 19 explains the purport of the expression "void" and "voidable". It was also held that when the provision uses the expression 'previous' or 'prior' permission of the RBI failure to do so would render the transaction unenforceable in law.

Reference can also be made to the decision of the Hon'ble Supreme Court in the case of ***LIC vs. Escorts., reported in (1986)1 SCC 264*** wherein it was held that when the provisions of the Act did not qualify the words "general or special permission of the Reserve Bank of India with the words "previous" or "prior", Reserve Bank can grant an ex post facto approval. Provisions of Chapter IX of NDI Rules, 2019

Going by the orders of Compounding Authority directing the person who has acquired the immovable property in violation of the provisions of the Act to dispose off the property to a person resident in India who is a citizen of India and to recover the benefit/gains arising out of such acquisition to be appropriated to the RBI by way of compounding fine the transaction is not held to be 'void'. It is not also clear as to why the Compounding Authority did not direct the Applicants to seek post facto approval for holding agricultural land from the RBI before compounding the violation and directed its dispossession.

By Persons Other Than Individuals

Foreign Embassies/Diplomats/Consulate Generals are not permitted to purchase or sell agricultural land or plantation property or farm house.

Foreign Nationals also have no permission to acquire agricultural land or farm house or plantation property under any of the provisions of NDI Rules, 2019.

A. Foreign Direct Investment in Agricultural Sector

Conditions for Foreign Direct Investment is primarily governed by Foreign Exchange Management (Non-Debt Instrument) Rules, 2019 read with Master Direction on Foreign Direct Investment (as amended).

Rule 6 of the NDI Rules states that a 'person resident outside India' may make investment by way of subscription, purchase or sell equity instruments of an Indian company in the manner and subject to terms and conditions specified in Schedule I.

Schedule I provides for the following important conditions that is to be fulfilled to undertake Foreign Direct Investment in 'Indian Entities':

a. Indian Company can issue equity instrument to PROI subject to the entry routes, sectoral caps and attendant conditionalities prescribed in the Schedule,

b. Cannot enter into sectors prohibited for FDI.

Table to Schedule I provides for Sector/Activity which is permitted

Sl. No	*Sector/Activity*	*Sectoral Cap*	*Entry Route*
1.	Agriculture and Animal Husbandry	100%	Automatic
1.1	(a) Floriculture, Horticulture and Cultivation of vegetables and mushrooms **under controlled conditions;** (b) Development and production of seeds and planting material; (c) Animal Husbandry (including breeding of dogs), Pisciculture, Aquaculture and Apiculture; and (d) Services related to agro and allied sectors **Note: Other than the above, foreign investment is not allowed in any other agricultural sector or activity**		
1.2	Other Conditions The term 'under controlled conditions' cover the following: 'Cultivation under controlled conditions' for the categories of Floriculture, Horticulture, Cultivation of vegetables and mushrooms is the practice of cultivation wherein rainfall, temperature, solar radiation, air humidity and culture medium are controlled artificially. Control in these parameters may be effected through protected cultivation		

Sl. No	***Sector/Activity***	***Sectoral Cap***	***Entry Route***
	under green houses, net houses, poly houses or any other improved infrastructure facilities where micro-climate conditions are regulated anthropogenically.		
2. 2.1	Plantation (a) Tea sector including tea plantations (b) Coffee plantations (c) Rubber plantations (d) Cardamom plantations (e) Palm oil tree plantations (f) Olive oil tree plantation **Note: Foreign investment is not allowed in any plantation sector/activity other than those listed above.**	100%	Automatic
2.2	Other Conditions Prior approval of the State Government concerned is required in case of any future land use change.		

Acquisition of Agricultural Land by Indian Companies which has FDI for undertaking the activities permitted under Sl. No. 1 and 2 as stated above is permitted, subject to complying with the conditions prescribed by the State Government. Technically, agricultural land will be acquired by the Indian Company a 'person resident in India' does not have any statutory restrictions under FEMA but would be governed by the State Laws where it proposes to buy the land.

However, on acquiring agricultural land by such Indian Companies which has FDI, the activity that is permitted on the agricultural land is strictly as specified under Sl. No. 1 and 2 of Table to Schedule I of NDI Rules. The land so acquired should be strictly used for these specified activities. Any violation of land use conditions would be violative of the provisions of FEMA which would attract penal provisions. Respective State laws will also have powers to confiscate the property when it is not used for the stated purpose.

If the land is designated as 'agricultural land' as per revenue records, the occupant of the land is entitled to only undertake agricultural operations or to erect farm buildings, construct wells or tanks, or make any other improvements that are required for better cultivation of land or its convenient use for the designated purpose.

Prior to NDI Rules, 2019 there were stricter conditions imposed for FDI in Agriculture Sector. Only Tea Sector including tea plantations was allowed and now the sectors have increased to six types of plantation activity. Animal husbandry, pisciculture, aquaculture was also to be undertaken under controlled conditions, which restrictions are now removed. Requirement of undertaking activity under controlled conditions is now restricted to floriculture, horticulture and cultivation of vegetables and mushrooms.

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Reporting requirement under the FDI is governed by Master-Direction on Reporting under Foreign Exchange Management Act, 1999 as amended from time to time. Part IV of the Master Direction deals with the procedure to be followed on 'Foreign Investment'.

Acqusition of Shares if Indian Company Which is into Agriculture by Inheritance by Person Resident Outside India:

It would also be possible that an NRI or an OCI or a Foreign National can inherit shares of the Indian Company from a person resident in India or a Person resident outside India. If the Indian Company is undertaking agricultural operations which are not permitted either under Sl. No. 1 or 2 of Table to Schedule I of Non-Debt Instrument Rules, 2019 the company would be in violation of the FDI conditions if the inherited shares are to be transferred to person resident outside India. In such a situation the Indian Company would have to seek specific approval from the RBI and adhere to the conditions that may be imposed by the RBI which may normally be in the nature of divesting the inherited shares to a person resident in India who is a citizen of India.

Case Study

Q.1 – Can a 'person resident in India' who is a foreign national [other than those from Countries prohibited under Rule 31] satisfying the conditions prescribed under Section 2(v) of the Act buy 'agricultural land' or 'farm house' or 'plantation property'?

Ans: As stated above, matters relating to acquisition of land is in the legislative domain of State Government. If the respective State Government laws permit a foreign national to acquire agricultural land or farm house or plantation property, they may do so. However, no State Government till now has accorded such permission to foreign nationals. Hence, it would not be possible to acquire agricultural land or farm house or plantation property.

Also citizen of Pakistan, Bangladesh, Sri Lanka, Afghanistan, China, Iran, Nepal, Bhutan, Hong Kong or Macau or DPR Korea require prior approval of Reserve Bank to purchase immovable property in India.

Q.2 – Can a foreign national inherit agricultural land or farm house or plantation property situated in India. From whom can they inherit?

Ans: There is no restriction on foreign nationals of non-Indian origin to inherit such immovable property from a person who was resident in India or even from a person resident outside India so long as the person from whom the property is inherited was acquired in accordance with the prevalent foreign exchange laws at that point of time.

However, for a citizen of citizen of Pakistan, Bangladesh, Sri Lanka, Afghanistan, China, Iran, Nepal, Bhutan, Hong Kong or Macau or DPR Korea require prior approval of Reserve Bank to also inherit such property.

> "There are people in the world so hungry, that God cannot appear to them except in the form of bread."
>
> — *Mahatma Gandhi*

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GST Implications on Agricultural Sector and Allied Activities

CA Suvrata Maheshwari

Overview

Agriculture is the backbone of India's economy. It is the primary source of food, income, and employment for the majority of the population, and it has a significant impact on the overall economic growth of the country. Therefore, the Government allocates significant budgets for the development of the agricultural sector and also provides tax exemptions and tax benefits to the cultivators in agricultural sector for the growth as well as economic development of the country. Thus, it becomes crucial to analyse the GST implications on agricultural sector in light of the exemptions and judicial precedents.

Agriculture plays a pivotal role in Indian economy both in terms of employment generation and contribution to GDP. As per the Indian economic survey 2020-21, agriculture sector employed more than 50% of the Indian workforce and contributed 20.2% to the country's GDP. Agriculture also plays a major role in earning foreign exchange by way of exports of various commodities. Therefore, it becomes imperative to understand the impact of Goods and Services' Tax ('GST') on the agricultural sector.

GST is an indirect tax introduced in India from July 1, 2017, and which is applicable throughout India. It replaced various statutes like the Central Sales Tax Act, States Sales Tax Act, Value Added Tax, Excise Act, etc of the Central Government and State Governments. It also affects the agricultural sector and allied activities due to the definition of 'supply' in the Central Goods and Services Act ('CGST'). CGST Act defines 'supply' to mean and include all forms of supply of 'goods' or 'services' or both such as sale, transfer, barter, exchange, license, rental, lease, or disposal made or agreed to be made for a consideration by a person in the course or furtherance of business[1].

At the outset, it is to be noted that GST law does not define agriculture. The leading case on the meaning of 'agriculture' is the case of ***CIT vs. Raja Benoy Kumor Sahas Roy***[2] in the context of Income Tax Act, 1961. The Supreme Court after considering a number of

1. See Section 7(1)(a) of the CGST Act.
2. [1957] 32 ITR 466 (SC).

standard dictionaries and law lexicon, held that it denotes the cultivation of the field and is restricted to the primary or basic processes such as tilling of the land, sowing of the seeds, planting and similar operations on the land, requiring the expenditure of human skill and labour upon the land itself. The Supreme Court further held that besides the basic operations, the subsequent operations would also be comprehended within the terms of agriculture, and such subsequent operations are illustrated as weeding, digging the soil around the growth, removal of undesirable undergrowth and all operations which foster the growth and preservation of the same not only from insects and pests, but also from depredation, from outside, tending, pruning, cutting, harvesting and rendering the produce fit for the market, which would all be agricultural operations, when taken in conjunction with the basic operations.

Nonetheless, CGST Act incorporates the definition of "agriculturist" to mean an individual or HUF who undertakes cultivation of land (a) by own labour or (b) by the labour of family or (c) the servants on wages payable in cash or kind or by hired labour under the personal supervision or the personal supervision of any member of the family[3]. The agriculturists are not liable to take registration to the extent of supply of produce out of the cultivation of land[4].

Moreover, the term "agricultural produce" has been explained vide Notification No. 11/2017-CT(R) [rate notification for services] and 12/2017-CT(R) [exemption notification for services], dated 28.6.2017. Its ingredients are set out below:

a. **Inclusive Part:** It means any produce out of cultivation of plants and rearing of all life forms of animals for the purposes of food, fiber, fuel, raw material or other similar products.

b. **Exclusion Part:** It does not include rearing of horses.

c. **Permitted degree of processing**: Only the following process is permitted to be done on the produce:

    i. Only such processing can be done thereon as is usually done by a cultivator or producer; AND

    ii. Such processing should not alter its essential characteristics; AND

    iii. Such processing must be done only to make it marketable for primary market.

There are a gambit of support services relating to agriculture or agricultural produce which are exempt from GST under the aforesaid notifications, inter-alia, including:

(i) Services relating to cultivation of plants and rearing of all lifeforms of animals, except the rearing of horses, for food, fibre, fuel, raw material or other similar products or agricultural produce by way of:

3. See Section 2(7) of the CGST Act.
4. See Section 23(1)(b) of CGST Act.

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a. agricultural operations directly related to production of any agricultural produce including cultivation, harvesting, threshing, plant protection or testing;

b. supply of farm labour

c. processes carried out at an agricultural farm including ending, pruning, cutting, harvesting, drying, cleaning trimming, sun drying, fumigating, curing, sorting, grading, cooling or bulk packaging and suchlike operations which do not alter the essential characteristics of agricultural produce but make it only marketable for the primary market;

d. renting or leasing of agro-machinery or vacant land with or without a structure incidental to its use;

e. loading, unloading, packing, storage or warehousing of agricultural produce;

f. agricultural extension services;

g. services by any Agricultural Produce Marketing Committee or Board or services provided by a commission agent for sale or purchase of agricultural produce[5].

(ii) Services by way of pre-conditioning, pre-cooling, ripening, waxing, retail packing, labelling of fruits and vegetables which do not change or alter the essential characteristics of the said fruits or vegetables[6].

(iii) Carrying out an intermediate production process as job work in relation to cultivation of plants and rearing of all life forms of animals, except the rearing of horses, for food, fiber, fuel, raw material or other similar products or agricultural produce[7].

(iv) Services by way of transportation by rail or a vessel from one place in India to another[8] or by a goods transport agency, by way of transport in a goods carriage of agricultural produce[9].

(v) Services of loading, unloading, packing, storage or warehousing of rice and storage or warehousing of cereals, pulses, fruits and vegetables have been specifically exempt from GST[10].

On a cursory reading of the above entries, it is clear that the exemption primarily revolves around the theme, as to whether, the support services have been provided in relation to “agricultural produce”. There are plethora of Advance Rulings pronounced under the GST laws, wherein it is opined that goods like turmeric (Haldi), Dried Ginger (South), Dates

5. See Entry 24 of Notification No. 11/2017-CT(R) or 54 of Notification No. 12/2017-CT(R).
6. See Entry 24 of Notification No. 11/2017-CT(R) or 57 of Notification No. 12/2017-CT(R).
7. See Entry 24 of Notification No. 11/2017-CT(R) or 55 of Notification No. 12/2017-CT(R).
8. See Entry 20 of Notification No. 12/2017-CT(R).
9. See Entry 21 of Notification No. 12/2017-CT(R).
10. See Entry 24 and 24B of Notification No. 12/2017-CT(R).

(Khajoor), Dry Dates (Chhuhara), Tamarind (Imli), Dry Mango (Amchur), Kathodi, Dry Gooseberry (Dry Amla), Dry Water -Caltrop/ Water Cashew nut (Sukha Singadha), Dry Peas (Sukha Matar), Cinnamon (Dalchini), Gum (Gond), Arjuna Chhal, Dry fruits such as Fig (Anjeer), Almond (Badaam), Walnuts (Akhrot), Pistachio (Pista), Lotus Seeds Pop (Phool Makhana), Saunf (Fennel) Jhaniya (Coriander), Jeera (Cumin seeds), tea etc do not constitute agricultural produce[11]. The reasoning stated in the aforementioned AARs in holding that the goods do not qualify as "agricultural produce" are use of some specialized machine or equipment/plants or certain processes (not usually done by a cultivator or producer), leading to consideration value addition and change in essential characteristics.

In this regard, it has also been clarified by Tax Research Unit of Department of Revenue that processed products such as tea (i.e. black tea, white tea etc.), processed coffee beans or powder, jaggery, processed spices, processed dry fruits, processed cashew nuts etc. fall outside the definition of agricultural produce and therefore the exemption from GST is not available to their loading, packing, warehousing etc.[12]

In the context of milling of paddy into rice, it has been clarified that milling of paddy is not an intermediate production process in relation to cultivation of plants. It is a process carried out after the process of cultivation is over and paddy has been harvested. Further, processing of paddy into rice is not usually carried out by cultivators but by rice millers. Milling of paddy into rice also changes its essential characteristics. Therefore, milling of paddy into rice cannot be considered as an intermediate production process in relation to cultivation of plants for food, fibre or other similar products or agricultural produce and hence not eligible for exemption[13].

Given the significance of the term "agricultural produce", reference can be made to the jurisprudence laid under the Income Tax Act, 1961 which defines "agricultural income" and draws certain similarities with the definition of "agricultural produce" in the GST notifications.

In ***Sakarlal Naranlal vs. CIT***[14], the Hon'ble Gujarat High Court, summarized the principles established in the case of ***Dooars Tea Co***[15] and observed that if there is no market for the produce as grown, the cultivator would have to perform some process. Even where the produce is subjected to a process ordinarily employed by cultivators to render it fit to be taken to market, the produce must not change its original character.

In ***CIT vs. Stanes Amalgamated Estates Ltd.***[16], it was held that even under processing, the produce should not lose its identity and

11. See *Sardar Mal Cold Storage & Ice Factory 2019 (23) GSTL 321 (App AAR-GST); Guru Cold Storage P Ltd 2018 (14) GSTL 112 (AAR-GST); Nutan Warehousing Co. Pvt Ltd 2019 (20) GSTL 146 (App AAR-GST); Rara Udhyog 2019 (23) GSTL 118 (App AAR- GST)*
12. See Circular No. 16/16/2017-GST dated 15th November 2017.
13. Circular No. 19/19/2017-GST dated 20.11.2017.
14. [1965] 56 ITR 503 (Guj).
15. [1962] 44 ITR 6 (SC).
16. 232 ITR 443 (Mad).

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the assessee must establish the agricultural produce itself has got no market and only by converting the same into some other product there can be a market.

In ***Seth Banarsi Das Gupta vs. CIT***[17], it was held that when sugarcane is converted into gur, it results in the production of a different commodity. It was further held that the conversion of sugarcane into gur is not a necessary process performed by a cultivator to render sugarcane fit for being taken to the market.

In ***Commissioner of Sales Tax, Lucknow vs. DS Bist and Sons***[18], it was held that tea leaves after process of withering, crushing, roasting and fermentation, in its basic nature, continues to be an agricultural produce. It was observed that almost every kind of agricultural produce has to undergo some kind of processing or treatment by the agriculturist himself in his farm or elsewhere in order to bring them to a condition of non-perishability and to make them transportable and marketable. Some minimal process is necessary to be applied to many varieties of agricultural produce. It was also opined that there may be some other kinds of agricultural produce which required some more processing to make it marketable. The mere fact that in the case of a particular product the process is a bit longer or even a bit complicated will not rob the produce of its character of being an agricultural produce.

In the case of ***CIT vs. Diwan Bahadur S.L. Mathias***[19], it was observed that in the case of coffee the process subsequent to picking the beans are not in the nature of manufacture, but are processes ordinarily employed by the cultivator to render the produce fit to be taken to the market.

Now what is “primary market”? In the case of ***JM Casey vs. CIT***[20], the Patna High Court held that the word ‘market’ must mean a ready and available market where produce of the kind grown by the assessee is brought and sold. In a recent case decided by the Gauhati High Court in ***Apeejay Tea Ltd vs. UOI***[21], the term was understood to refer to the market where the agricultural produce as such are being sold and the process that the cultivator or the producer may undertake is to the extent to make it transportable and presentable in such a market.

The following principles emerge on a perusal of the above judicial precedents:

a. That that ‘agriculture’ in its primary sense denotes the cultivation of the field. Its scope is restricted to basic operations which require the expenditure of human skill and labour such as tilling of the land, sowing of the seeds, planting and similar operations on the land itself. In other words, agricultural operations would cease when the produce is raised and removed from the soil.

17. [1977] 106 ITR 804 (All).
18. (1979) 4 SCC 741.
19. 1937 (5) ITR 435 (Mad).
20. AIR 1930 Pat 44.
21. 2019 [23] GSTL 180.

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b. Apart from the said basic operations, certain subsequent operations or processes are also comprehended within the term 'agriculture'. But these subsequent processes must be done in continuation with the basic agricultural operations just so as to enable the cultivator/producer to sell his produce. They must be so integral to or assimilated with basic agricultural operations that they must appear like processes ordinarily carried out by cultivators. These processes may involve the use and assistance of machinery and is not confined merely to manual labour.

c. The aforesaid subsequent processes must have been employed with the object of making the produce marketable. However, if there is already a market for the produce in its raw state, then the process cannot be said to be a process employed to render the produce marketable.

d. The employment of the subsequent processes must not alter the essential character of the original produce.

On the scores of the above precedents, one may have to examine whether a particular product qualifies as an "agricultural produce". Another condition to the definition under GST exemption notification is that the process is usually done by the cultivators or producers. So, first of all, who are the 'producers'? What are the "processes usually done" by the said 'producers'?. The 'producers' are obviously not cultivators who would do agricultural work on land.

In ***CIT vs Maddi Venkatasubbayya***[22], the assessee was not a land-holder or a ryot or a lessee of the land on which the tobacco crop stood. They only purchased standing crops of tobacco, sugarcane, groundnut etc., when the crop is ready or nearly ready for harvest. Thereafter, they did some pruning work and marketed the produce. In this context, it was held that for the purpose of deriving income from agricultural land there is no necessity that such land should be owned by the assessee. If the assessee has derivative interest in the land for the purpose of conducting agricultural operations on the said land, then the revenue generated from such land would be agricultural income.

Similarly, in case of ***Advanta India Ltd vs. ACIT***[23], the agricultural work was carried out on leased land, not by themselves but through other farmers. It was held that the farmers though are employed to cultivate the lands are acting on behalf of the assessee company under its supervision and the entire produce is taken by the assessee only.

In both cases, the assessee were themselves not cultivators. The assessee in the said cases were persons who essentially outsourced the whole or part production process to other persons. In my opinion, it is these classes of assessee who would fall under the category of producers. Thus, the definition of "agricultural produce" in the GST exemption notification contemplates two classes of persons: one, the cultivators themselves and two, the 'producers' who have derivative interest in cultivation. The subject matter of the definition of

22. AIR 1951 Mad 1007.
23. (2013) 158 TTJ (Bang) 763.

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"agricultural produce" is cultivation on land and its subsequent processes to render it fit for primary market. What only follows is that any process, must be integral to basic agricultural operations that they must appear like processes ordinarily carried out by cultivators as was held in the case of ***Sakarlal Naranlal (supra)***.

It must also be noted that, from the scheme of the CGST Act, especially from Section 23(1)(b), that legislature intended to provide certain concessions to the agricultural sector. Moreover, the exemptions given to agricultural produce is beneficial in nature and must be given liberal interpretation in view of the decision of the Supreme Court in ***Government of Kerala & Another vs. Mother Superior Adoration Convent***[24].

In that context, reference may be made to the case of ***CIT vs. Cynamid India Ltd***[25], where the question was whether rice husk was a product of agriculture. The Tribunal had held that what was produced by the cultivator was paddy which alone would be considered as an agricultural product. That husk was the result of process of de-husking which was not an agricultural produce. Overruling the view of the Tribunal, it was observed that Section 35C of the Income Tax Act, 1961 was designed to encourage development of agriculture. The term 'agricultural product' or 'product of agriculture' is required to be construed liberally so as to include not merely the primary product as it actually grows, but also a product which undergoes a simple operation so as to make it more saleable or more useable. It was held that the rice and the husk though separated remain as they were produced and hence continue to be 'agricultural product' or 'product of agriculture'.

Recently, the Hon'ble High Court of Bombay, reversed the advance ruling pronounced in the case of ***Nutan Warehousing Co Pvt Ltd***[26]. The court recognized that even after standard processing like procurement, blending, and packing, tea retained its essential nature as an agricultural product. Minor processing for storage and transportation, didn't alter the tea's character in the primary market and therefore, tea is to be considered as an agricultural produce. While the decision provides an immediate relief and clarity to the tea industry, it raises new questions in respect of the extent of processing that may be considered to not alter the character of agricultural produce and its application to other sectors and products.

Ultimately, the GST implications on agricultural sector cannot be anybody's guess work, the transactions need to be analysed on a case-to-case basis. Although there are plethora of judgements under the allied laws, their application needs to be tested under the GST laws. The test of time will tell whether the rulings will hold good and how the courts will interpret the same.

24. 2021 (5) SCC 602.
25. (1999) 3 SCC 727.
26. 2023 (13) Centax 158 (Bom).

A Survey of Land Laws in Maharashtra

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Overview

The article provides a bird's-eye view of state legislation relating to land. The author discusses select laws in the State of Maharashtra regulating the land holding or transfer, including those relating to agricultural use. These include laws relating to land title, tenancy, land ceiling, fragmentation, change in use, tribal land, and a few others.

This is the extract from the letter of Chief Seattle to President Pierce in 1885 when the Squamish and other Indian Tribes around Washington's Puget Sound were faced with a proposed treaty which in part persuaded them to sell two million acres of land.

How can you buy or sell the sky – the warmth of the land? The idea is strange to us. Yet we do not own the freshness of the air or the sparkle of the water. How can you buy them from us? We will decide in our time. Every part of this earth is sacred to my people. Every shining pine needle, every sandy shore, every mist in the dark woods, every clearing, and every humming insect is holy in the memory and experience of my people.

We know that the white man does not understand our ways. One portion of land is the same to him as the next, for he is a stranger who comes in the night and takes from the land whatever he needs. The earth is not his brother, but his enemy, and when he has conquered it, he moves on. He leaves his father's graves and his children's birthright is forgotten. The sight of your cities pains the eyes of the redman. But perhaps it is because the redman is a savage and does not understand.

There is no quiet place in the white man's cities. No place to listen to the leaves of spring or the rustle of insect wings. But perhaps because I am a savage and do not understand – the clatter only seems to insult the ears. And what is there to life if a man cannot hear the lovely cry of the whippoorwill or the arguments of the frogs around a pond at night? The Indian prefers the soft sound of the wind itself cleansed by a mid-day rain, or scented by a pinõn pine: The air is precious to the redman. For all things share the same breath – the beasts, the trees, and the man. The white man does not seem to notice the air he breathes. Like a man dying for many days, he is numb to the stench.....

All things are connected. Whatever befalls the earth befalls the sons of the earth....

There perhaps we may live out our brief days as we wish. When the last redman has

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vanished from the earth, and the memory is only the shadow of a cloud passing over the prairie, these shores and forests will still hold the spirits of my people, for they love this earth as the newborn loves its mother's heartbeat. If we sell you our land, love it as we have loved it. Care for it as we have cared for it. Hold in your memory the way the land is as you take it. And with all your strength, with all your might, and with all your heart – preserve it for your children, and love it as God loves us all. One thing we know – our God is the same. This earth is precious to him. Even the white man cannot escape the common destiny.

Land and property has always been an integral part of human life since times immemorial. However, with the rise of socialism and emergence of modern welfare, "nation state" ushered in a new era whereby the governments all over the world tried to regulate the land laws implementing their own philosophies and wisdom.

India, being a predominantly agricultural society, has a strong linkage between land and social status of an individual. The fact that close to 70 % of the population is dependent on land, either as farmers or farm laborers, means that it is imperative to address the issue of land in such manner that it provides livelihood, dignity, and food security to millions of Indians. India has the largest number of rural poor as well as landless households in the world. Landlessness is a strong indicator of rural poverty in the country. Land is the most valuable, imperishable possession from which people derive their economic independence, social status, and a modest and permanent means of livelihood.

India under Nehru adopted a model of mixed economy which was in consonance with the modern welfare nation state. It is reflected from the way the Constitution was shaped; one has to understand the land laws in such a perspective.

It is difficult to encapsulate in one article, the entire survey of the land laws pertaining to Maharashtra. There are many Acts. Some so minor that one does not know its existence till a case lands in your lap .Rather than enlisting the Names and Numbers of the act, a methodological premise is devised whereby the readers can have a birds eye view of the fields and areas which would point towards the relevant acts. There are many obscure land laws which would govern the residuary rights. However, it being a minor area, I have not dealt with the same.

In order to understand the scope, width, extent and the operations of the land laws in general and in Maharashtra in particular, it is necessary to have a perspective in respect of Constitutional framework. After promulgation of the Indian Constitution, the Congress party assumed power. The main plank of their manifesto was abolition of Zamindari and the land to be given to the tillers. This was the central idea of the land reforms which were initiated all over India. Land is entry 18 is a subject matter in the State List in the Seventh Schedule and Indian states enacted many land reforms acts to usher in the governess and equitable distribution of the land. These legislations were challenged in three different High Courts at that particular point in time. It was challenged in Allahabad High Court (Uttar Pradesh), Madhya Pradesh High Court and Patna High Court (Bihar). Though the challenges in the first two High Courts were unsuccessful, the Patna High Court struck down large portions of the aforesaid land reforms act which sent warning notes to the then polity. It was thought that they required some device to protect the aforesaid laws and to keep their promise to the electorate and thus, the Legislature brought in the first amendment whereby they added Articles 31A

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and 31B. It was a unique way to protect the Constitution against itself hitherto unknown to the world. Part III of the Constitution which contains Fundamental Rights was conceptualised as inalienable freedom on one hand however, the legislature vide first amendment intended that when it came down to certain categories of laws (especially land reforms) it could transgress Part III. This gave rise to the entire litigation whereby the Supreme Court settled the Constitutional Law in context of the land reforms starting from Shankari Prasad, Golaknath, Keshavananda Bharati till I.R Coehlo. This will give readers a Constitutional framework in order to understand the enactment of different laws all over India.

In Maharashtra, because of these amendments, there were several fields which the legislature covered by enacting various acts in respect of agricultural land laws and the fields were as under:

1. Conclusive land title

It is evident from a survey of Indian land laws that the land titles are presumptive. It is the person whose name appears on the record of revenue rights is presumed to be the occupant of that particular land until proved otherwise. These revenue entries in the record of rights are merely fiscal and do not confer any title upon the occupant.

The Government at Centre and the State have now taken various measures to grant the conclusive title for agricultural land markets in India. In 2011, Ministry of Rural Development proposed a Draft Land Titling Bill 2011 to establish a system of conclusive and electronically recorded titles. In 2016, Rajasthan enacted law in respect of conclusive titles in the urban areas. In 2019, Government of Maharashtra also proposed a Draft Land Titling Bill which envisages creation of land titling authority and has empowered it with the responsibility of preparation, maintenance and updating of land records. This is an attempt to collate relevant information available with different agencies such as land records department, revenue department and department of registration and stamps.

2. Tenancy laws

One of the most important pieces of legislation is Maharashtra Tenancy and Agricultural Lands Act, 1948.It governs the landlord and the Tenant relationship in respect of the agricultural land. Section 63 of the aforesaid Act requires prior permission of the Collector to transfer agriculture the land to non-agriculturalists. In 2016, the State Government amended the aforesaid section and exempted the lands situated within the limits of urban local bodies as per development or regional plans. Government also has facilitated and eased the transfer of agricultural land for non-agricultural purposes i.e., bona fide industrial use and integrate township permission without Collector's permission vide Section 63-1A. For maximum utilisation the Act casts a mandate on non-agricultural transferees to put the land to the intended use within a period of ten years. Such amendments and policies have now made it possible for the industries to buy agricultural land for their bona fide use.

3. Land Ceiling Laws

In Maharashtra, the Maharashtra Agricultural Lands (Ceiling on Holdings) Act, 1961 governs the transfer and alienation rights over agricultural lands. The State can acquire the surplus land. Like the land ceiling laws in the other states, the Act limits agricultural land ownership and provides for distribution of excess land in public interest. The central idea of the Act is social justice through redistribution; however, the restrictive nature of this Act and its operation has put the

framers in greater distress. Even though there is a Prevention of Fragmentation and Consolidation from Holding Act, 1947 also occupying the field, the investment in agriculture has remained poor.

4. Reforming and Fragmentation Act

Apropos to what is stated in the preceding paragraph, Maharashtra also enacted the Prevention of Fragmentation and Consolidation from Holding Act, 1947. Under this law, the State has a power to declare a village, taluka or tehsil as a local area for purposes of determining minimum area that can be cultivated profitability as a separate plot and achieve consolidation. However, it is evident that in the last 25-30 years, Maharashtra has witnessed large scale fragmentation of the land, and the Act has not achieved its intended purpose.

5. Revenue records

The revenue record is essentially fiscal in nature. The settled position of law is that the mutation entries in revenue records do not create or extinguish any title but are only fiscal. The digitisation of this entire land record has now given access to an ordinary citizen and landowners as also to the intending prospective buyers towards assessing the title of the land. The Registration Act, 1908 mandates compulsory registration of all the property transactions in India. Maharashtra government amended the aforesaid Act in 2012 and allowed e- registration of land deeds and simplified the entire registration process. This amendment and the process of optimally interconnecting the land records department, the revenue department and department of registration has now created a comprehensive land records repository which has ensured transparency in the agricultural land market with lower transaction cost.

6. Change in land use

One of the major areas for effective capitalisation and utilisation of lands is simplifying regulations to plan, control and coordinate the contents of rural and urban land activities.

In Maharashtra, section 42 of Maharashtra Land Revenue Code (MLRC) Allows conversion of agricultural land for non-agricultural purposes with requisite permission from Commissioner. Section 44 of MLRC and 1969 Rules stipulate that land must be used for non-agricultural purpose for which the permission was sought and the use shall be commenced within one year from the date of grant of permission. However, these restrictive provisions have negatively affected the effective use and capitalisation of the land in urban India. Increased urbanisation in the last 25-30 years has forced the Maharashtra Government to amend the MLRC to simplify the land use conversion requests. By an amendment in section 29 and by introducing section 42A-42D brought in the lands held by Class I occupants and included under the urban development plan or regional plan are deemed to be converted without seeking permission of Collector. Section 44A of MLRC also permits the occupant to convert an agricultural land for bona fide industrial use or for constructing integrated township projects without prior permission of the Collector.

7. Restrictions of transferability of tribal land

As a matter of legislative policy, the State has put restrictions on sale of tribal lands to non-tribals. The State has enacted a supplementary legislation to MLRC and tenancy laws namely, the Maharashtra Restoration of Lands to Scheduled Tribes Act, 1974. This Act provides for restoration of lands which (were

transferred to non-tribals) to tribals on or before 6 July 1974. It is one of the important pieces of legislation for prospective buyers/corporate entities when they are seeking to buy agricultural land for industrial use.

8. Land lease markets

The practice of leasing of land (sharecropping) has been practised all over India even before independence. It's essentially a tenure contract where the tenant cultivates land on behalf of the landlord for a share of produce. However, tenancy agricultural lands acts enacted all over India vested the land in the tenants on the tiller's day and in case the tenancy was created after the tiller's day, the tenant was given the right to purchase the land from the landlord within one year. In such circumstances, the landowners are always at a risk of losing land to the tenants. However, in order to project interest of both, what was sought was regularisation of land leasing by providing security to the landlord and the tenants, allowing the tenants to access the credit markets and thereby improve agriculture efficiency.

In 2017, the Government of Maharashtra passed the Maharashtra Agricultural Land Leasing Act 2017.

In respect of the non-agricultural lands, the Regional Town Planning Act, Rent Control Act, creation of various statutory authorities and acts governing the aforesaid statutory authorities in urban areas were created.

A survey, span, extent, and width of the laws pertaining to agricultural lands in Maharashtra suggests that the agricultural land in Maharashtra and agricultural land markets are regularised. Agricultural land is generally transacted for three purposes i.e., mortgage, sale, and lease. However, the transferability of land is influenced and often determined by various factors such as change of land use, tenancy, ceiling, and ownership patterns. It is clear from the aforesaid enactments that in the last 25-30 years, the approach of the State of Maharashtra for land governance has shifted from distributive justice to efficient reallocation. Revolution by the internet which paved the way for digitisation has now transformed the traditional way of looking at land as an important factor of production not only for agriculture and allied industries but also for developing the secondary and tertiary economy.

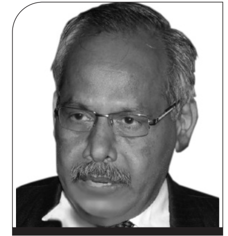
Epilogue

Central Idea of this article was to give readers an overview in respect of the main areas in which these legislations operate. One can identify the area from which a query emanates and can then apply the mind to the major and minor legislations in that area.

Even though many of these land laws were enacted in 1950s and 1960s since the context has rapidly undergone a change, the same laws can now serve as a tool for effective utilisation and capitalisation of land, both agricultural and non-agricultural. The aforesaid laws also have capacity for unlocking the potential of economic development by efficient allocation of land resources.

Let us hope that the initiatives and liberalisation of the state agricultural laws will go a long way in transforming 'dead assets' into 'live capital' and bring much needed clarity and efficiency in the functioning of the agricultural land market in the state.

DIRECT TAXES
Supreme Court



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1 ***CIT vs. National Agricultural Co-Operative Marketing Federation of India Ltd.; [2023] 459 ITR 593 (SC): Dated 21/08/2023***

Business expenditure — Accrued or contingent liability — Award of damages with interest thereon in arbitration made rule of court by Single Judge — Assessee disputing award and dispute pending before Division Bench — Grant of stay by Division Bench does not relieve assessee of liability to pay interest — Assessee entitled to deduction of interest — Supreme Court dismissed SLP: S. 37 of ITA 1961: A. Ys. 2001-02 and 2002-03:

In proceedings initiated by A against the assessee u/s. 5 of the Foreign Awards (Recognition and Enforcement) Act, 1961 the Court (Single Judge) made the award rule of the court and held that A was entitled to interest. On appeal by the assessee against such order, the Court (Division Bench) granted stay of execution of the decree.

For the A. Ys. 2000-01 and 2001-02, the assessee claimed deduction of interest payable to A, on account of an arbitration award on the outstanding amount of the award. The Assessing Officer disallowed the claim for deduction by the assessee for the A. Ys. 2001-02 and 2002-03 and held that the liability of the assessee was contingent and that it had not been entered in its books of account.

The Commissioner (Appeals) confirmed the order of the Assessing Officer, disallowing the interest. The Appellate Tribunal allowed deduction of interest for the A. Y. 2003-04. The members of the Appellate Tribunal who heard the appeals for the A. Ys. 2001-02 and 2002-03, disagreed with the earlier order for the A. Y. 2003-04. A reference was made to the Special Bench of the Appellate Tribunal which held that the assessee had not incurred the liability for the payment of the interest at the end of the assessment years in question and that under the mercantile system of accounting deduction could be granted only where the incurring of the liability was a certainty. It also held that there was no legally enforceable liability of interest that existed against the assessee. It further held that where the claim to damages and interest thereon was disputed by the assessee in a court, deduction could not be allowed for the interest on such damages. It concluded that as a result of the stay order granted by the Division Bench of the court, the liability of the assessee to pay interest remained suspended from the date of stay.

The Delhi High Court allowed the appeal filed by the assessee and held as under:

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"i) With the award being made rule of the court by a Single Judge, the mere fact that the judgment and decree was stayed by a Division Bench would not relieve the assessee of its obligation to pay the interest in terms thereof to A. Such liability had commenced in the previous year in which the judgment and decree was passed by the Single Judge. The order of the Special Bench of the Appellate Tribunal confirming the disallowance of interest was unsustainable.

ii) For the aforementioned reasons, this Court is unable to sustain the impugned order of the Special Bench of the Income-tax Appellate Tribunal. Accordingly, the question framed is answered in the negative i.e., in favour of the assessee NAFED and against the Revenue."

(See ***National Agricultural Co-Operative Marketing Federation of India Ltd. vs. CIT [2017] 393 ITR 666 (Delhi)***.)

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

"i) Having heard learned senior counsel for the petitioners at a considerable length and after carefully perusing the material available on record, we do not find any ground to interfere with the impugned order dated April 19, 2017* passed by the High Court of Delhi at New Delhi.

ii) The special leave petition is, accordingly, dismissed."

2 *ITO vs. Jagesh Savjani; [2023] 459 ITR 210 (SC): Dated 28/07/2023:*

Recovery of tax — Private company — Recovery from director — Condition precedent — Only if Officer unable to recover tax due from private company — Steps taken to recover tax due from delinquent company not disclosed in show-cause notice — No reference in order to material forming basis for failure of steps taken to recover tax from company — Failure to record satisfaction of AO as required u/s. 179 — Show-cause notices and order quashed by Bombay High Court — Supreme Court dismissed SLP: S. 179 of ITA 1961:

On receipt of show-cause notices and order u/s. 179(1) of the Income-tax Act, 1961, the petitioner preferred a writ petition submitting that he was not a director of the assessee-company as he did not attend any of the board meetings and that the failure to disclose the steps taken by the respondents to recover tax from the company in the show-cause notices were contrary to law. Pursuant to the court's observations that the Department was required to explain the steps taken to recover the tax dues from the company, the Department filed an affidavit setting out the steps taken by it from 2016 to 2020 to recover the tax due from the company.

The Bombay High Court allowed the writ petition and held as under:

"i) From a perusal of section 179 of the Income-tax Act, 1961, it is clear that the Assessing Officer is vested with the jurisdiction to recover the tax from a director of a private company only when

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the officer is unable to recover such dues from that company. The argument that the petitioner was not a director of the company would be irrelevant at this stage, if the petitioner was able to demonstrate from the contents of the show-cause notices and the order that there was no compliance with the mandate of section 179 of the Act. The show-cause notices did not disclose any facts regarding the steps taken by the Revenue to recover tax dues from the assessee-company. In fact, the show-cause notices dated February 24, 2020, March 19, 2020 and December 4, 2020, were mere repetitions of the show-cause notice dated October 15, 2019.

ii) The order dated December 14, 2020, did not record any of the material which formed the basis for the Assessing Officer to conclude that all steps had been taken to recover the tax dues from the company. Further, it did not refer to the Assessing Officer's subjective satisfaction based upon the material before it, to conclude that all steps had been taken to proceed against the company and such steps had failed. This being a sine qua non for proceeding further, and for assuming jurisdiction u/s. 179 of the Act, failure to disclose this material and to record the satisfaction of the Assessing Officer in the manner required by the provisions of section 179 of the Act rendered the show-cause notices and the order unsustainable in law.

iii) Therefore, the show-cause notices dated February 24, 2020, March 19, 2020 and December 4, 2020 and order dated December 14, 2020 issued u/s. 179 of the Income-tax Act, 1961 were to be quashed and set aside."

(See ***Jagesh Savjani vs. Union of India [2023] 459 ITR 194 (Bom)***)

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

"i) We do not find any merit in the special leave petition.

ii) The special leave petition is dismissed."

■●■

"At the same time, he must struggle hard to acquire these things — firstly, knowledge, and secondly, wealth. It is his duty, and if he does not do his duty, he is nobody. A householder who does not struggle to get wealth is immoral. If he is lazy and content to lead an idle life, he is immoral, because upon him depend hundreds. If he gets riches, hundreds of others will be thereby supported."

— *Swami Vivekananda*

DIRECT TAXES
High Court

Jitendra Singh
Advocate

Radha Halbe
Advocate

Harsh Shah
Advocate

1 ***Veena Estate Pvt. Ltd. vs. CIT (ITA 302 of 2002, dated 11 January 2024, Bombay High Court)***

Levy of Penalty - Section 271(1)(c) of the Income Tax Act, 1961 – Notice - Assessee cannot challenge the validity of notice based on a procedural flaw without demonstrating prejudice caused to it

Facts

The Assessee had purchased a plot of land in Mumbai for Rs. 25,00,000/- in 1982. The Assessee incurred development and construction costs of Rs. 26,61,283/-, resulting in a total cost of Rs. 51,61,282/-. On 19 September 1983, a partnership named Nirmal Enterprises was formed between the Assessee and six others. The Assessee revalued the land at Rs. 1,04,53,500/-, which was its market value on 19 September 1983 and introduced it into the firm as its capital.

For AY 1984-85, the Assessee declared "Nil" income in its return of income filed on 29 September 1984. The AO sought instructions from the Inspecting Assistant Commissioner (IAC) regarding taxability of the revaluation of land and its introduction as capital in the partnership firm. The IAC, referring to the Supreme Court's decision in ***Hind Construction Ltd ([1972] 83 ITR 211 (SC))***, opined that no income arose to the Assessee. Accordingly, the assessment was completed on 20 April 1985 under Section 143(3) of the Act.

Subsequently, proceedings under Section 263 of the Act were initiated by the CIT, based on the Supreme Court judgment in ***Sunil Siddharthbai vs. CIT ([1985] 156 ITR 509 (SC))***. The CIT, relying on observations from ***McDowell & Co. Ltd. vs. Commercial Tax Officer ([1985] 154 ITR 148 (SC))***, noted that the AO had not considered aspects of potential tax avoidance through dubious devices. The CIT set-aside the assessment and instructed the AO to conduct a fresh assessment. In the revision proceedings, the AO held that the Assessee had not only transferred land at its market value but also withdrawn the profits arising therefrom. Accordingly, the events were so arranged that the Assessee enjoyed benefits of the monies without paying taxed due thereon. Accordingly, the brought a sum of Rs. 52,92,218/- to tax as profit on transfer of land. On appeal by the Assessee to the CIT(A), the CIT(A) ruled in favor of the Assessee. The CIT(A) held that the amendment to Section 45 of the Act, introduced in AY 1985-86, did not apply to AY 1984-85. The department appealed to the Tribunal and argued that substantial withdrawals by the Assessee and early retirement indicated an ulterior motive. The Tribunal agreed with the revenue's contentions and upheld the AO's order relying upon the decision in the case of ***Sunil Siddharthbai's case ([1985] 156 ITR***

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509 (SC)) and ***ALA Firm vs. CIT ([1991] 189 ITR 285 (SC))***.

In the penalty proceedings under Section 271(1)(c) for AY 1984-85, the Assessee contended that the case aligned with ***Hind Construction ([1972] 83 ITR 211 (SC))***, not ***Sunil Siddharthbai ([1985] 156 ITR 509 (SC))*** or ***ALA Firm ([1991] 189 ITR 285 (SC))***. However, the AO rejected the Assessee's contentions and imposed a penalty of Rs. 33,34,096/-. Aggrieved with the levy of penalty, the Assessee filed an appeal with the CIT(A). The CIT(A) deleted the penalty noting the bona-fide difference of opinion between authorities and the Assessee on the taxability of the impugned amount. The department assailed the CIT(A)'s order before the Tribunal. The Tribunal upheld the levy of penalty.

The Assessee being aggrieved by the order of the Tribunal filed an appeal before the Hon'ble Bombay High Court under section 260A of the Act. During the course of hearing, the Assessee contended before the High Court that penalty proceedings were vitiated due to the AO's failure to specify the relevant limb of Section 271(1)(c), in the show cause notice issued for initiation of penalty proceedings and thus the issue is covered by the decision rendered in the case of ***Ventura Textile Ltd. vs. CIT (2020) 117 taxmann.com 182 (Bom)***.

Decisions of the Hon'ble Court

Hon'ble Bombay High Court observed that Sections 271 and 274, as they stood at the relevant point of time did not expressly provide a format or a form of notice. The mandatory aspect of Section 274 was hearing the Assessee before a penalty order is passed. If the Assessee participates in a hearing without expressing any grievance about the notice, it implies acceptance by the Assessee of the notice's validity.

The High Court, further, observed that the Assessee after 20 years of admission of the appeal challenged the penalty notice based on certain decisions which held that the revenue would be required to tick-mark the relevant limb of Section 271(1)(c) which attracted the levy of penalty.

Relying on the decision of Hon'ble Supreme Court in the case of ***Natwar Singh vs. Director of Enforcement & Anr. (2010) 13 SCC 255,*** Hon'ble High Court observed that it is a settled principle of law that any breach of principles of natural justice cannot be addressed by a straight-jacket formula and would be required to be considered in the facts each case. A genuine grievance of the breach of principles of natural justice is required to be made with utmost promptness accompanied with the prejudice it would cause. Any delay in making such complaint or raising a grievance would give rise to a position that such grievance is either not genuine or is belated and/or a technical plea being agitated.

In view of the above, Hon'ble High Court noted that in the present case the Assessee at no point of time had discharged the basic burden of demonstrating any prejudice being caused to it. Hence, Assessee's plea at this stage would amount to accepting a plea of technical infringement of natural justice, when it was not the case of the Assessee, even remotely, before any of the forums below. Hence it would not be a permissible course of action for the High Court.

Note: - Hon'ble High Court has distinguished the Order rendered by the Hon'ble Bombay high Court in the case of Ventura Textiles Ltd. (supra) by observing that in Ventura's case both at the time of initiation pf penalty as well as at the imposition pf penalty the AO was not clear as to which limb of section 271(1)(c) was attracted. However, in the present case even though the penalty notice was issued without a tick mark, yet both the limbs under Section 271(1)(c) i.e., concealment of particulars of

income and furnishing inaccurate particulars of such income were attracted and were so understood by the Assessee.

2 ***The Fine Arts Society vs. DCIT (Exemption) [Writ Petition No. 2541 of 2015, order dated 25.01.2024, Bombay High Court]***

Reassessment - Section 147 of the Income Tax Act, 1961 – notice under section 148 – reasons do not show any escapement of income and recording incorrect facts – vitiated by non application of mind – notice invalid

The Assessee before the Hon'ble Bombay High Court is a charitable institution registered under the Bombay Public Trusts Act 1950. Petitioner is also registered under Section 12AA of the Act and enjoys exemption under Section 11 of the Act. For the AY 2007-08, the Assessee filed its return of income declaring nil income.

The AO issued a notice dated 29.03.2014 under section 148 of the Act to reopen the assessment of the Assessee for AY-2007-08. In the reasons recorded, prior to the issue of the notice under section 148, the AO alleged that the Assessee is carrying on the commercial activity and hence, as per the decision of the Hon'ble Delhi High Court in the case of ***M/s. Yogiraj Charity Trust vs. Commissioner of Income Tax, New Delhi 103 ITR 777*** the Assessee is not eligible for exemption under section 11 of the Act. The Assessee filed details objections before the AO and brought to his notice that the assessment of the Assessee has not been finalized under section 143(3). Hence, the recording of reasons to this extent is not valid. The Assessee further brought to the notice of the AO that the decision in the case of ***M/s. Yogiraj Charity Trust vs. Commissioner of Income Tax, New Delhi*** is passed by Hon'ble Supreme Court and not Delhi High Court as mentioned in the reasons recorded and further, contended that the said decision is clearly distinguishable on the facts of the case. The AO however passed the order rejecting the objections raised by the Assessee. Being aggrieved, the Assessee filed a Writ Petition before the Hon'ble Bombay High Court.

Hon'ble High Court was pleased to allow the Writ Petition filed by the Assessee and quashed the notice issued under section 148 of the Act by observing that in the case of ***Yogiraj Charity Trust (supra)*** the Apex Court held that where in a trust deed providing for many charitable objects, the trustees were authorised to open and maintain commercial institutions where work at living wages could be provided to the poor and to contribute to commercial, technical or industrial concerns, institutions, associations or bodies imparting any type of training or providing employment to persons; and the deed gave uncontrolled discretion to the trustees to spend the whole of the trust fund on any of the non-charitable objects of the trust, then income of the trust was not exempted from tax under the said Act. There is not even an allegation that uncontrolled discretion or authority to open or maintain commercial institution was in the object of petitioner. There is not even a finding to that effect. Just because there are certain receipts received by petitioner while conducting its charitable activities, would not make those receipts whatever may be the quantum, to be income from commercial activities. Therefore, there has to be a tangible material to come to the conclusion that there is an escapement of income from assessment to exercise the power to reopen. But if the reasons to believe indicate non application of mind as submitted by Mr. Singh, with whom we concur, the reasons to believe itself cannot be sustained. (AY 2007-08).

3 *New India Assurance Company Ltd. vs. ACIT [2024] 158 taxmann.com 367 (Bombay)*

Reassessment – Section 148 of the Income Tax Act, 1961 – notice issued pursuant to the decisions of Hon'ble Supreme Court in the case of Ashish Agarwal and CBDT Instruction No. 1/2022 to revive notice issued under old regime is to be quashed and set aside

The Assessee before the Hon'ble Bombay High Court is Public Sector Undertaking and is engaged in the business of General Insurance in India and outside India. The assessee had filed its return of income for AY 2013-14 declaring nil income. The AO had finalized the assessment order under section 143(3) making certain additions/disallowances. On appeal the CIT(A) granted substantial relief to the Assessee which was upheld by the Hon'ble ITAT. The AO issued a notice dated 30.03.2017 under section 148 of the Act to reopen the assessment of the Assessee. The AO finalized the reassessment by further making certain additions/disallowance. The Assessee being aggrieved by the said reassessment order filed an appeal before the CIT(A).

The AO issued another notice dated 29.06.2021 to reopen the assessment of Assessee by following the unamended provisions of Sections 147 and 148 of the Act that existed prior to 1st April 2021. The Assessee challenged the validity of the said notice before the Hon'ble Bombay High Court. Hon'ble High Court relying on the decision of ***Tata Communications Transformation Services Ltd. vs. Assistant Commissioner of Income Tax (2022) 443 ITR 49 (Bombay)*** quashed the notice issued by the AO. However, Hon'ble Supreme Court in the case of ***Union of India vs. Ashish Agarwal (2022) 444 ITR 1 (SC)*** held that reassessment notice if issued under unamended section 148, needs to be set aside. However, same being a bona fide mistake on the part of department, notice should not be set aside, rather deemed to have been issued under substituted section 148A. The CBDT issued a Instruction No. 01 of 2022 dated 11.05.2022 to implement the decision of Hon'ble Supreme Court in the case of Ashish Agarwal (supra).

The AO issued a notice dated 30.05.2022 under section 148A(b) of the Act to initiate the reassessment proceedings. The Assessee filed its objections vide letter dated 06.06.2022 and 14.06.2022. The AO rejected the objections by passing the order dated 27.07.2022 under section 148A(d) of the Act and also issued notice of even date under section 148 of the Act. The Assessee challenged the order passed under section 148A(d) as well as notice issued under section 148 before the Hon'ble Bombay High Court.

Hon'ble Bombay High Court was pleased to quash the order passed under section 148A(d) as well as notice issued under section 148 by observing that limitation for issue of notice for assessment year 2013-14 expired on 31.03.2020. Hence, notice issued in June 2021 in case of assessee is barred by limitation. Therefore, impugned notice issued under section 148 dated 28.07.2022 issued pursuant to ***Ashish Agarwal vs. ITO and CBDT Instruction No. 1/2022*** to revive notice issued under old regime is to be quashed and set aside as it is invalid, without jurisdiction and barred by limitation. (AY 2013-14)

■●■

DIRECT TAXES
Tribunal

CA Nikhil Mutha CA Viraj Mehta CA Kinjal Bhuta

1 *Pico Deepali Overlay Consortium vs. DCIT [ITA No. 518/Del/2022 dated 22.12.2023] [AY 2011-12]*

Section 2(31)/CBDT Circular 7/2016 – Characterization of consortium as AOP – conflict between the parties regarding assessment as AOP – Attributes and terms of the agreement are deciding factors

Facts of the case

Pico Deepali Overlay Consortium (PDOC) is an unincorporated consortium of three entities i.e., PICO Hong Kong Limited (PHK), Deepali Designs and Exhibits Private Limited (Deepali Designs) and PICO Event Marketing (India) Private Limited (PICO India). The consortium was formed vide agreement dated 19.12.2009 (Original agreement) in order to bid and execute certain contracts in relation to Commonwealth Games (CWGOC) held in Delhi in 2010. The consortium members had a successful bid for the overlays contract for Cluster I & VI. Dispute and differences arose between the parties. Accordingly, on 01.06.2010, parties modified their legal relationship and entered into a new agreement. The new agreement was executed to divide the responsibility of work between the parties with the receipts bifurcated for each item as stated in bill of quantities. The consideration was to be received from CWGOC and thereafter divided between the two groups (PICO and Deepali). It further provided that PHK shall provide CWGOC with the requisite guarantees. On the other hand, Deepali Designs shall deliver in favour of PHK a corporate guarantee and personal guarantee for its separate scope of work. All Statutory obligations of the consortium in relation to the project was the responsibility of PHK and Pico India.

The Appellants are two parties claiming to be the 'assessee' for the purpose of section 2(7) r.w.s. 253(1) of the Act having right to file appeal against the impugned final assessment order. For sake of brevity referred to as Appellant No. 1 (i.e., represented by Deepali Designs and Appellant No. 2 (i.e., representing as consortium/in the capacity of AOP). The present appeal is a second round of litigation. The ITAT on earlier occasion remanded the matter to AO to decide whether the Appellant (Deepali Designs Exhibits (P) Ltd) is a member of AOP or not. At the time of hearing a conflict of interest arose with Appellant No. 1 contesting the constitution of the AOP and Appellant No. 2 contesting otherwise.

The claim of appellant no. 1 is that (i) PDOC is not an 'association of persons' consisting of Deepali Designs, Pico Hong Kong and Pico India; (ii) Deepali Designs is not a member of any association of persons; (iii) the receipts

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and receivables from CWGOC with respect to Deepali Designs's scope of work is solely and exclusively the income of Deepali Designs; (iv) Deepali Designs has proprietary interests and overriding titles over such receipts and receivables (v) Deepali Designs has worked independently for execution of its scope of work with its own resources and man force.

Held

The Hon'ble ITAT assessed the issue in light of the CBDT Circular 07/2016 dated 7.03.2016, which provides certain conditions, for an association not to be regarded as AOP. The Hon'ble ITAT largely relied on the modified agreement dated 01.06.2010. The Hon'ble ITAT referred to the terms of the agreements and made following observations:

(i) Clause no. 2.4(3) states that tax liability of the consortium shall be determined for the 'project' as a whole. Hence, the ITAT observed that the assignment of work between the parties was irrelevant so far as statutory obligation is concerned.

(ii) The responsibility given by the Appellant No. 1 to PHK and PEMI to "Manage all financial matters of the JV" and for maintenance of records, effecting payment of taxes, filing of returns, etc., must have been with intention that for assessment and tax liability, consortium shall be a unit and assessed as a unit, which can only be by way of the consortium being treated as AOP and all the members of consortium being member of the AOP.

(iii) In the addendum, there is division of work, but, that is only a mode of completing the 'Project'. As far as sharing of profits is concerned Appellant No. 1 had agreed by virtue of Clause 2(3) of the addendum, to forego 23% of its gross revenue to PHK. Thus, there is revenue sharing also from the works which had fallen in scope of work of Appellant No. 1. Also, by virtue of Clause 2(4) of the addendum if any new contract was to be allotted to Deepali Designs, specified value of such contract was to be paid to PHK by Appellant No. 1. Certainly, Deepali Designs is not getting any share of proceeds of the work assigned to PHK, but PHK is not disputing the existence of AOP so question of Deepali Designs not getting share of profits from PHK is not material.

(iv) Consortium came into existence for accomplishing the 'project' as a whole and the participation of the consortium members in the tender process, the submission of bids, execution of contracts, nomination of consortium leader or Project Board, payments and receipts of considerations, the extent of joint and several liability accepted by the consortium members, the risks and cost of any defect or damage on the consortium, insurance in the names of consortium all indicate that there was lot of commonality of interest and mutuality of liabilities to form AOP.

(v) Clause 9 of the original agreement provides for a Board of the JV which was to be a supreme body of the JV to decide upon all the issues regarding policy and organization of the JV. This indicates that this Board had a supervisory power even with regard to scope of work falling in the share of Deepali Designs and that Deepali Designs had a privilege to stay on the Board on its own terms. The same

negates the argument that Deepali Designs had distanced itself with all the activities of the consortium except to the extent of scope of work assigned.

(vi) Thus, there is unified control and management of the consortium and the conditions laid down under Circular 7/2016 is not being satisfied.

The Hon'ble ITAT thus held that the Consortium failed to fulfill the relevant requirement of the aforesaid Circular. Thus, upheld the taxability of Consortium as AOP and not as individual members.

2

Piramal Enterprises Ltd. vs. Deputy Commissioner of Income-tax, Range-8(2)(1) [2024] [ITA No. 3706/M/2010 dated 11.01.2024] [AY 2005-06]

Section 28(ii)(c) – Termination of the agency agreement – Assessable as Business profits or Capital Gains

Facts of the case

The assessee company is engaged into manufacturing and sale of pharmaceuticals products. It filed its return of income for the year under consideration which was subjected to scrutiny. The assessee company received an amount of ₹ 92,76,62,688/- from Roche Diagnostics Gmbh (RDG) of Germany under a settlement agreement towards termination of agency, distribution and manufacturing rights granted to it by RDG vide agreement dated 30.06.1997. The same was offered by the assessee to tax under the head "capital gains" instead of showing the same as "business income." The AO proceeded to hold that such proceeds falls under the provisions of section 28(ii)(c) read with section 28(va)(a) of the Act. The CIT(A) upheld the addition made by the AO and the assessee is in appeal before the Hon'ble ITAT. The assessee raised an additional ground that the subject receipt is a non-taxable capital receipt, which was permitted to be raised being a legal ground.

Held

Section 28(ii)(c) provides any compensation or other payment due to or received by any person, by whatever name called, holding an agency in India in connection with the termination of the agency or the modification of the terms and conditions relating thereto is regarded as income assessable under the head 'profits and gains from business or profession'.

The ITAT observed the following on facts:

(i) The Assessee, earlier known as Nicholas Pirmal India Ltd (NIPL) had entered into Agreement for Manufacturing and Agency in year 1997 (ADMA 1997).

(ii) In 2004 RDG had acquired BM Group all over the world and unilaterally terminated certain obligations under 1997 agreement, which as challenged before by the assessee before the UK Court

(iii) Thereafter, the assessee andRDG entered into out of court settlement agreement, effective from 01.01.2005 with RDG paying compensation of ₹ 92,76,62,688/-.

(iv) As per the terms of the settlement agreement, the assessee has transferred its legal title in all instruments placed with its customers to RDG. Third tranche of settlement amount shall be paid upon successful transfer of the business. The assessee shall sell entire

stock/inventory as on 1 January 2005 to RDG at a landed cost. Employee of the assessee to be transferred to RDG.

(v) Conjoint reading of the various clauses goes to prove that primarily parties to the agreement have agreed upon with each other for the purpose of distribution, marketing and sales of product for sales, sales and manufacturing of products by the assessee in India on the basis of a non transferable, non assignable, exclusive license in the territory.

(vi) The assessee would have no right to use or otherwise deal with BM's patent, trademark, denomination, products, knowhow and information for the purposes other than those of developing, manufacturing, marketing and selling and distributing the products under trademark and denomination. Not only this, even any further trademarks if developed by the assessee in coordination with BM shall also be owned by BM.

(vii) In view of the above facts, the assessee company by virtue of the agreement (supra) got non transferable, non assignable license to manufacture, market, distribute and sell products otherwise owned by the BM for a satisfied commission as agent of the assessee and hence, the entire intellectual property qua distribution and manufacturing of the product remains with BM.

The ITAT relied upon the following decisions to hold that when termination of an agency did not impair the profit-making structure but was within the framework of the business, the receipt for termination would be a revenue receipt:

(a) ***Kettlewell Bullen and Co. Ltd (53 ITR 261)***

(b) ***Chari and Chari Ltd (57 ITR 400)***

(c) ***Indo Foreign Traders (P) Ltd (166 ITR 308)***

Having regard to the above, the Hon'ble ITAT held that compensation received by the assessee is for the sacrifice of all prospective future profits from the agency business of product of RDG and assessable to tax under section 28(ii)(c) of the Act. The assessee had also raised one additional ground to supplement Ground No. 1 to the effect that compensation received on termination of agreement is a capital receipt. The Hon'ble ITAT held that when it is nowhere case of the assessee that it has lost its livelihood on account of termination of the business agreement, compensation received by it by virtue of the termination agreement is business income.

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3 ***Baba Export House vs. Asst. CIT [ITA No. 180/Del/2020 dt. 02.01.2024 (Delhi)(Trib.) (AY: 2015-16)***

Sec. 50C - Difference in valuations of flats in the same locality also possible depending upon various mitigating factors – Deeming provisions of section 50C to be not applied

Facts

The assessee is a partnership firm and had sold two properties namely B-6 & B-39 in the same locality for ₹ 5,50,00,000/- and ₹ 1,10,00,000/- respectively and offered income as long-term capital gains. The AO based on the registered sale deed, noticed

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that for the B-6 property, the value adopted by the Stamp Valuation Authority (SVA) was much higher than the actual sale consideration. The AO show caused to add the difference between the SVA and actual consideration u/s. 50C(1) of the Act. In response, the assessee submitted that the B-6 property was surrounded by slums which affected its price. Furthermore, due to the illness of the ex-partner funds were required, and therefore, the properties were sold at distress. Not being convinced, the AO added the difference between the SVA value and the sale consideration received. At the first appellate stage, the DVO report had already come by reducing the value of property as compared to the SVA and therefore DVO valuation was directed to be adopted by the CIT(A). The assessee had also submitted a valuation report from the Govt. registered valuer, wherein the value of the property was lesser than the DVO value also, however the same was not considered by the first appellate authority. Against this order of CIT(A), the assessee has preferred an appeal before the Hon'ble ITAT.

Held

Before the Hon'ble ITAT, there were 4 different valuations available for consideration i.e. – as per agreement; as per SVA; as per DVO and as per registered valuer appointed by the assessee. The Hon'ble ITAT held that, the value determined by the SVA does not reflect the Fair Market Value (FMV) of the property as there is a difference of more than ₹ 2 crores between the value determined by the SVA and DVO. Further, the difference between the value determined by the DVO and consideration received by the assessee was much less. The valuation of property involves some kind of guesswork and estimation and there cannot be any consensus in the opinion of two valuers. It was further held that the assessee has brought on record the mitigating circumstances resulting in the sale of the property for the actual sale consideration. The Hon'ble ITAT further noted that the other property B-39 was sold by the assessee for a much lesser value which corroborates the fact that the rate of the property even in the same locality differs depending upon the locational advantage and other factors. Further, the AO has also brought to the notice of the DVO certain sale instances in the same locality at higher prices, however, the DVO has not accepted them. These facts establish that there can be difference in the valuation of property in the same locality.

It was further held, that since the difference in the FMV as per actual sale consideration received by the assessee and DVO is much lesser as compared to the difference in value as per SVA and DVO, the deeming provisions of section 50C of the Act cannot be pressed into action.

4

ITO vs. M/s. Sahana Jewellery Exports Pvt. Ltd. [ITA No. 999/Chny/2022 dt. 20.12.2023 (Chennai) (Trib.) (AY: 2017-18)

Sec 68 - No addition towards cash receipts which has been subsequently converted into sales

Facts

The assessee is engaged in business of trading in gold and jewellery and it's case was selected for scrutiny under CASS to verify the cash deposits made during the demonetisation period. The assessee submitted that source of cash deposits was advances from customers for gold scheme and the same has been accounted as sales for the relevant period. Further, the

assessee had explained that as on the date of demonetisation, there was a sufficient cash balance available to the assessee as per books of account. The AO noticed that there was a huge disproportion in the number of parties and collections for the period from 01.04.2016 to 08.11.2016 and from 09.11.2016 to 31.03.2017. It was also contended by AO, that assessee had only furnished the name and address of the parties and has not filed any confirmation from even a single party. The summons issued u/s. 131(1) of the Act, by the AO were returned back. Citing such reasons, the AO added the total cash receipts u/s. 68 of the Act.

Before the CIT(A), beyond the arguments made during the assessment, the assessee furnished all the evidences, including books of accounts, purchase and sales bills, to establish the genuineness of sales declared and explained that there was no abnormal variation in total sales and cash sales declared for the impugned assessment year when compared to earlier Financial Year. The assessee also submitted that the AO has not pointed out any discrepancy in books of accounts maintained by the assessee, including purchases and sales declared for the period prior to the date of the demonetization period. The assessee declared huge sales for the month of June & July, 2016, which was more than the amount of sales declared for the month of November, 2016. The assessee also explained that demand for gold and jewellery is high during festival seasons and the months in which, the assessee declared higher sales fall under various festivals whereby customers buy more and more gold and jewellery.

The CIT(A) held that the assessee has duly explained that the source for cash deposits made during the demonetization period and that the AO had tried to build up a case on the presumption ignoring the legal position settled by various courts that trade advances that has been subsequently accounted sales in the books of accounts, cannot be treated as cash credits u/s. 68 of the Act. Against this order of CIT(A), the revenue has filed an appeal before Hon'ble ITAT.

Held

Before the Hon'ble ITAT, the DR argued that the CIT(A) has failed to appreciate the fact that the identity of the creditors, creditworthiness of the creditors and genuineness of the transactions was not proved by the assessee. The DR further submitted the assessee has made huge deposits into his bank account after demonetization and to cover up source for said cash deposit, introduced cash into its books of accounts in the form of cash receipts from various persons. Also, the assessee failed to submit confirmations, name and address of the persons with their PAN to discharge the onus.

The Hon'ble ITAT held that there is a distinction between cash credits and cash receipts towards sales. If the assessee receives any trade advances in cash and the same has been subsequently converted into sales then, said trade advances cannot be examined in light of provisions of Sec. 68 of the Act. It was held that the AO has committed a fundamental mistake in examining the cash receipts claimed to have been received by the assessee towards sale of jewellery. Further, the assessee need not obtain confirmation and submit to the AO, because, the law does not mandate colleting PAN details of the persons, if sale value of jewellery does not exceed ₹ 2 lakhs. The compliance of KYC norms is mandatory under Prevention of Money Laundering Act,

2002, w.e.f. 04.05.2023 onwards and not applicable for the impugned assessment year. Therefore, the assessee has satisfactorily discharged onus cast upon to furnish name and address of the persons.

It was also held that the assessee was having sufficient cash balance as on the date of demonetization and said cash balance is backed by cash receipts recorded in the books of accounts before the date of demonetization. Further, cash receipts from various persons have been further substantiated with sales made to them before the date of demonetization. The assessee has filed various evidences, including sales bills and the AO never disputed sales declared by the assessee nor pointed out any discrepancy in purchase or stock in trade held in the business of the assessee before the date of demonetization. The assessee has also filed comparative sales with last year and there was no abnormal deviation in sales declared.

The Hon'ble ITAT also held that assessee was having sufficient withdrawals from very same bank accounts before the date of demonetization. Further, the cash balance as on 08.11.2016 was much higher than the amount of cash deposited to bank account during demonetization period. The Hon'ble ITAT upheld the decision of CIT(A) and dismissed the appeal filed by the Revenue.

5 ***Savita Mercantiles Pvt. Ltd. vs. ITO [ITA No. 168/Mum/2023 dt. 12.12.2023] (AY: 2009-10)***

Sec. 68 –Addition was made for Share Application Money as bogus only on the basis of statement given by Shri Pravin Kumar Jain – All the evidences submitted to provide the identity, creditworthiness and genuineness – Impugned additions were deleted

Facts

During the year under consideration, assessee received share application money of ₹ 45,00,000/- from 4 parties. Based on information from the DGIT(Inv.), Mumbai, AO reopened the assessment. According to the information, Shri Pravin Kumar Jain was searched u/s. 132 of the Income Tax Act, 1961 (hereinafter "the Act") and he admitted that he was providing accommodation entries through the bogus concerns. According to the AO, assessee had received ₹ 45,00,000/- from the aforesaid concerns of Shri Pravin Kumar Jain. On the basis of the aforesaid statement and the fact that assessee received share-application money of ₹ 45 Lakhs from 4 concerns controlled by Shri Pravin Kumar Jain, the AO drew adverse inference against the share application money received to the tune of ₹ 45 Lakhs and treated the same as unexplained u/s. 68. CIT(A) also confirmed the addition made by AO. Being aggrieved by the same, appeal is filed before Hon'ble ITAT.

Held

The Hon'ble ITAT held that AO had issued notice u/s. 133(6) of the Act to the 4 share applicants and pursuant to which they confirmed to AO that they have subscribed to the shares of the assessee company as well as filed the details called for by AO, which fact has been acknowledged by AO at para 5 of the assessment order. Despite assessee filing the primary documents to prove the identity, creditworthiness and genuineness of the four share-subscribers who invested ₹ 45 Lakhs in assessee company and they confirmed to AO, the AO took adverse view against the assessee based on the statement given by Shri Pravin Kumar Jain. Admittedly his statement was recorded behind assessee's

back and no opportunity was given to assessee to cross-examine Shri Pravin Kumar Jain, which was the only basis for making the impugned addition in the hands of the assessee. Such a statement of Shri Praveen Kumar Jain could not have been relied upon by AO for making addition. Further, it was held that assessee has shown the nature of the receipt i.e. ₹ 45,00,000/- as share application money, and has discharged the onus casted upon it u/s. 68 of the Act by providing proof at investor i.e. identity of the shares subscriber by furnishing their PAN details, their ITR acknowledgment for AY. 2009-10; and from a perusal of the relevant financials of share subscribers it can be found that share applicants have sufficient creditworthiness to make investment in assessee company; and from perusal of the bank statement it reveals that share application money was paid through banking channel and the source of the payment has also been brought to the notice of the AO. Further the aforesaid four share subscribers are still active as on date and has filed copy of the Ministry of Corporate Affairs relevant documents to substantiate the same. Referring to judicial decisions, including those by the Bombay High Court and subordinate benches, the ITAT deleted the addition.

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6 ***Farzad Sheriar Jehani vs. ITO [ITA No. 2065/Mum/2023 dt. 22.12.2023] (AY 2014-15)***

Section 68 – Sale of Shares – All documents available – No penny Stock Transaction – Exemption cannot be denied

Facts

In assessment, AO scrutinized assese's claim of exempt income of ₹ 82,52,616 on account of Long Term Capital Gain (LTCG) from the sale of shares - "Kappac Pharma"; which was alleged as penny stock. The AO, relying on a report from the Directorate of Investigation, Kolkata, raised concerns about the legitimacy of the transactions, suspecting a pre-arranged scheme to generate bogus LTCG.

AO denied the claim of exemption on account that Kappac Pharma's financial performance did not justify the significant increase in share prices, and the scrip's trading was eventually suspended by the Bombay Stock Exchange (BSE). Drawing parallels with the modus operandi outlined in the Directorate of Investigation's report, the AO concluded that the transactions were non-genuine and represented undisclosed income. CIT(A) also dismissed the appeal of the assessee. Being aggrieved, appeal is filed before Hon'ble ITAT.

Held

The assessee submitted all documentary evidences, including contract notes, details of issued cheques, and bank statements, to support the legitimacy of the LTCG. Hon. ITAT observed that while the financials of the company did not align with the share prices, there was no evidence linking assessee to any dubious transactions or price rigging and even in the SEBI report, there is no mention or reference to the involvement of the assessee. The Hon'ble ITAT emphasized that, despite exhibiting characteristics of a penny stock case, there was no material connecting assessee to any fraudulent activities. The Hon'ble ITAT noted that the presumption of assessee's involvement was based on human probabilities rather than concrete evidence. Referring to judicial decisions, including those by the Bombay and Delhi High Courts, the ITAT held that suspicion alone cannot be

the basis for rejecting the taxpayer's claims and thereby deleted the addition and allowed the asseesee's appeal.

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7 *AEP Investments (Mauritius) Ltd vs. ACIT, Intl Tax 1(1)(1) Delhi [ITA No.2164/Del/2023] [AY 2017-18]*

Section 148 – Validity of reassessment proceedings – Assessee entitled for DTAA benefits with Mauritius – Reasons recorded for re-opening does not demonstrate prima facie satisfaction

Facts of the case

M/s AEP Investments (Mauritius) Limited (AIML) is a company incorporated in Mauritius on 15.07.2008. The Company is set-up under the laws of Mauritius as an investment holding company for making investments and holding them on a long-term basis. The Assessee is a tax resident of Mauritius as per Article 4 of the India-Mauritius Double Taxation Avoidance Agreement (India-Mauritius DTAA'). It holds a valid Tax Residency Certificate (TRC') issued by the Mauritius Revenue Authority (MRA). The Assessee since incorporation has made investments in various countries such as India, China, Mauritius, Singapore, Hong Kong etc.

During FY 2016-17, the Company has invested an aggregate amount of INR 96,55,88,240 for subscribing to 2,88,23,529 equity shares and 6,77,35,295 CCDs of Skeiron Renewable Energy Private Limited (Skeiron), at a price of INR 10 per equity share and CCD. The assessee has made foreign remittance to the tune of ₹ 28,82,35,290/- from sale of such investments. Based on the information pertaining to foreign remittances, notice u/s. 148 has been issued by the Revenue Authorities and the amount invested in equity shares and CCDs of Skeiron was treated as undisclosed income assessable to tax @ 40%.

The same was challenged before the Dispute Resolution Panel but the Assessee could not obtain any relief. Post which, the assessee filed an appeal before the Hon'ble ITAT.

Held

The Hon'ble ITAT observed that the assessee is eligible to claim benefits under the India-Mauritius DTAA to the extent it is more beneficial than the provisions of the Act. Accordingly, the capital gains earned by the assessee for the FY 2016-17 is covered under "Article 13 - Capital Gains" of the India-Mauritius DTAA, which provides that the capital gains earned on the sale of equity shares (acquired prior to 1 April 2017) shall be taxable only in Mauritius.

The reasons recorded stated that:

(i) The assessee has not filed the return of income for AY 2017-18 but filed the return of income for two subsequent years i.e., AY 2019-20 and AY 2020-21;

(ii) The assessee has made large transactions but choose not to file the return of income. It appears that the assessee is carrying on some activity which has resulted in generation of income but the income has escaped assessment as no ITR has been filed by the assessee.

(iii) Reliance is placed on the decision of the SC in the case of ***Rajesh Jhaveri Stock Brokers Pvt Ltd (291 ITR 500)*** and the jurisdictional HC decision in the case of ***Nova Promoters & Finlease (P) Ltd (ITA No. 342 of 2011)***.

Basis the same, the Hon'ble ITAT observed that from the above reasons nothing could

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be deciphered as to how the AO came to conclusion of escapement of income. The case has been reopened just because of assessee made remittances which is from the sale of investments made by the assessee. The Assessing Officer at the stage of reopening is required to form a prima-facie belief that income chargeable to tax has escaped assessment. In this case, basis the reasons, the Hon'ble ITAT held that *prima facie* satisfaction cannot be ascertained from the reasons recorded. Hence, the Hon'ble ITAT concluded that there was no escapement of income during the year and hence, the notice issued u/s. 148 is considered to be void ab initio and consequently the assessment is treated as nullity.

8 ***Edelweiss Assessment Management Ltd. vs. ACIT (ITA No. 3020/Mum/2023 dt. 19.12.2023) (AY 17-18)***

Sec. 251 – Powers of CIT(A) for enhancing the assessment – Enhancement made by CIT(A) is beyond the scope – AO has not dealt with the issue considered in enhancement during assessment – Such enhancement made by CIT(A) is beyond his jurisdiction – Addition deleted

Facts

Assessee for the AY 2017-18 filed the return of income declaring a loss of ₹ 8,64,09,139/- under the normal provisions of the Income Tax and a loss of ₹ 6,58,19,849/- u/s. 115JB of the Act. The assessee subsequently filed a revised return declaring a total loss of ₹ 10,69,00,642/- under the normal provisions of the Act and the book loss of ₹ 6,58,19,849/- u/s. 115JB of the Act. The case was selected for scrutiny and AO completed the assessment u/s. 143(3) of the Act wherein he has made a disallowance of ₹ 6,30,553/- u/s. 14A of the Act.

In proceedings before CIT(A), CIT(A) enhanced the assessment and disallowed the expenditure incurred towards ESOP expenses u/s 37. Being aggrieved, the assessee is in appeal before the Tribunal challenging the jurisdiction of CIT(A) to enhance the assessment and also on merits.

Held

The Hon'ble ITAT held that CIT(A) can exercise the power to enhance under section 251(1) in a case where the AO has considered a particular issue of disallowance or addition and while doing so has under assessed the income of the assessee. In cases where the AO has not dealt with the issue at and has not applied his mind on the taxability or non-taxability of a certain matter then the CIT(A) has no jurisdiction to enhance under section 251(1) but should resort to alternate course of action either under section 263 or 147 or 154 as the case may be. The Hon'ble ITAT further held that CIT(A) has acted beyond his jurisdiction enhancing the income of the assessee by disallowing the ESOP expenses for the reason that the AO while completing the assessment has not taken into consideration the revised return of income and has not examined the taxability of ESOP expenses which the assessee has claimed in the revised return of income. Therefore, relying on the provisions of the IT Act, 1961 and judicial pronouncements it was held that no addition can be sustained as enhancement made is bad in law and CIT(A) has exceeded its jurisdiction which is bad in law.

9 *Reuters Asia Pacific Ltd. vs. DCIT [ITA No. 587/Mum/2021 dt. 26.12.2023 (Mum.)(Trib.) (AY: 2015-16)*

Sec. 282- Service of an unsigned order by the AO is invalid – not curable defect u/s. 292B – order quashed

Facts and submissions of parties before the ITAT

The assessee had challenged the unsigned assessment order received on his e-mail id. The note was also given on email that signed copy may be sent separately if not already digitally signed. Before the Hon'ble ITAT, the AR for the assessee referred to Notification no. 2/2016 dated 03.02.2016 issued by CBDT, contending that as per the Board procedures, the AO should attach a scanned copy of the order bearing the signature in PDF format to the e-mail sent to the assessee, and cause the order to be served as specified u/s. 282 of the Act. The AR further referred to ITBA Assessment Instruction No. 6 dated 03.10.2017 wherein the entire process for passing the assessment order was explained in a chronological manner. Relying on Sections 282 and 282A of the Act and the above instructions, the AR contended that the unsigned order communicated to the assessee is invalid. The DR submitted an affidavit stating that the assessment order was duly signed by him manually before being uploaded on the ITBA portal. However, due to some technical issue, it was not digitally signed. The DR placed the manually signed copy of the assessment order and contended that the service of an unsigned assessment order can be an error or omission that is rectifiable. The DR argued that the additions made in the draft assessment order and the final assessment order were the same, and the draft order was signed by the AO, and the additions were confirmed by the DRP, hence, no prejudice is caused to the assessee if the final assessment order is not signed and the order is valid as per Section 292B and 292BB of the Act.

Held

During the proceedings in the open court, the AR of the assessee logged in to the ITBA portal to demonstrate that the assessment order uploaded on the portal was neither signed manually nor digitally by the AO and therefore, the contents of the affidavit placed on record are doubtful. It was held that the assessment order served on the assessee and available in the public domain is an unsigned order.

The Hon'ble ITAT held that signing an assessment order by the AO is a mandatory requirement and not merely a procedural formality. The importance of signature cannot be undermined in light of several clarificatory notifications and circulars. It is not a curable procedural defect u/s. 292B of the Act. Further, it was held that framing of assessment order is a quasi-judicial function and therefore the same has to be in conformity with the provisions of the Act in every respect, whether it is limitation, jurisdiction of the AO or signature and service. Even if the DR's contention is accepted, and the AO is allowed to sign the assessment order now, the order would still suffer from the defect of limitation and would be without jurisdiction. Therefore, the unsigned assessment order served on the assessee was quashed by the Hon'ble ITAT.

INTERNATIONAL TAXATION
Case Law Update

Dr. CA Sunil Moti Lala
Advocate

A. SUPREME COURT

1 *CIT. vs. Ad2pro Media Solutions (P.) Ltd. [(2024) 158 taxmann.com 432 (SC)]*

SLP dismissed against order passed by High Court holding that where assessee-company made payments to US Company for marketing services and scope of work was to generate customer leads using/subscribing customer data base, market research, analysis, and online research data and that service provider had not made available any technical knowledge, experience, knowhow, process to develop and transfer technical plan or technical design - in view of admitted fact that services were utilized in USA, payments so made could not be considered as royalty or FTS and hence, no TDS was required to be deducted

Facts

i. Assessee was a private limited company engaged in business of providing graphic design solutions for advertising and marketing communications. It had remitted huge amounts to US based company for marketing services without deduction of TDS.

ii. The AO held that assessee had utilized services of US Company even in negotiations with customers and in finalizing contracts, and that the same could not have been done without sharing technical knowledge, knowhow, processes or experience, hence, payment was taxable in India as FTS.

iii. The Hon'ble Tribunal allowed assessee's appeal holding that payments made could not be considered as royalty or FTS and hence, no TDS was required to be deducted as the US Company did not have any PE in India – Further, it noted that scope of work was to generate customer leads using/subscribing customer data base, market research, analysis, and online research data and that the service provider had not made available any technical knowledge, experience, knowhow, process to develop and transfer technical plan or technical design.

iv. The Hon'ble High Court held that in view of admitted fact that services were utilized in USA, findings returned by Tribunal did not call for any interference.

v. Aggrieved, the Revenue filed SLP before the Hon'ble Apex Court.

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Decision

i. The Hon'ble SC dismissed the SLP by following ***Commissioner of Income Tax, International Taxation vs. AD2PRO Media Solutions Pvt. Ltd. in SLP (C) Dy. No. 45802/2023 dated 8-12-2023.***

B. HIGH COURT

2 ***Hyatt International-Southwest Asia Ltd. vs. ADIT [(2024) 158 taxmann. com 136 (HC - Delhi)]***

Where assessee, a resident of UAE, had entered into Strategic Oversight Services Agreements (SOSA) with AHL India in respect of a hotel located in India for providing strategic planning services and know-how, since fee received by assessee was not for use of or right to use any process or for information of commercial or scientific experience, the same was not royalty under article 12 of DTAA but was taxable as business income as the assessee had a fixed place PE in India through which it carried on its business

Facts

i. The assessee, a tax resident of the UAE had entered into two Strategic Oversight Services Agreements (SOSA) with Asian Hotels Ltd., India in respect of the Hotel (the hotel located at Delhi - Hyatt Regency) whereby, the assessee provided strategic planning services and know-how to ensure that the hotel was developed and operated as an efficient and highly quality international full-service hotel.

ii. The AO held that the assessee had a PE in terms of article 5(2) of the DTAA. According to the AO, the Assessee had inter alia a fixed place of business at its disposal throughout the year in the premises of the Hotel, including the Chambers of the Managing Director and other expatriates who were continually present. It was clear that the premises were available to the Assessee for the entire duration. And, that it had carried out its activities for performing its obligations under the SOSA from the said premises. The AO disregarded the audited financial statement (on global basis), which disclosed that the assessee had declared losses and arbitrarily adopted 25% of the gross receipts as taxable income attributable to assessees's alleged PE in India. Further, he also held that the payment received under the SOSA was royalty under the DTAA.

iii. The Hon'ble Tribunal upheld the orders of the AO. However, w.r.t determination of profit it held the same may be computed in accordance with the provisions of Section 44DA and Article 12 of DTAA and that the assessee be given an opportunity of submitting the working of apportionment of revenue, losses etc. on financial year basis with respect to the work done in entirety by furnishing the global profits earned by the assesse, so that the profits attributable to the work done by the PE could be determined judiciously.

iv. Aggrieved, the assessee filed an appeal before the Hon'ble High Court.

Decision

i. The Hon'ble High Court noted that it was apparent from the plain reading of the SOSA that the assessee was required to render services in the area of strategic planning, maintaining the

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Hyatt Operating Standards and covering all aspects of the operation of the Hotel. Further, the assessee had an overarching role in the management of the Hotel albeit at the policy level, with further right to oversee its implementation to ensure that the hotel was operated as an upscale hotel commensurate with the standards of the Hyatt chain of hotels - Hyatt Operating Standards. It was also amply clear that the policies and procedures framed by the assessee (the implementation which it had to oversee) covered every aspect of the management of the Hotel.

ii. It noted that that the assessee was not required to manage day-to-day operations of the hotel which were required to be managed by Hyatt India (an Indian Company affiliated to the assessee).

iii. Additionally, in terms of the SOSA, the assessee had also agreed to provide the owner and other employees of the hotel, proprietary, written knowledge, skills, experience, operational and management information and associated technologies related to operation of international, luxury full service hotels, which the assessee and its affiliates had developed over a period of time. This was described under the SOSA as 'know-how'. However, the terms of SOSA also made it clear that the provisions of the Know-How would be "in furtherance of the oversight and strategic planning services to be provided for the benefit of the Hotel".

iv. In consideration of the host of services to be provided in terms of the SOSA, the assessee would be entitled to fee (strategic fee as well as incentive fee) as set out in SOSA. It was clear that the said fee was not a consideration for use of or the right to use any process or for information of commercial or scientific experience. The fees payable was in consideration of providing the services as set out in SOSA.

v. Indisputably, in terms of the SOSA, the assessee had agreed to provide access. However, such access was only incidental to the services agreed to be provided by the assessee. The obligation to grant access to information, knowledge and software was solely to certain information, written knowledge, skill and experience in furtherance of the service provided by the assessee under SOSA and for operating the Hotel. Merely because the extensive services rendered by the assessee in terms of the SOSA also included access to written knowledge, processes, and commercial information in furtherance of the services, could not lead to the conclusion that the fee received by the assessee was in the nature of royalty as defined under article 12 of the DTAA. It relied upon the co-ordinate bench's judgement in ***DIT vs. Sheraton International Inc. – ITA No 2160/2020***.

vi. Thus, the Hon'ble Tribunal held that the consideration received by the assessee in terms of SOSA could not be termed as Royalty under Article 12 of the DTAA and the same was clearly in the nature of business income.

vii. The Hon'ble HC held that it was apparent from the plain reading of the SOSA that the assessee exercised control in respect of all activities at

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the hotel, inter alia, by framing the policies to be followed by the hotel in respect of each and every activity, and by further exercising apposite control to ensure that the said policies were duly implemented. The assessee's affiliate (Hyatt India), was placed in control of the day to day operations of the hotel in terms of the ROSA.

viii. The assessee had the discretion to send its employees at its will without concurrence of either Hyatt India or the owner. This clearly indicated that the assessee exercised control over the premises of the hotel for the purposes of its business. Thus, the condition that a fixed place (Hotel Premises) was at the disposal of the assessee for carrying on its business, was duly satisfied. It relied upon the judgement of the Hon'ble Supreme Court in ***Formula One World Championship (2018) 13 SCC 294***.

ix. W.r.t the contention of the Assessee that even if it was assumed that the Assessee had a PE in India, there was no question of attributing any amount as income chargeable to tax under the Act to its PE, as it had incurred a loss on an entity level (global basis), it accepted that, the said issue was covered in favour of the Assessee by a decision of the Coordinate Bench of this Court in ***Commissioner of Income Tax (International Taxation)-2 vs. M/s Nokia Solutions and Networks OY3 [(2023) 455 ITR 157]***. However, since it had some reservations regarding the said view, it directed that this order be placed before the Acting Chief Justice for referring the said question to a Larger Bench.

3 ***CIT (IT) vs. DXC Technology Services (P.) Ltd. [(2024) 158 taxmann.com 431 (HC - Delhi)]***

The Hon'ble HC by relying on the Hon'ble SC's judgement in *Engineering Analysis Centre of Excellence Pvt. Ltd. vs. CIT (432 ITR 471)* upheld the order of the Hon'ble Tribunal holding that amount received by assessee-company from various entities on account of sale/supply of software could not be treated as royalty within meaning of article 12(3) of India-Singapore DTAA as assessee had not transferred copyright it had *qua* subject software.

4 ***LGE & C-NCC ([(2023) TS-510-HC-2014(AP)-TP (HC Delhi)]***

The Hon'ble Andhra Pradesh HC dismissed Revenue's appeal against Hon'ble Tribunal's order holding that TPO was not empowered to hold international transaction as sham.

C. TRIBUNAL

6 ***EXL Service.Com INC v. ADIT [(2023) 157 taxmann.com 678 (Delhi Tribunal)]***

In the facts of the case, the Hon'ble Tribunal held that the assessee neither had a) a fixed place PE nor b) Agency PE by holding that a) Fixed place of business should satisfy "power of disposition" test to qualify as PE under Article 5(1) and 'core business' of foreign enterprise should be conducted through place of business which means that there should be a nexus between place of business and carrying on of business

b) Agency PE is constituted where a person, other than an agent of an independent status, is acting on behalf of a US enterprise in India and such person has authority to conclude contracts on behalf of the US enterprise and such authority habitually secures orders in India wholly or almost wholly for foreign enterprise

Facts

i. Assessee, a US company, was engaged in developing and deploying business process outsourcing solutions. It entered into a service agreement with Exl India under which Exl India provided internet voice based customer care services and backroom operation services to customers of assessee and in consideration of these services, Exl India invoiced assessee at pre-determined hourly rates and assessee raised invoice on end-customers.

ii. The AO held that assessee had PE in India as entire activity for performance of contract was undertaken in India and assessee retained substantial revenue by performance of contract from Indian set up and facilities in India were at disposal of assessee as it was not required to take formal consent of Indian set up before entering a contract with customers. Further, the common CEO of the assessee & EXL India had concluded contracts (meaning thereby that there was an authority to conclude contracts resulting into Agency PE). Consequently, the AO held that the income of the assessee was taxable in India.

iii. The order of the AO was confirmed. Aggrieved, the assessee filed an appeal before the Hon'ble Tribunal.

Decision

i. The Hon'ble Tribunal held that no part of business premises of Exl India had been available to assessee for its use and AO had not placed any material on record to show that assessee had a right to use any part of business premises of Exl India to carry on its own business activities. Exl India was merely doing a work contract awarded to it by assessee and core activities such as key management functions, development of strategy, identifying new business areas, etc. were managed by assessee outside India. Consequently, the Hon'ble Tribunal relying on the judgement of the Hon'ble SC in ***E-funds IT Solution [99 ITR 34 (SC)***] held that the assessee did not have a fixed place PE in India.

ii. Secondly, since the CEO was not employed with Indian company but was under employment of assessee and Exl India had no authority to conclude any contract on behalf US enterpirse and all customers were based out of US and none of it was present in India. Consequently, relying on the judgement of the Hon'ble Supreme Court in the case of ***Morgan Stanley [292 ITR 416 (SC)***], the Hon'ble Tribunal concluded that the assessee did not have any dependant agent PE in India.

iii. Accordingly, the Hon'ble Tribunal decided the appeal in favour of the assessee.

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INDIRECT TAXES
GST – Recent Judgments and Advance Rulings

CA Naresh Sheth CA Jinesh Shah

A. WRIT PETITON

1 *Goutam Bhowmik vs. State Tax of West Bengal - [2024] 158 taxmann.com 399 (Calcutta) – Calcutta High Court*

Facts and Issues involved

Petitioner is engaged in trading of timber. Assistant Commissioner of State Tax, Jalpaiguri Charge ('adjudicating officer') issued notice to petitioner alleging mismatch between GSTR-7 and GSTR-3B for FY 2018-19. Said SCN did not mention any date, time or place for personal hearing. Adjudicating officer thereafter passed an order for confirming the demand. Aggrieved with the order under Section 73 and the notices, petitioner had filed writ petition which was dismissed by the learned Single Judge. Aggrieved by said single judge decision, the appellant/petitioner has filed the present appeal.

Discussions by and observations of High Court

From bare perusal of the show cause notice under Section 73 of the WBGST/CGST Act, 2017, it is evident that no opportunity of hearing was afforded by the proper officer before passing the impugned assessment order. Although in the show cause notice it was specifically mentioned by the proper officer addressing the petitioner that "You may appear before the undersigned for personal hearing either in person or through authorized representative for representing your case on the date, time and venue, if mentioned in table below" but in the table neither date and time nor venue for personal hearing was mentioned.

Section 75(4) of the WBGST/CGST Act, 2017 specifically provides as under:-

"*An opportunity of hearing shall be granted where a request is received in writing from the person chargeable with tax or penalty, or where any adverse decision is contemplated against such person.*"

As per Section 75(4) of the WBGST/CGST Act, 2017, when the proper officer contemplated a decision against the petitioner/assessee, then it was mandatory for him to afford an opportunity of hearing. From the perusal of the show cause notice, it is evident that the proper officer has declined to afford an opportunity of hearing to the petitioner inasmuch as it has not communicated any date, time and venue of hearing.

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A Division Bench of the Allahabad High Court in ***Bharat Mint and Allied Chemicals vs. Commissioner of Commercial-tax, reported in [2022] 59 GSTL 394 (Allahabad)***, on similar set of facts, has held that where an adverse decision is contemplated against the person, such a person even need not to request for opportunity of personal hearing and it is mandatory for the authority concerned to afford opportunity of personal hearing before passing an order adverse to such person.

In view of the provisions of Section 73 read with Section 75(4) of the WBGST/ CGST Act, 2017, proper officer is bound to afford an opportunity of hearing where either a request in writing is received from the person chargeable with tax or penalty, or where any adverse decision is contemplated against such person. To afford opportunity of hearing is a statutory mandate which cannot be violated by proper officer and in the event of violation the order passed by the proper officer cannot be sustained.

Under the circumstances, adjudication order passed by adjudicating officer cannot be sustained and deserves to be quashed and remanded back to the Authority to pass an order afresh after affording reasonable opportunity of hearing.

Since the order has been passed by the proper officer in complete breach of statutory mandate contained in Section 75(4) of the WBGST Act, availability of alternative remedy would not be a bar while entertaining the writ petition under Article 226 of the Constitution of India

Decision of High Court

Petition is allowed.

2 ***Shri Tyres vs. State Tax Officer- [Writ Petition No. 19756 of 2021] – Madras High Court***

Facts and Issues involved

The proceedings were initiated against the petitioner based on an order dated 25.08.2021 issued under Section 73 of the CGST Act, 2017. The petitioner challenged the said order on two grounds:

1. Absence of opportunity for personal hearing- The petitioner contended that no opportunity for personal hearing was granted which is a procedural requirement under law.
2. Procedure outlined in Rule 142 of CGST Rules has not been followed i.e., Form DRC-01A (Pre-SCN) and Form DRC-01 (SCN) was not issued prior to passing of order.

The petitioner has filed the present writ petition praying for quashing of order dated 25.08.2021 passed by the respondent.

Discussions by and observations of High Court

Section 142 of CGST Act reads as under:

(1) The proper officer shall serve, along with the:

(a) notice issued under section 52 or section 73 or section 74 or section 76 or section 122 or section 123 or section 124 or section 125 or section 127 or section 129 or section 130, a summary thereof electronically in FORM GST DRC-01.

(1A) *The proper officer shall, before service of notice to the person chargeable with tax, interest and penalty, under sub-section (1) of Section 73 or sub-section (1) of Section 74, as the case may be, shall communicate the details of any tax, interest and penalty as ascertained by the said officer, in Part A of FORM GST DRC-01A.*

A careful perusal of Section 73 of the CGST Act in conjunction with Rule 142 makes it clear that nonadherence to Rule 142 had caused prejudice to the writ petitioner qua impugned order.

The court acknowledges that as per Rule 142 of the CGST Rules, 2017, the issuance of Forms GST DRC-01 and GST DRC-01A is a statutory requirement. These forms precede the issuance of an order under Section 73 of the CGST Act. The court emphasized that non-compliance with Rule 142 amounts to violation of the petitioner's rights.

Decision of High Court

Court set aside the order solely on the ground of non-adherence to Rule 142 of the CG&ST Rules 2017 and all other procedural requirements.

Further, it clarified that this decision does not express any opinion on the merits of the case but solely addresses the procedural irregularity.

The court directed the respondent to initiate fresh proceedings, ensuring strict adherence to statutory requirements, especially those outlined in Rule 142.

3 *Hindustan Herbal Cosmetics vs. State of UP – High Court of Allahabad - [2024] 158 taxmann.com 200 (Allahabad)*

Facts and Issues involved

Petitioner is a seller of cosmetic products. The petitioner was supplying cosmetic products to another registered dealer and the transaction was duly covered by a tax invoice, a bilty and e-way bill, all dated 23rd Mary 2018.

The consignment of goods was sent by the petitioner in Vehicle No. DL1 AA 5332. When the vehicle was in transit, it was intercepted by the GST Authorities. Subsequently, a seizure order was passed and penalty under Section 129 of the CGST Act was imposed on the petitioner on the ground that the vehicle number was incorrectly mentioned in the e-way bill as DL1 AA 3552 and not DL1 AA 5332.

Apart from the above-mentioned error, there was no other infraction on the part of the petitioner. There WAS no allegation by the GST Authorities of any attempt by the petitioner for evasion of tax as the e-way bill, bilty, and the tax invoice were matching, and the consignee was also a registered dealer.

The petitioner claimed that it is a typographical error and since there was no loss to revenue, penalty should not be charged.

GST Authorities claimed that Circular No. 64/38/2018-GST dated 14.09.2018 has allowed non-imposition of penalty in cases where there is a mistake of two digits in the vehicle number and no further.

Discussion and Observations by HC

Court observed that in the instant case, there was definitely an error with regard to typing of the vehicle number and there is a difference of three digits instead of the permitted two digits as per the Government Circular.

The principle established in various judgments is that presence of mens rea for evasion of tax is sine qua non (necessary) for imposition of penalty.

In the present case, instead of '5332', '3552' was incorrectly entered into the e-way bill which clearly is a typographical error. A typographical error in the e-way bill without any further material to substantiate the intention to evade tax should not and cannot lead to imposition of penalty.

Decision of High Court

The writ petition was allowed and the impugned orders demanding penalty from the petitioner were quashed and set aside. The Court directed the GST Authorities to provide consequential relief to the petitioner within four weeks.

4

Jak Communications Private Limited vs. Deputy Commercial Tax Officer, Ayanavaram Zone – Madras High Court [W.P.No.35453 of 2023 and W.M.P. No. 35420 of 2023]

Facts and Issues involved

Petitioner was served with notices dated 24.12.2021, 24.03.2023 and 15.05.2023 which were uploaded by the respondent in GST portal in the **"View Additional Notices and Order"** column. The said notices were not served physically and hence, petitioner was unaware of said notices.

Order dated 25.05.2023 was passed against petitioner without giving an opportunity of being heard.

Petitioner, thus, preferred the impugned petition to quash the order dated 25.05.2023.

Discussion and Observations by HC

The notices dated 24.12.2021, 24.03.2023 and 15.05.2023 and the assessment order dated 25.05.2023 have been uploaded in the web portal in the "View Additional Notices and Orders" column and the same were not at all physically served to the petitioner, due to which, the petitioner was unaware about the said notice. Hence, the reasons provided by the petitioner for being unaware of the notice, which was uploaded in the web portal, appears to be genuine.

Further, no order can be passed without providing sufficient opportunities to the petitioner. In the present case, no reply was filed by the petitioner and no opportunity of personal hearing was provided to the petitioner. Hence, the impugned order is liable to be set aside.

Decision of High Court

Petition is allowed.

B. RULINGS BY ADVANCE RULING AUTHORITY

1

Unique Welding Products - Gujarat Authority for Advance Ruling - [2024] 158 taxmann.com 425 (AAR - Gujarat) [05-01-2024]

Facts and Issues involved

Applicant is engaged in the business of manufacturing and sale of welding wires. Applicant supplies its products and services

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after discharging GST at the rate of 18%. The applicant has entered into an interconnection agreement with a power distribution licensee for captive use of power generated by Roof Top Solar System and has recently installed a roof top solar system on the factory roof for power generation.

Applicant has sought an Advance Ruling on the following:

i. Whether the applicant is eligible to take ITC as 'inputs/capital goods' or 'input services' on the purchased roof top solar system with installation and commissioning in terms of Section 16 & 17 of the CGST Act?

ii. Whether the roof top solar system with installation and commissioning constitutes plant and machinery of the applicant which are used in the business of manufacturing welding wires and hence not blocked input tax credit u/s. 17(5) of the CGST Act, 2017?

Discussion and observations by AAR

Applicant has recorded the Solar Power Plant under the head plant and equipment and has also charged depreciation on the same.

Based on the pictures submitted by the applicant and the treatment recorded by the applicant in his books of accounts, authority observed as follows:

- Roof Solar Plant affixed on the roof of the building is not embedded to Earth and therefore, it is not an immovable property.
- It is a plant and machinery which is utilized to generate electricity which is further solely and captively used in the manufacture of welding wires.
- Hence, it is not covered under blocked credit as mentioned in Section 17(5)(d) of the CGST Act, 2017.

Therefore, it was held that the applicant is eligible for ITC on roof solar plant.

Ruling

The applicant is eligible to avail ITC on roof top solar plant with installation and commissioning under the CGST Act.

The roof top solar plant with installation and commissioning constitutes plant and machinery of the applicant and hence, ITC is not blocked under Section 17(5) of the CGST Act.

"Thus the man that has practiced control over himself cannot be acted upon by anything outside; there is no more slavery for him."

— *Swami Vivekananda*

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INDIRECT TAXES

Service Tax – Case Law Update

CA Rajiv Luthia CA Keval Shah

1 *The Honkong Shanghai Banking Corporation Ltd. vs. Union of India 2023-TIOL-1632-HC-MUM-ST*

Backgrounds and facts of the case

- The Appellant filed a writ petition in regard to an amount of Rs. 56,19,84,075/- which is retained by the department without any authority of law and not as tax which is leviable/ payable by the petitioner.
- The petitioner had deposited the said amount under Protest in an event where a prospective demand in respect of 'interchange income' arises in future then such amount may be appropriated towards service tax demand and interest thereof. The petitioner pleaded that no such show cause notice was issued in respect of such 'interchange income'.
- The books of the petitioner were taken up for audit by the service tax department for the period 2007 to 2012. The department raised various audit objections including one for non-payment of service tax on the 'interchange income'. The petitioner paid an amount of Rs. 56,19,84,075/- under protest although no demand was raised in relation to the same. A final audit report was issued, however no show cause notice was issued in relation to appropriation of the said amounts, deposited by the petitioner under protest.
- Accordingly, the petitioner had taken up the issue with the department and had made requests for refund of the subject amount as deposited. The department continued to retain the amounts. On 29 May, 2018, the petitioner filed an 'application for refund' of the said amount along with interest. On such refund application, on 16 January, 2020, an O-I-O was passed by the designated officer, rejecting the refund application of the petitioner. The petitioner, aggrieved by such O-I-O, approached the Appellate Authority. The Appellate Authority vide an O-I-A dated 30 March, 2021 remanded the matter for reconsideration of the eligibility of the petitioner and decide matter on merits of the petitioner's case.
- In the intervening period, there were proceedings pending before different benches of the Tribunal as also before the High Courts on the issue of taxability of the transactions in question, namely, service tax on interchange income. The said proceedings ultimately reached the Supreme Court

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in the proceedings of ***Commissioner of GST and Central Excise vs. M/s. CITI BANK.*** The learned Judges of the Division Bench of the Supreme Court delivered separate judgments. As there was a split verdict on the case, it is submitted by counsel Mr. Rastogi that the proceedings would now be decided by Larger Bench of the Supreme Court.

- The issue being canvassed by the petitioner in the present proceedings although on taxability, is an issue subject matter of consideration before the Supreme Court in the proceedings of Citibank, however, it would not affect the petitioner's case in the present proceedings as urged in the present petition, namely, the petitioner's entitlement to have the refund of the amount as deposited **under protest**, as there is no ascertainment of any tax liability payable by the petitioner.

Arguments of the Petitioner

- The retention of the amounts in question by the respondent/revenue is without authority in law. It was admitted by department that such amount was paid under protest. It is submitted that this has also not been disputed by the respondents. Petitioner submitted that once the said amounts were deposited under protest, there was no warrant for the department to retain the said amounts, as this would amount to violation of the provisions of Article 265 of the Constitution of India.

- It was further submitted that from the date of deposit of the amounts, which was almost about 11 years back, the amounts are enjoyed by the respondents and no show cause notice being issued or any steps otherwise taken to appropriate the said amounts in the manner known to law, so as to consider such amounts to be any legitimate and lawful liability of the petitioner to pay service tax on interchange income. It is submitted that the petitioner's objection of such amount being paid under protest, was also recorded in the Final Audit Report.

- The reliance of the revenue on decision of the Hon'ble SC in case of ***Commissioner of GST and Central Excise vs. M/s. CITIBANK N.A. (supra)*** is misconceived in the present facts, as the respondent have no ground/cause to retain the amounts of the petitioner. It is his submission that this is a case where the respondents had not exercised its right to issue the show cause notice. It is submitted that even otherwise, the impugned order does not in any manner justify the withholding of the said amounts deposited by the petitioner under protest, and that too without adjudication, and more particularly considering the fact that for a period of 10 years, no show cause notice was issued. It is thus submitted that there was no warrant for the respondents to issue a show cause notice and no reason whatsoever to retain the amounts in question. It is submitted that the rights of the petitioner as guaranteed by the Constitution not only under Article 265 of the Constitution but also under Article 14 stands clearly violated by the impugned actions as resorted by the respondents.

Arguments of the Respondents

- The submissions on behalf of the respondents in opposing the petition is primarily on two counts, firstly, that the O-I-O dated 19 June, 2023 passed by the Adjudicating Authority would be required to be assailed by the petitioner by approaching the Commissioner (Appeals) being a statutory remedy of an

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appeal available to the petitioner. The second opposition is on the premise that the petitioner would not be justified in praying for the refund of the amounts, in view of the proceedings in the case of ***Commissioner of GST and Central Excise vs. M/s. CITIBANK N.A. (supra),*** pending before the Supreme Court.

- The affidavit in- reply extensively sets out as to what is the conclusion as arrived by Mr. Justice K.M. Joseph in his Lordship's judgment and as to the dissenting view taken by Mr. Justice Ravindra Bhatt on certain issues. On such premise, the contention is to the effect that the issues are now sub-judice before the Supreme Court and as the matter would be required to be now decided by the Larger Bench of the Supreme Court in such situation, the respondents would be justified in retaining the amounts. The reply affidavit does not in any manner dispute that the amounts were deposited by the petitioner under protest. It is also not being disputed that, such amounts were not deposited by the petitioner under any lawful demand raised by the respondents of any claim for payment of service tax.

Decision of the Hon'ble High Court

- The stand of the respondents in the reply affidavit is nothing but what the impugned order provides for. When the petitioner is before us asserting violation of provisions of Article 265 of the Constitution, which provides that "No tax shall be levied or collected except by authority of law", this would certainly pre-suppose that the amounts which are levied and collected in accordance with law can only be retained and not otherwise. Thus, the department would need to demonstrate that it had authority in law to withhold/appropriate the amounts as deposited by the petitioner towards tax. This is certainly not the case, as the department is alleging that the amounts which are retained by the department are in fact tax levied or collected in accordance with law. The stand taken by the department to retain the amount is only on the basis of a for fuitous circumstances, namely, the petitioner having voluntarily deposited the amount and the legitimacy of any such amounts as deposited is an issue relevant, in the adjudication of the proceedings in the case of ***Citibank N.A. (supra)***.

- We are not persuaded to accept the reasons as set out in the impugned order, as urged before us in the reply affidavit, to be any ground which would provide any legitimacy to the department to retain the amounts which were deposited under protest, and which is not an ascertained amount of tax much less levied and collected. We may also observe that when clearly such amounts were deposited by the petitioner under protest and categorically not accepting any liability to pay service tax on such count, the department was not precluded from taking an appropriate position at the relevant time, and/or surprisingly it was not adviced to do so, to raise a demand against the petitioner in the manner known to law, in contesting the position taken by the petitioner by issuance of a show cause notice. In the absence of such steps being taken, the legal character of the deposit of the said amounts, as made by the petitioner with the department, would continue to remain as amounts deposited under protest and retained by the department not as a tax or under an authority in law.

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- In these circumstances, in our opinion, such rejection of the refund application is squarely hit by the provisions of Article 265 of the Constitution, as the action of the department results in withholding/retaining amounts, not levied in accordance with law or collected under authority of law.
- Also it was not unjustified for the petitioner to invoke the writ jurisdiction of this Court and more particularly, when the petitioner contends violation of its rights under Article 265 read with provisions of Article 14 as raised before us. It is not the case that the petitioner had not knocked the doors of the authority by a lawful refund application. It is also not the case that the petitioner has directly invoked the jurisdiction of this Court under Article 226 of the Constitution. As rightly contended on behalf of the petitioner, the petitioner is a reputed bank having large scale operations in the country and is an entity of reputation. There is nothing on record to suggest that in the event any recovery is initiated against the petitioner, the department would not be in a position to recover any lawful dues. We are not shown any such situation or proceedings against the petitioner.
- Be that as it may, on behalf of the department we are also not shown any provision under the Finance Act, 1994 which would authorise the department to retain said amounts and in the situation peculiar to the present case. If there are no supporting provisions under the Finance Act for withholding of the service tax deposited by the petitioner under protest, then certainly retention/withholding of such amounts would amount to an action without the sanction and authority in law. Such amounts, hence, would be required to be refunded to the petitioner.

2 *Shyam Coach Engineers vs. Commissioner of Central Excise and C.G.S.T., Jaipur-I [2024] 158 taxmann.com 307 (New Delhi - CESTAT)*

Backgrounds and facts of the case

- The appellant is engaged in the manufacture of Gantry Cranes & Motor Vehicles falling under Chapter Heading 8426 & 8702 respectively of the Central Excise Tariff Act, 1985. The appellant manufactured and cleared excisable goods without obtaining registration and without payment of duty availing benefit of SSI exemption.
- A Show Cause Notice was issued demanding tax for the period 2009-10 and 2010-11 and same was adjudicated, wherein demand was confirmed along with interest and penalty was also imposed. The Commissioner (Appeals) also rejected the Appeal. The assessee challenged the said Order-In-Appeal before the Hon'ble CESTAT which was allowed by the Hon'ble CESTAT.
- The appellant filed consequential refund claim, which was deposited by them during investigation. The adjudicating authority sanctioned such refund; however, the said Order was reviewed and the Commissioner Appeals allowed the appeal of the revenue and stated that refund is not allowed on the basis of unjust enrichment.

Arguments on behalf of Appellant

- The appellant has mentioned that the amount in question was paid by the appellant, pending the investigation of the case when the department denied the benefit of SSI exemption to the appellant. Since the payment was made

during the investigation of the case, no bills or debit notes were raised on the customers after making the payment to the department.

- Resultantly there arises no occasion for any unjust enrichment to the appellant which has been made the sole basis by Commissioner (Appeals) to deny the sanction of refund claim to the appellant's account.
- It has been settled with respect to the refund of the amounts deposited subsequently that the provisions of Section 11B of Central Excise Act, 1944 and the principle of unjust enrichment shall not be applicable to such refunds.

Arguments on behalf of Respondent

- The original adjudicating authority has not thoroughly examined the books of account of the appellant. The Chartered Accountant's Certificate cannot solely be relied in arriving at the conclusion that the burden of duty has been borne by appellant himself. Although the amount of tax has not been directly recovered from the customers by the appellant but has been charged to expenses in their books of accounts, the appellant has indirectly recovered the tax and hence has failed to cross the bar of unjust enrichment.
- Once the amount is booked in the Profit and Loss Account, it entails passing of the incidence of duty to the customers. Thus, the amount of duty and interest booked by the appellant as expenses in their Profit and Loss Account, the same is hit by the clause of unjust enrichment and is therefore liable to be credited to the Consumer Welfare Fund in terms of provisions of Section 11B(2) of the Central Excise Act, 1944.

Decision of the Hon'ble SC

- Section 12B of Central Excise Act, 1944 provides that every person who has paid the duty of excise on any goods under this act shall, unless the contrary is proved by him, be deemed to have passed on the full incidence of such duty to the buyer of the goods.
- The Commissioner (Appeals) has also relied upon this provision. Hon'ble Supreme Court in the case of ***Mafatlal Industries Ltd. vs. Union of India reported as 1997 (89) E.L.T. 247 (S.C.)***, has also discussed about the bar of unjust enrichment in case of refund of duty. The said decision has also been relied upon by Commissioner (Appeals). However, we observe that Hon'ble Supreme Court has not denied the refund of duty but has clarified that the refund of duty either under Central Excise Act, Customs Act, in a Civil Suit or in a Writ Petition can be granted only when it is established that burden of duty has not been passed on to the others.
- In the present case, admittedly the amount was deposited by the appellant during the investigation when department proposes to deny him the benefit of SSI exemption. Later the said denial was set aside, and the appellant was held entitled for the said SSI exemption. Admittedly the goods were already cleared prior the payment of the impugned amount by the appellant. We observe that the period involved in the present dispute is the Year 2009-10 and 2010-11 whereas the payment was made in the Year 2013-14.
- No doubt it is not the amount of duty but the incidence of duty which has to be passed on irrespective, what has to be seen that as to whether the amount

has resulted in an increased sale price of goods to the buyers. If yes, then only is the possibility to hold that the buyer has born the burden of the excise duty. Admittedly the goods were sold to the buyers prior the payment of the impugned amount. Question of involvement of the said amount resulting into increased sale price is irrelevant. There arises no question of any subsequent bill/invoices/debit notes to be issued by the seller to the buyer subsequent to the sale of the goods. Nor any such evidence is produced by the department.

- The certificate issued by the Chartered Accountant of the appellant has also been wrongly denied by Commissioner (Appeals). The said certificate specifically certifies that the impugned amount was deposited on 18-2-2014 against the excise demand for the Financial Year 2011-12 and thus has not been collected from the customers rather was paid/borne by the appellant's proprietorship concern itself. The Hon'ble CESTAT did not find any reason, in the light of the above admitted facts and circumstances of the present case, to ignore the said Chartered Accountant Certificate. The said certificate proves that there is no unjust enrichment to the appellant as is alleged by Commissioner (Appeals).
- Accordingly, the Appeal was allowed.

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3 *K.P. Mozika vs. Oil and Natural Gas Corporation Ltd. [2024] 158 taxmann.com 340 (SC)*

Backgrounds and facts of the case

- The present group of appeals concerns the liability to pay tax under the Assam General Sales Tax Act, 1993 and the Assam Value Added Tax Act, 2003, respectively. In some cases, in the said group of appeals, the assessees have, under a contract, agreed to provide different categories of motor vehicles, such as trucks, trailers, tankers, buses, scrapping winch chassis, and cranes, to the Oil and Natural Gas Corporation Limited. There are other cases where Indian Oil Corporation Limited has entered into agreements with transporters to provide tank trucks to deliver its petroleum products.
- Broadly, the question is whether, by hiring these motor vehicles/cranes, there is a transfer of the right to use any goods. If there is a transfer of the right to use the goods, it will amount to a sale in terms of clause 29A(d) of Article 366 of the Constitution of India. In short, if the transactions do not fall in the definition of 'Sale' in clause 29A(d), the same may not attract tax under the Sales Tax Act or the VAT Act. As a result, there will be other questions about whether the transactions will amount to service, thereby attracting liability to pay service tax.

Arguments by the Assessee

- Under the Seventh Schedule to the Constitution of India, Entry 92A of List-I confers power on the Government of India to impose taxes on the sale of goods. Similar legislative powers were vested in the State under Entry 54 of List-II of levy of taxes on the sale or purchase of goods other than newspapers, subject to the provisions of Entry 92-A of List-I. On the interpretation of the sale of goods covered by Entry 54 of List-II, the learned counsel relied upon several decisions of this Court in the cases of

Sales Tax Officer, Pilibhit vs. Budh Prakash Jai Prakash AIR 1954 SC 459, The State of Madras vs. Gannon Dunkerley & Co. AIR 1958 SC 560, and ***M/s. K.L. Johar & Co. vs. The Deputy Commercial Tax Officer, Coimbatore III AIR 1965 SC 1082***. The learned counsel also pointed out the provisions of clause 29A, added by way of the 46th Amendment Act 1982 to Article 366 of the Constitution of India.

- It was pointed out that by this amendment to the Constitution of India, by way of legal fiction, six cases of transactions were treated as deemed sale of goods. Therefore, 'deemed sale' must be read in every provision wherever the phrase 'tax on sale and purchase of goods' appears. It was pointed out the decisions that cover the contingencies covered by sub-clauses (a) to (f) of clause 29A of Article 366 of the Constitution of India.

- It has been submitted that the five tests laid down therein can be called the Panchratna Test. At no point was the complete and exclusive dominion of cranes, and other vehicles passed on to ONGC in view of the express terms of the contracts in question. It was pointed out that in the present case, the employees on cranes worked for the contractor and not for ONGC. The contract or appoints those who work on cranes and not ONGC. The responsibility of repair and maintenance, including alternative arrangements, is of the contractor, not ONGC. The contractor is obliged to make arrangements at his own cost for shelter, food, night stay and other requirements of the employees working on the cranes. He pointed out that as per the terms of the agreement, the contractor and ONGC are not responsible for providing secured parking to the cranes in the sense that even if the cranes are parked at the site of ONGC, the same are at the risk of the contractor. More importantly, the contractor is liable for a claim for compensation that may arise due to injury to any third party by reason of the use of the cranes. The contractor is mandated to fully indemnify ONGC against any consequence under law arising from any accident caused by the cranes to the equipment/property/personnel of ONGC. He submitted that in the facts of the case, sub-clauses (c), (d) and (e)of the Panchratna test are not fulfilled.

Arguments by the State Authorities

- State of Assam relied upon a decision of ***20th Century Finance Corporation Ltd. & Anr. vs. State of Maharashtra (2000) 6 SCC 12***. It was submitted that the contracts entered into by ONGC will have to be read as a whole. He relied upon the test of effective control found in this Court's decision in the case of Rashtriya Ispat Nigam Limited. He urged that it is not lawful to split the "transfer of right to use goods" into "sale and service" for the purposes of taxation. He relied upon a decision of this Court in the case of BSNL. It was submitted that the transaction covered by the contract of hiring cranes presupposes that there is a transfer of the right to use the cranes. Therefore, the provisions regarding making available staff, maintenance, etc., are irrelevant. It was urged that the actual delivery of goods is not necessary for effecting the transfer which are deliverable and are actually delivered at some stage. Finally, it was submitted that if the tests laid down in the case of BSNL are applied, it will establish that what was transferred was the right to use the goods.

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Decision by Hon'ble Supreme Court

- The entire controversy revolves around the question of whether the transactions reflected from the agreements subject matter of these appeals amount to a sale within the meaning of sub-clause (d) of clause 29A of Article 366 of the Constitution of India and, consequently, whether it is a "sale" within the meaning of clause (iv) of sub-section (43) of Section 2 of the VAT Act.

- Sub-clause (d) of clause 29A refers not to the transfer of property in the goods to the buyer but to the transfer of the right to use any goods for any purpose for consideration as mentioned in sub-clause (d) of clause 29A. The transfer of the right to use any goods can be for any purpose (whether or not for a specified period) for cash, deferred payment or other valuable consideration. Only because a person is allowed to use certain goods of the owner, per se, there is no transfer of the right to use any goods. The transaction can be either of transfer of right to use the goods or granting mere permission to use the goods without transfer of the right to use the goods.

- Thus, to decide the controversy involved in this group of appeals, the contract between the parties will have to be tested on the touchstone of the five tests laid down by Dr AR Laxmanan, J in the case of BSNL. Thus, the contract will be covered by sub-clause (d) of clause 29A of Article 366, provided all the five conditions laid down are fulfilled.

- On a conjoint reading of the aforesaid terms of the contract, it is apparent that the contractor has an option of replacing the cranes in case one of the cranes was not working properly. Only the contractor is liable to take care of the legal consequences of using the cranes. The contractor must maintain the cranes, and it is for the contractor to pay for consumables like fuel, oil, etc. Even the cranes must be moved and operated by the crew members appointed by the contractor. Moreover, in case of any mishap or accident in connection with the cranes or connection with the use of the cranes or as a consequence thereof, the entire liability will be of the contractor and not of the ONGC. Thus, in short, the contract is for providing the service of cranes to ONGC. The reason is that the transferee (ONGC) is not required to face legal consequences for using the cranes supplied by the contractor. Therefore, the tests laid down in clauses (c) and (d) of paragraph 97 of the decision of the Supreme Court in BSNL, are not fulfilled in this case.

- Section 105(zzzzj) of Finance Act, 1994 provides for the definition of taxable services to mean any service provided to any person by any other person in relation to the supply of tangible goods, including machinery, equipment and appliances for use without transferring the right of possession and effective control of such machinery, equipment and appliances.

- The Supreme Court allowed the appeals of the assessees by holding that the contracts are not covered by the relevant provisions of the Sales Tax Act and of the VAT Act, as the contracts do not provide for the transfer of the right to use the goods made available to the person who is allowed to use the same.

CORPORATE LAWS
Case Law Update

CS Makarand Joshi

Companies Act – Case 1

State Bank of India. Applicant in the matter of *Kotak Mahindra Bank Limited (Financial Creditor) vs. Gupta Synthetics Limited (Corporate Debtor).* NCLT Mumbai bench, order dated 21st November 2023.

Facts of the case

- M/s Gupta Synthetics Limited (hereinafter called as the "Corporate Debtor") is undergoing a liquidation process and State Bank of India (hereinafter called as the "Applicant") is the financial creditor and member of the Committee of Creditors (COC) of M/s Gupta Synthetics Limited.
- In 2004, the Applicant SBI sanctioned credit facilities aggregating to ₹ 18.35 crores (Facilities) under a consortium banking arrangement constituting ING Vysya Bank Limited (now Kotak Mahindra Bank), the Applicant and Oriental Bank of Commerce (OBC) led by OBC. The Facilities were subsequently enhanced to ₹ 38.90 crore. State Bank of Saurashtra (SBS), which subsequently merged with the Applicant in 2008, also provided ₹ 7.45 crore to the Corporate Debtor under the consortium. Pursuant to the merger of SBS with the Applicant, the SBS facility of ₹ 7.45 crore was transferred to the Applicant. The Facilities include working capital facilities and two term loans of ₹ 13.05 crore (Term Loan-I) and ₹ 14.65 crore (Term Loan-II).
- The facilities are secured by a charge over current assets and moveable assets of the Corporate Debtor. Term Loan-II is secured by an exclusive charge over the FDY plant of the Corporate Debtor at Dadra, Silvassa.
- The Applicant restructured the Facilities in 2010 by way of its sanction letter dated 21 April 2010. The restructured facility includes WCTL of ₹ 12.16 crore, FITL-I Loan of ₹ 1.09 crore, FITL-II Loan of ₹ 3.03 crore and FITL-III Loan of ₹ 2.70 crore.
- The Corporate Debtor was admitted for the corporate insolvency resolution process under the Code in September 2019. However, the resolution process failed to rehabilitate the Corporate Debtor and consequently, this Tribunal passed a liquidation order against the Corporate Debtor.
- The Applicant filed its claim aggregating to ₹ 196 crores approximate with the Liquidator.
- The Liquidator by way of an email dated 19th September 2020 informed the

Applicant that only ₹ 47 crore (approx.) pertaining to cash credit facility can be considered as secured. The Liquidator has classified the Applicant as an unsecured creditor for ₹ 148 (approx.) relating to WCTL, RTL, FITL-I, FITL-II and FITL-III, being the restructured facility.

- The Liquidator also informed the Applicant that under the sanction letter dated 21st April 2010, the Applicant was required to modify its charge with ROC for the restructured Facilities, however, the Applicant could not produce such modification of charge.
- Thereafter, the applicant filed the present application before NCLT praying for an order directing the Liquidator to treat the Applicant's entire Claim Amount as secured and some more things.

Applicant's contentions

- The security securing the Facilities is registered with ROC and the same covers the principal amount together with all interest, compound interest, damages, compound interest, premia on prepayment or redemption, guarantee commission, costs, charges. Consequently, Restructured Facilities are also duly registered with ROC since the Restructured Facilities are nothing more than the earlier interest amounts categorised into newly term loans as a result of RBI regulations.
- The Facilities have not been fully repaid and the registered charge has not been released- either by the Applicant or the ROC and it is still valid and subsisting in law.
- It is a trite law that a funded interest amount account is not a fresh loan account and consequently, no modification of the registered charge is required.
- The facilities have been restructured under the RBI norms and the Applicant cannot be put in at disadvantageous position for following the mandate of its regulator.
- Point 17 of the Applicant's sanction letter dated 21st April 2010 is "optional" and in any event was only required for the "creation" of security and not "modification" of any security with the Liquidator estates is required. There was no new or fresh security required to be created.
- Consequently, the Liquidator has erred in relying solely on the sanction letter while ignoring other executed and filed legally binding documents.
- Even if registration was required (which is not admitted by the Applicant), the non-registration of charge for the Restructured Facilities will not make earlier charges void and in fact, the earlier charges will be revived in favour of the Applicant.

Intervenor's contentions

- Kotak Mahindra Bank ("Kotak"), Financial Creditor and member of COC, was allowed by the tribunal to be joined as Intervenor and is allowed to reply as the prayers in the present application has a bearing on their share in the Liquidation proceeds. Accordingly, its reply is taken into consideration.
- In the Minutes of the Meeting of the Second Stakeholders Consultation Committee meeting held on 7.12.2020, the liquidator himself has recorded that none of the lenders have registered their

charges after the restructuring including IDBI and SBI.

- The sanction letter dated 21.04.2010 issued by the applicant itself mandates at clause 17 thereof that "Charges created in Favour of the Bank will be registered with the Registrar of Companies within 30 days from the date of creation.".

- In the absence of a new charge having been created with the Registrar of Companies post 2008, only the facilities of the Applicant as recorded in the security documents executed in 2008, pre-restructuring, are validly secured. Accordingly, the terms and conditions and the extent of the facilities granted by the Applicant to the Corporate Debtor have been modified and the same were required to be filed with the Registrar of Companies as rightly held by the Liquidator.

- The Master Circular-Prudential Norms on Income Recognition, Asset Classification and provisioning pertaining to Advances dated 01.07.2009 is applicable to the present case, as that circular deals with accounting norms and provisioning.

- The State Bank of Saurashtra (since merged with SBI) had also extended certain working capital facilities to the Corporate Debtor which were secured only by way of a second pari passu charge, hence a second charge holder can be paid only after satisfaction of dues of the first charge holder, which is not the case here.

- During the pendency of consent terms between Kotak and the Corporate Debtor, a fire broke out at the factory Unit of the Corporate Debtor at Silvassa, and an insurance claim was lodged with the Insurance agency, whereunder insurance claims was received by the Corporate Debtor and distributed amongst the lenders in the absence of any charge on such claim in favour of any one or more of lenders.

- The Applicant's share of the Insurance Claim proceeds were released by the Liquidator on 25.09.2020 which was accepted by the Applicant without any protest, accordingly, the applicant cannot be allowed to re-agitate or challenge the said distribution at this belated stage.

- Kotak has emphasised that its claim under various facilities secured in terms of Registrar of Charge was followed by a decree in the form of consent terms taken on record by DRT, accordingly, the whole of the amount payable under such consent terms is secured.

Respondent liquidator's contentions

- Although the claim of the applicant was accepted in full, it was classified as an unsecured creditor for an amount of ₹ 148,61,88,236.32 out of a total claim of ₹ 196,41,31,030.34, and the remaining was classified under the class of secured creditors.

- The Insurance claim received under the Insurance policy on account of damages of the FDY plant and POY plant was distributed to the lenders under advance intimation to them about the method being followed, in the absence of any assignment in Favor of any specific lenders or any specific charge created by any of them upon the same. The Applicant was present at the meeting

of the stakeholders held on 31.08.2020, where the issue of distribution of insurance proceeds was specifically discussed, and the Applicant had not raised any of the grievances which are sought to be addressed through the present application.

- There was an enhancement of the facilities insofar as the amount covered by them increased as well as the number of facilities. However, even though the facilities themselves were restructured in their 2010, there was no corresponding documentation demonstrating how the securities were restructured to cover the restructured facilities.
- A perusal of Section 77(3) of the Companies Act, 2013 makes it unequivocally clear that the failure to register a charge under section 77(1) is a bar against a liquidator appointed under the IBC from taking cognizance of the same.
- Section 79(b) of the Companies Act, 2013 makes provision of section 77 for the registration of charge applicable to a modification in the "terms of conditions or the extent or operation of" any registered charge.

Question of law

- Whether restructuring of loan carried out in 2010 by the Applicant was in nature of modification in terms & conditions of existing charge registered in 2008 with the Registrar of Companies, so as to necessitate the registration of such modification in terms of Section 77(1) so as to make it enforceable u/s. 77(3) in the liquidation proceedings.

Held

- It is an undisputed fact that the facilities enjoyed by the Corporate Debtor from all consortium lenders came to be restructured and the charges in relation to none of the restructured facility was registered in terms of section 77(1) read with 79(b) of the Companies Act, 2013. It is also an undisputed fact that all the consortium lenders were aware of the extent of the charge and facilities granted by the other lenders.
- Section 79(b) of the Companies Act, 2013 clearly mandates registration of modification in the particulars of charge in terms of section 77(1) of the Companies Act, 2013. Similar provisions existed under section 135 of the Companies Act, 1956. Accordingly, the question arises whether the restructuring of the loan carried out in 2010 by the Applicant was in nature of modification in terms & conditions of the existing charge registered in 2008 with the Registrar of Companies.
- Consequent upon the distress of the Corporate Debtor, these facilities came to be restructured, by funding the Interest on a Term Loan, and by converting a portion of Working Capital into a Working Capital Term Loan. In essence, the restructured credit facilities were only recharacterized as new facilities, divided into various kind of facilities known as separate facility in terms of RBI Regulations.
- Though, the sanctioned limits indicates an increase of ₹ 11.09 crores in fund-based facility, but we find that clause 5 states that "*The restructuring package involves sacrifices to the extent of ₹ 11.11 crores on account of concessionary pricing which is subject*

to Right of Recompense. The Company would be required to show this amount in their Audited Balance Sheet every year as 'Contingent Liability" till the amount is recompensated to the bank". Accordingly, we do not find merit in the contention of Respondent Liquidator that the restructuring package resulted into the enhancement in the overall credit facilities, or any new facility came into existence.

- We further find that the original charge was created in relation to the amount of principal, including the overdue principal component, and interest accrued but not paid on such facilities, including the penal interest etc. Accordingly, we feel that it would not be tenable to content that there has occurred modification in the terms and conditions of the credit facilities, merely because the overdue cash credit facilities or unpaid interest is rechristened as a new facility. It is an undisputed fact, that none of the lenders sought modification of charge after restructuring of their facilities around the same time.
- Further, we do not find merit in the contention that the sanction letter dated 21.04.2010 mandated registration of charge, as clause 15 requiring registration of charge is stated under the 'Optional Covenants'. Hence, it cannot be inferred therefrom that the applicant was also of the opinion that the restructured limits entail modification and require registration in terms of section 77(1) of Companies Act, 2013.
- Though on the strict interpretation of provisions of section 77(b) of the Companies Act, 2013 and the corresponding provision in section 135 of the 1956 Act, we find that registration of modification was mandatory, we feel that the term 'modification' should be liberally construed in Favor of lenders in a manner that such construction does not prejudice the security interest of existing lenders where security interest came to be acquired by other lenders with knowledge of the existence of such security interest. In the present case, every lender had full knowledge of obligations due to other lenders, and security interest created in each of such lender.
- Accordingly, we hold that the sanction letter dated 21.04.2010 does not modify the credit facilities, in substance, and hence, renamed credit facilities did not require registration. Since the overall amount sanctioned under the restructuring scheme was less than the amount what was already secured in terms of registered charge in 2008, we do not find any merit in the contention of the intervenor Bank as well as Liquidator that restructured credit facilities necessitated registration of charge, and in the absence of which, the WCTL, FTL-I, FTL-II, and FTL-III facilities are to be classified as unsecured.

SEBI Case - 1

Securities and Exchange Board of India's Final Order in the matter of Fedders Electric & Engineering Limited

Facts of The Order

1. Securities and Exchange Board of India ('SEBI') had received a copy of the complaint addressed to the Central Bank of India, from one of

the independent directors of Fedders Electric and Engineering Limited ('FEEL' or 'Fedders' or 'company'). It was alleged that financial fraud was observed in the company. Further, SEBI received references from various enforcement agencies containing similar allegations against FEEL.

2. SEBI then investigated affairs of FEEL for the period April 01, 2012, to August 14, 2020 ('Investigation Period'/'IP'). Investigation was conducted to ascertain whether books of accounts of FEEL were manipulated or there was any wrongful diversion/siphoning of funds of the company by the promoters/directors/key managerial persons ('KMP').

3. During investigation, SEBI had sought and examined Forensic Audit Report ('FAR') dated June 29, 2020, for the period April 01, 2012 to March 31, 2018, submitted by Kansal Singla & Associates ('KSA') to State Bank of India (Lead bank with a consortium of 6 banks) and the Transaction Audit Report ('TAR') dated February 25, 2020, for the period August 14, 2014 to August 14, 2020, submitted by Grant Thornton India LLP to the Resolution Professional ('RP').

4. On investigation, SEBI alleged that Fedders 85% to 90% (approximately) of sales and 72% to 92% of purchases was concentrated among 22 parties. Both sales and purchases were made with the same party(ies) having common partners/directors. Parties involved in two way dealings with FEEL were either related parties ("RPT") or potentially interlinked parties ("PILE") or potentially non-existing parties.

5. Also, SEBI noticed that M/s. Goel Garg & Co., Chartered Accounts of who were appointed as statutory auditors on September 20, 2018, for a period of 5 years, were unable to comment on sales and purchases figures for the financial year 2017-2018 owing to insufficient supporting evidence.

6. SEBI further alleged that, Fedders had misrepresented the financials of the company, prior approval of the Audit Committee were not taken for transactions with related parties & FEEL and its KMPs had consciously committed fraudulent, unfair, and manipulative transactions which led to inducing the shareholders to deal in the scrip of FEEL at an unrealistic price.

7. Hence SEBI sent a show cause notice ('SCN') to six Noticees i.e., Akhter Aziz Siddiqi (Noticee No. 1) who was Chief Financial Officer ('CFO') cum Whole Time director ('WTD') also a member of Audit committee and in charge of finance and accounts. Mr. Sham Sunder Dhawan (Noticee No. 2) who was appointed as Additional and WTD w.e.f. April 26,2008. Ms. Bindu Dogra and Ms. Ritushri Sharma (Noticee No. 3 and Noticee No. 4 respectively) were Independent Directors of FEEL and part of the audit committee. Ms. Anita Kakar Sharma (Noticee No. 5) who was KMP of LEEL Electricals ltd (related party) and acting as a treasury head to the group companies including FEEL and Mr. Bharat Raj Punj (Noticee No. 6) who was part of promoters of company during the IP. Noticee No. 1 to 6 ('Collectively referred to as 'Noticees') were alleged to be liable for financial frauds in the Company.

Charges Levied

Sr. No.	Noticee	Charges Levied
1	Noticee No. 1	Regulations 3(b), 3(c), 3(d), 4(1), 4(2)(e), 4(2)(f), 4(2)(k) and 4(2)(r) of PFUTP Regulations read with Section 12A(a), (b), (c) and 27 of the SEBI Act. Further, he failed to perform his duties and obligations provided under Regulations 4(2)(f)(i)(2), 4(2)(f)(ii)(2), (6), (7), 4(2)(f)(iii)(3)(6)(7), 23(2), 23(4) read of LODR Regulations read with Clause 49 (VII)(D)(E) of Listing Agreement dated April 17, 2014 read with Regulation 103 of LODR Regulations and Regulation 33(2)(a) and 17(8) of LODR Regulations read with Clause 49(V) of Listing Agreement dated October 29, 2004, Clause 49(IX) of the Listing Agreement dated April 17, 2014 read with Regulation 103 and 18(3) of LODR Regulations read with Para A of Part C of Schedule II of LODR Regulations and Section 21 of SCRA;
2	Noticee No. 2	Regulation 3(b), 3(c), 3(d), 4(1), 4(2)(e), 4(2)(f), 4(2)(k) and 4(2)(r) of PFUTP Regulations read with Section 12 A(a), (b), (c) and 27(2) of SEBI Act. Further, he failed to perform his duties and obligations provided under Regulation 4(2)(f)(i)(2), 4(2)(f)(ii)(2), (6)(7), 4(2)(f)(iii)(3)(6)(7), 17(8), 33(2)(a), 23(2), 23(4) of LODR Regulations read with Clause 49(Vll)(D)(E) of erstwhile listing agreement dated April 17, 2014 read with Regulation 103 of LODR Regulations, Section 21 of SCRA and Section 27 of SEBI Act;
3	Noticee No. 3 and Noticee No. 4	Regulation 3(b), 3(c), 3(d), 4(1), 4(2)(e), 4(2)(f), 4(2)(k) and 4(2)(r) of PFUTP Regulations read with Section 12A(a), (b), (c) and 27 of SEBI Act, Regulation 4(2)(f)(i)(2), 4(2)(f)(ii)(2), (6), (7), 4(2)(f)(iii)(7), 18(3) read with Para A of Part C of Schedule II of LODR Regulations read with Clause 49(II)(D)(E), Clause 49(IV)(A) of SEBI Circular dated October 29, 2004, Clause 49(III)(D)(E) of erstwhile listing agreement dated April 17, 2014 read with Regulation 103 of LODR Regulation and Section 21 of SCRA read with Section 27(2) of SEBI Act;
4	Noticee No. 5	Regulation 3(b), 3(c), 3(d), 4(1), 4(2)(e), 4(2)(f), 4(2)(k) and 4(2)(r) of PFUTP Regulations read with Section 12A(a), (b), (c) and 27(2) of SEBI Act;
5	Noticee No. 6	Regulation 3(b), 3(c), 3(d), 4(1), 4(2)(e), 4(2)(f), 4(2)(k) and 4(2)(r) of PFUTP Regulations read with Section 12A(a), (b), (c) and 27(2) of SEBI Act;

Contentions by The Noticees

A. **Noticee No. 1, as CFO and member of the audit committee, contended that he was not involved in significantly misstating/misrepresenting the financial statements which led to the publication of untrue and misleading financial**

results of the company during IP.

1. Noticee No. 1 contended that he was merely an employee who was provided the designation of WTD to comply with the provisions of the Companies Act, 2013. However in reality, he was merely an employee responsible for the collection and compilation of data of various units and divisions of the company. He had no say in the business decisions taken by the management of the company.

2. Noticee No. 1 further contended that he had acted as a whistle blower by writing a letter stating anomalies in the accounts of the company and also personally delivered a letter to the Chairman of the Audit Committee and to the Independent Directors. However when no action was taken by the committee on his letter, he tendered his resignation from the company. Thereafter, Noticee No. 1 again served the letter upon the chairman of the Audit Committee.

3. Noticee No. 1 further contended that audit committee meetings only occurred on paper and never took place in reality. Noticee No. 1 further contended that neither he had any authority to call audit committee meetings nor was in a capacity to follow provisions of LODR Regulations with respect to audit committee meetings in letter and spirit.

4. Noticee No. 1 further stated that he used to receive financial statements/ balance sheet and other documents for the purpose of signing them without having actual knowledge of the contents of the same. Due to the nature of his employment and being an employee, he was bound to sign the documents as asked by the management of the company.

5. Noticee No. 1 further contended that when he became WTD he came to know about unhealthy and malpractices taking place in the company and reported the same to Late Mr. Punj (then CMD) and resigned on September 19, 2017. However Noticee No. 1 mentioned that Mr. Punj asked him to continue working in the Company and not to share the issues with anyone else in the Company.

6. Further Noticee No. 1 contended that, he was the only employee who had blown the whistle and had acted in accordance with provisions of Section 177(9) of the Companies Act, 2013 by acting as a whistle blower against the malpractices prevalent in the Company. Hence he should be protected and provided immunity from any kind of victimization or retaliation as a result of making such disclosure under the said provision of law.

B. Noticee No. 3 and Noticee No. 4 stated that they were unaware of provisions of law as independent directors and members of the audit committee of FEEL

1. Noticee No. 3 and Noticee No 4 contended that they became Independent Directors of FEEL on insistence and assurances of their distant relative i.e. Late Mr. BR Punj (then CMD). Noticee No. 3 and Noticee No. 4 stated that they were unaware about their role, responsibilities and obligations as Independent Director and member of the audit committee under the relevant provisions of law. Also, Noticee No. 3 and Noticee No. 4 mentioned that they had no experience, degree or knowledge about finance and accounting. Hence their appointment in the audit committee was in gross

violation of Clause 49 II(A) of Listing Agreement, thus, void-ab-initio.

2. Further Noticee No. 3 and Noticee No. 4 contended that they were unaware about the relation of the company with the other party with whom transactions were taking place. The management never disclosed such nature of relations with the other party with whom transactions were taking place. Hence, monitoring of related party transactions was not possible on their part especially when information was disclosed to Independent Directors on need to know basis.

3. Further Noticee No. 3 and Noticee No. 4 contended that regulation 4(2)(f)(iii)(14) and Clause 49(I)(D)(3)(n) of LODR Regulations stated that the Board and senior management should facilitate the Independent Directors to perform their role effectively as a Board member and also a member of a committee. Regulation 25(7)(c) and Clause 49(II)(B)(7)(a) stated that the Company should familiarize the Independent Directors with the company, their roles, rights and responsibilities in the company, nature of the industry in which the company operates, the business model of the company, etc., through various programs. Hence Management had failed in their duties towards the Independent Directors in letting them know their roles, responsibilities, rights and duties and also to be aware about the company and its affairs.

4. Noticee No. 3 and Noticee No. 4 contended that after they joined as ID, they were given to understand that directorship will not entail any specialised knowledge of finance and law and their role will be minimal and on a policy level.

5. They further contended that the late Sh. B. R. Punj (then CMD of the Company), was a promoter of the company and used to take Key managerial decisions including financial decisions and implemented them through the CFO and his team of accountants and other finance persons.

6. Noticee No. 3 and Noticee No. 4 contended that they were unaware about corporate laws, finance and accounts, its compliances under different laws and other routine activities. They never had any experience, degree or knowledge about finance and accounting activities. The management also never made them aware about their role as an ID and member of the Audit Committee. Hence they used to completely rely on assurance and suggestions given by the Late Mr. Punj and other professionals and experts associated with the company.

Submissions by the SEBI

A. Noticee No. 1, as CFO and member of the audit committee, contended that he was not involved in significantly misstating/misrepresenting the financial statements which led to the publication of untrue and misleading financial results of the company during IP.

1. SEBI Adjudicating Officer ('AO') noted that Noticee No. 1 was disclosed as Asst. finance in the annual report of FEEL for Financial year ('F.Y') 2012-2013, CFO from F.Y. 2013-2014 to 2016-2017. Further Noticee No. 1 was appointed as CFO and Whole-time Director, to be designated as "Whole-time Director & Chief Financial Officer", with effect from February 09, 2017. He was also inducted as a member of the Audit Committee

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2. Further SEBI AO noted that as per annual reports, he had attended two board meetings for the F.Y 2016-17, four board meetings for the F.Y 2017-18, and four Audit Committee meetings for the FY 2017-18. Further for F.Y 2012-13 to F.Y 2016-17, he had signed the financials of FEEL as well as the CEO/CFO certification.

3. Hence SEBI AO was of the view that since Noticee No. 1 was appointed specifically for finance role, he held a senior management position in FEEL and signed financial statements of FEEL, hence contention of Noticee No. 1 that he was only appointed for complying with relevant laws was not satisfactory.

4. Further SEBI AO noted that Noticee No. 1 had not placed on record any evidence proving that he reported malpractices and manipulations to the Independent Directors and Audit Committee of FEEL prior to his resignation except an undated letter which Noticee No. 1 is relying to.

5. Further SEBI AO was of the view that if Noticee No. 1 was aware that Audit committee meetings never happened physically then why he never approached government agencies to raise a complaint against such manipulation and malpractices. Hence SEBI AO was of the view that Noticee No. 1 acted as whistle blower does not stand true in the absence of evidence.

6. SEBI AO further noted that Noticee No. 1 had admitted that the financial statements of FEEL contained incorrect and inflated figures. The figures of inventories, debtors, assets, liabilities and creditors were totally different from the original figures. In view thereof, SEBI AO was of the opinion that the contention of Noticee No. 1 that he had no knowledge of the contents of financials and he merely followed dictates of management of FEEL, was merely an afterthought to escape liability.

7. Further Noticee No. 1 had also signed the financials of the company for the financial year 2012-2013 to 2016-2017 as well as the CEO/CFO certification with complete knowledge that financials statements of FEEL contained manipulated and incorrect figures.

8. SEBI AO further added that every reasonable person is expected to sign any document only after reading and understanding the contents of the document. In the absence of coercion or undue influence, the signature of a person on the document is proof that he has accepted or consented to the contents of the document.

9. Further SEBI AO mentioned that financial statements are important disclosures made by the companies for informing the stakeholders about the financial position and financial performance of the company. In the case of a listed company financial statements influence the decision of the investors for buying, selling or dealing in the securities market. The act of manipulation of the books of accounts misleads the investors and prevents them from getting a true and fair view of the company's financials. Hence FEEL had committed serious irregularities in its books of accounts and showed inflated financial statements and lured the general public to invest in the shares of the company based on such false and misleading financial

statements. Hence contentions of Noticee No. 1 were not accepted.

10. Hence SEBI AO held Noticee No. 1 liable for alleged violation.

B. Noticee No. 3 and Noticee No. 4 stated that they were unaware of provisions of law as independent directors and members of the audit committee of FEEL

1. SEBI AO noted that from May 06, 2013, to August 24, 2018 and November 11, 2013 to August 24, 2018, Noticee No. 3 and 4, respectively, were the independent director and members of the audit committee of FEEL. SEBI further highlighted that KMP of FEEL Mr. Mr. Akhter Aziz Siddiqi, Whole Time Director and CFO, in his depositions, admitted that audit committee meetings never took place and these were only paper compliances by FEEL. Hence Vide separate letter dated September 24, 2022, Noticee No. 3 and 4 were given the opportunity to provide their reply/clarification/ submissions on admission of KMP. In response thereto, SEBI AO highlighted that Noticee No. 3 and 4 vide their letter dated October 13, 2022, and October 17, 2022, respectively, *inter-alia*, stated that board meetings of FEEL used to happen physically which they used to attend.

2. SEBI AO noted that being an independent director, it was Noticee No. 3 and Noticee No. 4 should have endeavoured to ensure that decisions taken at the audit committee meetings were transparent, fair and in compliance with applicable provisions of law and in the interests of the company and its shareholders.

3. Hence SEBI AO observed that on one hand Noticee No. 3 and 4 have pleaded ignorance or unawareness of their obligations and duties under the respective laws. On the other hand, they had pleaded that they endeavoured that decisions are taken fairly and in compliance with provisions of law.

4. Hence as per SEBI AO's view Noticee No. 3 and 4 cannot be allowed to approbate and reprobate because as per settled principles of law, ignorance of law is no excuse. Accordingly, SEBI AO held Noticee No. 3 and Noticee No. 4 liable as they were not aware of their duties and obligations as independent director.

5. Further SEBI AO noted that Noticee No. 3 and 4, being independent directors and members of the Audit Committee of FEEL, were responsible for approving related party transactions and were expected to be aware of related party transactions hence SEBI AO did not find any merit in their contention that they were not aware of the relation of the company with related parties.

6. SEBI AO highlighted that *'in any listed company, the audit committee is expected to play a vital role as far as ensuring compliance with existing accounting standards, true and fair presentation of the financial statement, approving related party transactions, monitoring the financial health of the company, apart from ensuring compliances with applicable laws and regulations, are concerned. Under LODR Regulations, the audit committee is entrusted with oversight of the company's financial reporting process, to ensure that the financial statement is correct, sufficient, and credible'.*

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7. Hence SEBI noted that being members of the audit committee, Noticee No. 3 and 4 were responsible for reviewing and approving the financial statements before they are placed before the Board for approval. Also, audit committee meetings were taking place only on papers and Noticee(s) did not raise even whisper. I find that financial illiteracy cannot be allowed as a defence to escape liability and Noticee(s) should be held liable for failure to perform duties and obligations attached to their position of independent director and members of the audit committee.

Penalty

- The Noticee No. 1 to 4 and 6 were, restrained from accessing the securities market and further prohibited from buying, selling, or otherwise dealing in securities, directly or indirectly, or being associated with the securities market in any manner, whatsoever, for a period of 2 years, from the date of coming into force of this order.
- The Noticee No. 1 to 4 and 6 were restrained from holding any position of Director or Key Managerial Personnel in any listed company or any intermediary registered with SEBI, or associating themselves with any listed public company or a public company which intends to raise money from the public or any intermediary registered with SEBI for a period of 2 years, from the date of coming into force of this order:
- Monetary Penalties imposed were as follows:

Noticee No.	Noticee Name	Provisions under which penalty imposed	Penalty amount
1	Mr. Akhter Aziz Siddiqi	Under section 15HA of the SEBI Act	1 crore
		Under section 15HB of the SEBI Act	25 lakhs
2	Mr. Sham Sunder Dhawan	Under section 15HA of the SEBI Act	1 crore
		Under section 15HB of the SEBI Act	20 lakhs
3	Ms Bindu Dogra	Under section 15HA of the SEBI Act	30 lakhs
		Under section 15HB of the SEBI Act	5 lakhs
4	Ms. Ritushri Sharma	Under section 15HA of the SEBI Act	30 lakhs
		Under section 15HB of the SEBI Act	5 lakhs
5	Mr. Bharat Raj Punj	Under section 15HA of the SEBI Act	1 crore

IBC Case 1

In the matter of *Asset Reconstruction Company (India) Limited (Appellant) vs. Uniworth Textiles Limited (Respondent)* at National Company Law Appellate Tribunal dated 10th July 2023.

Facts of the case

- Uniworth Textiles Limited - the Corporate Debtor (CD) had taken a loan of ₹ 41.50 Crores (Rupees Forty-One Crore and Fifty Lakhs) from the Industrial Finance Corporation of India Limited (IFCIL) and Investment Corporation of India Ltd (ICICI) in 1992. The loan documents were registered between the CD, IFCIL and ICICI, respectively. Both lenders later assigned their debts to the Asset Reconstruction Company (India) Limited (ARCIL/ Appellant).

- In 2004, CD initiated proceedings under Sick Industrial Companies (Special Provisions Act, 1985) (SICA) before the Board for Industrial and Financial Reconstruction (BIFR) and the account was declared as a non-performing asset (NPA) in August 2007.

- The proceedings continued till 2013 and were abated by the order dated 22 May 2013 passed by the Appellate Authority for Industrial Financial Re-Construction (AAIFR). Later, the appellant filed an application to the Debt Recovery Tribunal (DRT), Nagpur, which was allowed on 4 December, 2018.

- Later, the CD came forward for settlement with the appellant and sent a proposal on 19 September, 2016 to clear its dues submitted by five group companies.

- CD paid ₹ 51.10 crore (Rupees Fifty-One Crore and Ten Lakh), which were adjusted against some group companies and acknowledged the balance debt. However, the appellant was not getting payment of outstanding dues from CD.

- Hence, on 22 November, 2018, the appellant issued a letter for revocation of the terms of the settlement. Later, the appellant moved to the National Company Law Tribunal (NCLT) to claim an amount of ₹ 205.83 crore (Two Hundred and Five Crore and Eighty-Three Lakh). However, the application was dismissed primarily on the ground of limitation.

- Hence, the present appeal was filed u/s 61 of the Insolvency and Bankruptcy Code, 2016 (IBC) against the impugned order passed NCLT, whereby the application filed by the appellant u/s. 7 of the IBC against CD was dismissed.

Arguments of the Appellant

- CD had been acknowledging the outstanding dues towards the appellant in their own Annual financial statements from the financial year 2006-07 to 2017-18.

- Despite all efforts, they were not getting payment of outstanding dues from the CD. Hence, on 22 November 2018, they issued a letter for revocation of the terms of settlement due to non-compliance on the part of CD.

- NCLT failed to consider the exclusion of period from the limitation period in terms of section 22(5) of SICA. The application was within Limitation.

- CD acknowledged the debts in the balance sheets till 2017-18 and through letters/e-mails also acknowledged the outstanding dues, which were to be treated as acknowledgements of debt

in terms of Section 25(3) of the Indian Contract Act, 1872.

- NCLT ignored the vital facts that the CD acknowledged the outstanding debts vide the letter dated 11 November 2016 in addition to the acknowledgments in the balance sheets which extended the period of limitation in terms of Section 18 of the Limitation Act, 1963 (the Act).

- In terms of the IBC, the NCLT is required to ascertain the existence of debt and default and once these two criteria are satisfied NCLT is required to admit the application u/s. 7 of the IBC.

- NCLT wrongly construed the letter dated 11 September 2016 of the CD to be as a group settlement which in fact was provided for a company-by-company settlement with a specific amount item-wise mentioned therein.

- NCLT also failed to be relied upon a judgment of the NCLAT in the matter of ***Mr. Gouri Prasad Goenka vs. Punjab National Bank*** in which it was clearly held that the *period of reference under SICA before the BIFR or AAIFR would stand excluded while computing the period of limitation for the purpose of filing a Company Petition under Section 7 of the Code*.

- NCLT also didn't consider that acknowledgment in balance sheets come within the purview of Section 18 of the Act and relied upon the various Judgments to support the case.

Arguments of the Respondent

- Respondent denied all the averments of the appellant.

- The appellant indicated the date of default as 5 September 2020 in OA No. 162 of 2014 u/s. 19 of the Recovery of Debt to the Banks and Financial Institution Act, 1993 (RDB Act), before the NCLT treating as a date of default for alleged financial debt.

- OA No. 162 of 2014 had been decreed on 6 February 2019 the same was challenged in the Debt Recovery Tribunal (DRT), Nagpur and was sub-judice pending consideration after issuance of notice to the appellant by DRT.

- Prior to the issue of the said decree, Uniworth Group of Companies initiated talks for global settlement with the appellant and then the appellant had given in principal consent to the settlement offer of ₹ 75 Crores (Rupees Seventy-Five Cores) and ₹ 51.10 Crores (Rupees Fifty-One Crore and Ten Lakh) out of consolidated settlement of ₹ 75 Crores (Rupees Seventy-Five Crores) were paid to the appellant, which unfortunately was recalled/revoked by the letter dated 22 November 2016 by the appellant.

- Present appeal was not maintainable as the original application filed by the appellant was based on loan documents with an alleged debt of ₹ 205.83 Crores (Two hundred and five crores and eighty-three lakh), whereas the appellant in the present appeal changed the amount to ₹ 75 Crores (Rupees Seventy-Five Crores).

- Appellant concealed deliberately vital facts including the fact regarding global settlement with Uniworth Group and receipt of ₹ 51 Crores (Rupees Fifty-One Crore) through "White Knight".

- The appellant also concealed the material fact that it had obtained an *ex parte* decree by playing fraud upon

DRT pending its application under the IBC.

- Claims of the appellant were barred by limitation as the account of UTL was classified as Non-Performing Asset on or before 20 November 2007 and three years period should start running from the date of declaration of NPA which in the present case got over long back.

- It was stated that the *proceedings under the code cannot be initiated for a time barred debt* and relied on the case ***B.K. Educational Services Pvt. Ltd. vs. Parag Gupta and Associate, Innoventive Industries Ltd. vs. ICICI Bank Jignesh Shah & Anr. vs. Union of India & Anr.,*** **and** ***Sagar Sharma vs. Phoenix ARC (P.) Ltd***

- Also, highlighted that in the case of ***Jignesh Shah (Supra)*** it was *held that the ability or inability of a financial creditor to avail separate independent remedy cannot, in any manner, impact the limitation for the purpose of the period of limitation for initiating proceeding u/s. 7 of IBC, hence, the respondent submitted that mere operation of section 22(1) of SICA would not stop the period of limitation running during the pendency of reference under SICA.*

- Mere reflection of the amount of loan in the balance sheet of the CD with caveat and rider does not constitute valid and legal acknowledgments within the meaning of Section 18 of the Act.

- That the entries in balance sheets indicating liability is to be read along with the director's report to take a comprehensive view.

- Board of Directors of the respondent categorically disputed the alleged debt due to the appellant and therefore such mention of debt in the balance sheets cannot be construed as admission of debt or acknowledgment of the same.

- Pendency of an original application under the provisions of the RDB Act do not in any manner affect the period of limitation for the purpose of initiating proceeding under the IBC.

Held

- NCLAT after a review of provisions of the SICA noted that that the period of the petition before BIFR and AAIFR, once abated by the competent Judicial Forum (AAIFR in the present case) such period ought to have been excluded by the Adjudicating Authority. And accordingly, the period up to the order by AAIFR dated 22 May, 2013 is to be excluded from counting the relevant period under the Act.

- NCLAT thereafter factored into the subsequent events post 22 May, 2013 impacting the limitation period till the Section 7 application was filed on 11 October, 2018. The Law of Limitation give 3 years period for initiating the legal remedy. Thus, the Appellant has to cross the hurdle post 22 May, 2016 i.e., 3 years period from the AAIFR order till the application was filed at NCLT.

- NCLAT highlighted that a mere entry in the Balance Sheet cannot be taken as an unqualified acknowledgment of the debt. However, it may also not be correct to take every note or caveat regarding entries made in the Balance Sheet as a ground to denying acknowledgement of debt in order not to extend the limitation period from such acknowledgment period.

- It is therefore desirable that while looking at such entries of debt amounting to acknowledgment, one has to consider the overall scenario which may be evident from the Director's Report, Auditor's Report, notes to the accounts etc. It is relevant to consider the entire series of events starting from such loans/debts to the filing of application u/s. 7 of the IBC, to gauge the true intent of such entries and caveats, if any, which impact the intended acknowledgements or genuine denial of liability on part of the CD. While doing this examination, it may be worthwhile to look into the overall eco system of such transactions which may help in understanding the impact on the limitation period based on such acknowledgements.

- It was also noted that from the entries in the Balance Sheet of 2016-17 and the Director's Report that the debt indeed finds its place in the Balance Sheet with admission as a CD that they are in process of negotiation with the term lenders for rescheduling/restructuring. This establishes that the loan/debt has been taken and acknowledged by the CD.

- Consideration was also paid to the Director's Report where it was indicated that the company was exploring the possibility for a suitable resolution scheme through NCLT and also exploring other options available in the law. The Director's Report further also recorded that the Company disputing the repayment of dues and therefore figures of the borrowed amount in the Balance Sheet could not be considered as of the claims of the lender.

- The NCLAT referred various Balance Sheets from 2006-07 to the Balance Sheets of 2013-14, and do not found any apparent denial of debts by the CD. Also, reviewed the excerpts from the Balance Sheets from 2014-15 to 2018-19. On an overall basis out of 13 Balance Sheets from 2006-07 to 2018-19, apparently in the three Balance Sheets, disputes were recorded as noted above and based on that, in a balanced manner and keeping commercial/judicial fairness, such denial of acknowledgment cannot be taken as a stout dispute regarding debt which would tantamount to the absolute and continued denial of acknowledgments of debt by the CD.

- NCLAT had to consider that there were acknowledgements of due in the Balance Sheets and the acknowledgement letter of the CD which would extend the limitation period, in terms of Section 18 the Act.

- Section 18 of the Act makes it clear that any acknowledgement expiration of the prescribed period for an application in respect of any acknowledgement of liability made in writing signed by the party against whom such right is claimed shall result into a fresh period of limitation to be computed from such time.

- After a detailed analysis and considering the various judgments of the Hon'ble Supreme Court of India, and various provisions of the relevant laws, NCLAT held that the NCLT erred in rejecting the application filed u/s. 7 of the IBC by the appellant on the ground of limitation. The case was remanded back to the NCLT for a decision on the merit of the application in accordance with the law.

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OTHER LAWS

FEMA – Update and Analysis

CA Hardik Mehta CA Tanvi Vora

In this article, we have discussed recent amendments made in FEMA through Notifications, Circulars and Press Notes & Press Releases.

A. Update through Rules

1. Amendments to Non Debt Instrument Rules, 2019 - Direct Listing of Equity Shares of Companies Incorporated in India on International Exchanges Scheme

The direct listing of equity shares of companies incorporated in India on International Exchange Scheme has been introduced vide this amendment. For this purpose, the following terms have been defined by RBI:

i) "International Exchange" shall mean permitted stock exchange in permissible jurisdictions which are listed at Schedule XI annexed to these rules;';

ii) "listed Indian company" means an Indian company which has any of its equity instruments or debt instruments listed on a recognised stock exchange in India and on an International Exchange and the expression "unlisted Indian company" shall be construed accordingly;'

iii) "permissible jurisdiction" means such jurisdiction as notified by the Central Government under sub-clause (f) of sub-rule (3) of rule 9 of Prevention of Money-laundering (Maintenance of Records) Rules, 2005;';

The amendment has added a new chapter to the NDI Rules, 2019 namely, Investment by Permissible Holder in Equity Shares of Public Companies Incorporated in India and Listed on International Exchanges. Rule 34 provides that a permissible holder may purchase or sell equity shares of a public Indian company which is listed or to be listed on an International Exchange under Direct Listing of Equity Shares of Companies incorporated in India on International Exchanges Scheme as specified in **Schedule XI**.

As per Schedule XI, a public Indian company has now been permitted to issue equity shares or offer equity shares of existing shareholders and such shares shall be listed on any of the specified International Exchange. Currently RBI has notified International Financial Services Centre in India-India International Exchange, NSE International Exchange as 'International Exchange'. Such issue or offer of equity shares of existing shareholders shall be subject to prohibited activities, and sectoral caps prescribed in Schedule I of NDI Rules. 2019.

The notification requires such equity shares to be issued in dematerialised form. Further, it should be remembered that such equity shares

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shall rank *pari passu* with equity shares listed on a recognised stock exchange in India.

I] A public Indian company may issue equity shares on International Exchange: Under the Scheme, only public Indian companies, listed or unlisted, are allowed to issue and list their shares on an international exchange. However, public Indian company are eligible to participate in direct listing scheme subject to the following additional eligibility criteria:

- the public Indian company, any of its promoters, promoter group or directors or selling shareholders are not debarred from accessing the capital market by the appropriate regulator;
- none of the promoters or directors of the public Indian company is a promoter or director of any other Indian company which is debarred from accessing the capital market by the appropriate regulator;
- the public Indian company or any of its promoters or directors is not a wilful defaulter;
- the public Indian company is not under inspection or investigation under the provisions of the Companies Act, 2013 (18 of 2013);
- none of its promoters or directors is a fugitive economic offender
- Additional eligibility conditions may be specified by the permitted international
- exchanges under their regulations.

II] Existing shareholders may offer equity shares in such exchange: However, they shall be subject to the following additional eligibility criteria:

- the public Indian company or the holder offering equity shares are not debarred from accessing the capital market by the appropriate regulator;
- none of the promoters or directors of the public Indian company is a promoter or director of any other Indian company, listed or otherwise, which is debarred from accessing the capital market by the appropriate regulator;
- the public Indian company or the holder offering equity shares is not a wilful defaulter;
- the public Indian company is not under inspection or investigation under the provisions of the Companies Act, 2013 (18 of 2013);
- none of the promoters or directors of the public Indian company or the holder offering equity shares is a fugitive economic offender.

The conditions and other requirements issued by Ministry of Corporate Affairs ('MCA') & Securities and Exchange Board of India ('SEBI') shall also apply.

Who can invest or trade under the Direct Listing Scheme?

As per para 2 of the Scheme in NDI Rule, 2019, only the 'permissible holder' can invest, trade, or hold equity shares of Indian companies listed on International Exchanges. Permissible holder is not a person resident in India i.e. PROI. Restrictions related to Press Note No. 3 (PN 3) is applicable to permissible holder as well. Accordingly, a holder who is a

citizen of a country which shares land border with India, or an entity incorporated in such a country, or an entity whose beneficial owner is from such a country, shall hold equity shares of such public Indian company only with the approval of the Central Government.

A permissible holder may purchase or sell equity shares of an Indian company listed on an international exchange subject to limit specified for foreign portfolio investment under these rules.

It is the responsibility of the public Indian company to ensure that the aggregate of equity shares which may be issued or offered in a permissible jurisdiction, along with equity shares already held in India by persons resident outside India, shall not exceed the limit on foreign holding under the Schedule I to these rules. Further, the public Indian company is required to ensure compliance with extant laws relating to issuance of equity shares under SCRA, 1956, SEBI Act, 1992, the Depositories Act, 1996, FEMA, 1999 and PMLA, 2002 or the Companies Act, 2013 as applicable.

The Schedule XI of the NDI Rules, 2019 further provides rules in relation to:-

i) ***Voting Rights:*** The public Indian companies having their equity shares listed on International Exchange shall ensure that the voting rights on such equity shares shall be exercised directly by the permissible holder or through their custodian pursuant to voting instruction only from such permissible holder.

ii) ***Pricing Guidelines:*** a) In case equity shares are issued by a listed company or offered by the existing shareholders of equity shares listed on Recognised Stock Exchange in India, the same shall be issued at a price, *not less than the price* applicable to a corresponding mode of issuance of such equity shares to domestic investors under the applicable laws. b) In case of initial listing of equity shares by a public unlisted Indian company on the International Exchange, the price of issue or transfer of equity shares shall be *determined by a book-building process* as permitted by the said International Exchange and shall not be less than the FMV under FEMA.

(Amendment to NDI Rules, 2019 vide F. No. 4/1/ECB/2019] issued in the E-Gazette on 24th January 2024 & FAQs issued by IFSCA Authority on Direct Listing Scheme)

(Comments: It should be remembered that prior to this amendment, Indian companies were not allowed to issue or list equity shares abroad.

The Central Government has also issued a compilation of FAQs on Direct Listing Scheme which has aided in understanding the nuances surrounding the scheme.

Currently, there are two Stock Exchanges in IFSC namely, India International Exchange (IFSC) Limited and NSE IFSC Limited, subsidiaries of BSE Limited and National Stock Exchange of India respectively, providing the platform for listing and trading of securities in GIFT IFSC. The clearing and settlement of the trades executed on these Stock Exchanges are carried out by the respective Clearing Corporations namely, India International Clearing Corporation (IFSC) Limited and NSE IFSC Clearing Corporation (IFSC) Limited. There is a depository namely India International Depository IFSC Limited providing depository services in GIFT IFSC.

The new direct listing scheme only permits persons resident outside India (PROI) to invest, hold or trade equity shares of Indian companies on international exchange. Indian residents cannot purchase or sell shares of an Indian company listed on an international exchange through the Scheme.

An understanding of the framework leads us to understand that such investment by PROIs in equity shares of Indian companies on international exchange would be equivalent to such PROI's investment in India itself. According to the framework, such investment would be considered as foreign portfolio investment in Indian company and also be subject to sectoral caps and will be counted towards the foreign holding of the company.

The FAQs issued by the Central Government further clarifies that, it is not mandatory for an unlisted company intending to list on international exchanges to also list on domestic exchanges. However, there is no restriction on such companies to opt for listing on domestic as well as international exchanges.

Interestingly the FAQs on Direct Listing Scheme issued by the Central Government lists the following potentials benefits or companies participating in the Direct Listing Scheme in FAQ 23:

- ***The Scheme will allow public Indian companies, especially start-ups and companies in the sunrise and technology sectors, to access global capital beyond the domestic exchanges.***
- ***Expected to enable better valuation of Indian companies in line with global standards of scale and performance, boost foreign investment flows, unlock unprecedented growth opportunities, and broaden the investor base.***
- ***The public Indian companies will have the flexibility to access both markets i.e. domestic market for raising capital in INR and the international market at IFSC for raising capital in foreign currency from the global investors.***
- ***This initiative will particularly benefit Indian companies going global and having ambitions to look at opportunities for expanding their presence in other markets.***

Most importantly, this scheme allows foreign investors to participate in value creation in Indian companies and earn high returns on their investment facilitated by the world class and business friendly regulatory regime being offered by GIFT-IFSC. Further, the transactions on the stock exchanges in IFSC are in foreign currency, eliminating the currency risk for the investors. The stock exchanges in IFSC have extended trading hours (more than 20 hours in a day) catering to investors of all significant jurisdictions in the world thereby providing convenience and ease of doing business. There are also various tax incentives provided under the Income Tax Act, 1961, making GIFT IFSC an attractive destination for global investors. Capital gains arising out of transfer of equity shares of Indian companies in GIFT-IFSC is currently exempted from tax.

THE CHAMBER NEWS

CA Neha Gada
Hon. Jt. Secretary

CA Vitang Shah
Hon. Jt. Secretary

Important events and happenings that took place online/ physical between **January 1, 2024 to January 31, 2023** 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 January 19, 2024 are as under:

Type of Membership	No. of Members
Life Member	05
Ordinary Member	02
Student Member	01
Total	**08**

II. PAST PROGRAMMES

Sr. No.	*Date*	*Topics*	*Speakers*
ACCOUNTING & AUDITING			
1.	17.01.2024	Lecture Meeting on "Changing Landscape of Internal Audit"	CA Satish Shenoy
COMMERCIAL & ALLIED LAWS			
1.	31.01.2024	Recent Judgement of Appellate Tribunal, Delhi bench under Benami Law and related aspects	Rahul Sarda, *Advocate*
DIRECT TAXES			
1.	09.01.2024	Recent Important Decisions Under Direct Tax	CA Kekti Mittal
2.	29.01.2024	Recent Important Decisions Under Direct Tax	CA Prasanna Krishnan

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Sr. No.	Date	Topics	Speakers
3.	The Direct Taxes Committee oragnised "Workshop on GST Law" (*Jointly with GSTPAM, AIFTP (WZ), BCAS, CTC MCTC & WIRC of ICAI*) for the year 2023-24. The session-wise detail of the program is as under:		
a.	16.01.2024	Legal Issues in Input Tax Credit & Apportionment	CA Sujata Rangnekar
b.	19.01.2024	Procedural Issues In Input Tax Credit	Vivek Laddha, *Advocate*
c.	23.01.2024	Issues In E-Way bills, E-Invoicing & Way Forward	CA Sumit Jhunjhunwala
		Issues in claiming Exemptions	CA S. S. Gupta
d.	30.01.2024	GST on deemed Sales	CA Rajat Talati
INDIRECT TAXES			
1.	The Indirect Taxes Committee organised "12th Residential Refresher Course on GST" at Ananta Spa & Resorts, Jaipur. The session-wise detail of the program is as under:		
a.	11.01.2024 to 14.01.2024	*Key Note Address:* GST and Constitutional challenges	Sanjay Jhanwar, *Senior Advocate*
b.		*Paper Discussion I*: Case studies on burning GST issues on certain important sectors	CA Sunil Gabhawalla
c.		*Paper Discussion II*: Case studies on business restructuring, sale of business, succession, resolution/liquidation under IBC, etc.	Rohit Jain, *Advocate*
d.		*Panel Discussion*: Assorted case studies on Conceptual aspects	*Panellists*: CA Sushil Solanki Jigar Shah, *Advocate* *Moderator*: K Vaitheeswaran, *Advocate*
e.		*Talk Show:* Insights/inputs on Growth strategies.	*Panellists*: CA Sunil Gabhawalla CA Vishal Gada Harsh Shah, *Advocate* CA Nitesh Jain CA Naresh Sheth CA Rajiv Luthia *Moderator*: CA Jayraj Sheth

Sr. No.	Date	Topics	Speakers
f.		*Panel Discussion*: Chai pe Charcha – GST Investigation	Shri O. P. Dadhich, IRS Jaipur
MODERATOR: CA KEVAL SHAH			
2.	30.01.2024	Issues under GST Refund	*Group Leader:* CA Manoj Chauhan *Chairman*: CA Rajiv Luthia
INTERNATIONAL TAXATION			
1.	30.01.2024	Taxation of free zone persons and natural persons in UAE	CA Janak Panjuani CA Rajiv Hira
2.	31.01.2024	Overview of Overseas Investments	CA Viren Doshi
MEMBERSHIP & PR COMMITTEE			
1.	23.01.2024	Power of subconscious mind	Mr Mahendra Devlekar
PUNE STUDY GROUP			
1.	05.01.2024	Taxation of Restructuring of Partnership Firms	CA Kishor Phadke
2.	12.01.2024	Analysis of Recent Judgements of Supreme Court on Income Tax Issues	CA Rajendra Agiwal
3.	19.01.2024	Aspects of Drafting in Faceless Era	CA Megha Dhanuka
STUDENT			
1.	The Student Committee organised "The 7th Dastur Debate Competition, 2024" (*Jointly with HR College of Commerce & Economics*) held on 18th & 20th January, 2024.		
STUDY CIRCLE & STUDY GROUP			
1.	15.01.2024	Select Issues with Reference to Taxation of Transactions in Immovable Property	CA Jagdish Punjabi

"Well, then, the human soul is eternal and immortal, perfect and infinite, and death means only a change of centre from one body to another"

— *Swami Vivekananda*

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Indirect Taxes Committee

"12th Residential Refresher Course on GST" at Ananta Spa & Resorts, Jaipur held from 11th January, 2024 to 14th January, 2024.

Inaugural Session. *Seen from L to R*: CA Vijay Bhatt (Vice President), CA Hemang Shah (Chairman), CA Sunil Gabhawalla (Speaker), CA Sushil Solanki (Speaker), CA Haresh Kenia (President), Sanjay Jhanwar, Senior Advocate (Speaker), CA Ashit Shah, CA A. R. Krishnan, CA Rajiv Luthia (Advisor) and CA Naresh Sheth.

CA Haresh Kenia (President) giving his opening remarks. *Seen from L to R*: CA Keval Shah (Vice Chairman), CA Rajiv Luthia (Advisor), Sanjay Jhanwar, Senior Advocate (Speaker), CA Hemang Shah (Chairman) and CA Ashit Shah.

CA Hemang Shah (Chairman) welcoming the speakers and the delegates. Seen from L to R: CA Keval Shah (Vice Chairman), CA Rajiv Luthia (Advisor), CA Haresh Kenia (President), Sanjay Jhanwar, Senior Advocate (Speaker) and CA Ashit Shah.

Speakers

Sanjay Jhanwar, Senior Advocate addressing the delegates

CA Sunil Gabhawalla addressing the delegates

Shri O. P. Dadhich, IRS Jaipur addressing the delegates

Panel Discussion

Panellists: CA Sushil Solanki, Jigar Shah, Advocate and *Moderator*: K Vaitheeswaran, Advocate addressing the delegates

Panellists: CA Sunil Gabhawalla, CA Vishal Gada, Harsh Shah, Advocate,A Nitesh Jain, CA Naresh Sheth, CA Rajiv Luthia and Moderator: CA Jayraj Sheth addressing the delegates

Panel Discussion: Shri O. P. Dadhich, IRS Jaipur and *Moderator*: CA Keval Shah addressing the delegates

Group Photo

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