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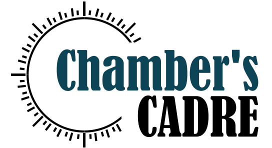

THE CHAMBER'S JOURNAL

Your Monthly Companion on Tax & Allied Subjects

Vol. XII | No. 2 | November 2023

PREVENTION OF MONEY LAUNDERING ACT AND ITS INTERACTION WITH OTHER LAWS

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Editorial

Dear Readers,

The Israel Hamas war which will enter its second month on 7th of November has become a matter of serious concern. About 11,000 people including innocent children, women and other civilians have lost their lives, besides there bring a huge destruction of properties and civic facilities. In spite of appeals by various world leaders, there appears no abatement. On the contrary the intensity seems to be escalating. War clouds are thickening. If foes and friends on either side join the war directly, it would be disastrous. Though at the moment there seems no direct ill effect of the war on our economy, escalation of the war further could have adverse impact in a number of ways. It's easy to destroy but immensely difficult to reconstruct. With globalization, any such disruptive event taking place anywhere in the world can adversely impact other countries, sometimes times in the most unforeseen way. Let us hope that the good sense will prevail and the conflict will come to an end soon.

On the Tax Collection front, both direct and indirect, the position appears to be quite encouraging as per the data available for the six months period of the Financial Year 2023- 2024. A record number of 7.65 crore ITRs have been filed for the AY 2023-24 upto October 2023. Further, the total number of ITRs filed in FY24 for all assessment years upto October 2023 stand at 7.85 crore, an all time high. Overall direct tax revenues have grown at 25 per cent in the first half of the current fiscal. GST collections rose by 13.4 per cent in September. GST collections have now averaged 1.66 lakh crore per month during April- September 2023.

The average growth is 11.4 percent compared to the corresponding period of the previous year. This suggests that the tax reforms initiated earlier are steadily getting deep rooted and yielding the desired benefits. It also indicates that despite geopolitical and global economic concerns, the Indian economy is stable and growing.

While there is a festive mood in air with the on going Cricket World Cup tournament, Diwali, India's most important festival of the year — to celebrate the triumph of light over darkness, knowledge over ignorance, and good over evil,has arrived. Widely observed by more than a billion people from a variety of faiths across India and its diaspora, the five days of Diwali are marked by prayer, feasts, fireworks, family gatherings, and charity. For many of us, Diwali is also the beginning of a new year. What most have in common, though, are the abundance of sweets, family gatherings, and the lighting of clay lamps that symbolize the glow of the inner light that protects each household from spiritual darkness.

I am sure that with successful completion of the tax audit season and filing of tax returns everyone must have some holiday plans and would be looking forward to celebrate and enjoy the festival of lights with their near and dear ones with great enthusiasm ! One word of caution, with increasing level of pollution, we must refrain from bursting crackers.

The Prevention Of Money Laundering Act PMLA was enacted in 2002 and it came into force in 2005. The chief objective of this legislation is to fight money laundering, that is, the process of converting "black" money into "white" The Act enables government authorities to confiscate property and/or assets created from illegal sources and through money laundering. The Act has been amended as many as eleven times since its enactment. The recent amendments bring in practising chartered accountants, company secretaries, and cost and works accountants and politically exposed persons within the purview of PMLA.

The PMLA is a complex and an important piece of legislation for professionals and stakeholders. The Journal Committee has designed this month's issue covering the important PMLA aspects. I sincerely appreciate the efforts put in by Vinita Krishnan & Sanjiv Chaudhary in designing the issue. I am sure the readers will find this issue useful and it will find a permanent place in their library. I express my gratitude to the authors who are experts on the subject, for sparing their valuable time and sharing their expert knowledge.

I wish you and your family a Very Happy Diwali and a Very Happy, Peaceful and Prosperous New Year, Samvat Year 2080 !

VIPUL K. CHOKSI
Editor

From the President

Dear Members

As I sit down to pen this message, the air is filled with excitement and anticipation. Diwali, the festival of lights, is just around the corner, and it seems that this year, it's going to be a grand celebration unlike the last couple of years. The streets are bustling with people, and shops are brimming with customers, all preparing for the festivities. What makes this Diwali even more special is that, for most of our members, the tax return deadlines have passed, except for our large corporate friends. This means a sigh of relief and a chance to truly enjoy Diwali with our loved ones – our families and relatives. By the time you read this message, the lamps will have been lit, the sweets shared, and the fireworks burst in the night sky. Diwali, with all its warmth and brightness, will be a cherished memory. As we step into the new year, **I want to extend my sincere wishes to every member of our Chamber family. May the coming year be filled with happiness, prosperity, and success. Thank you for being a part of our wonderful community.**

The International Taxation Committee, in collaboration with the Bombay Chartered Accountants' Society, organized a successful seminar titled "Cultivating Expertise: The Advanced FEMA Summit" at IMC, Churchgate. The event featured notable sessions, including a keynote address by Shri Aditya Gaiha, Chief General Manager-in-Charge and panel discussions led by senior RBI managers. CA Paresh P. Shah and Advocate L. S. Shetty shared valuable insights on FEMA investigations and PMLA powers. The seminar received active participation and positive feedback, highlighting its success in providing valuable knowledge to participants.

Our recent joint free-webinar on "Implications of Fake Invoicing under GST and Income Tax" was a resounding success, thanks to your active participation. This critical discussion explored the challenges posed by fake invoicing, a deceptive practice that affects businesses, tax collection, and our nation's economic fabric. The Chamber had the privilege of hosting a panel of experts, including Advocate Shri K Vaitheeswaran and CA Yogesh Thar, who provided profound insights into GST and Income Tax. CA Rajiv Jaichand Luthia and Mr.

Mahendra Sanghvi expertly guided this crucial conversation. I extend my heartfelt gratitude to all participants for making this webinar a success. I would also like to extend our sincere appreciation to Taxmann, our joint organizer for this event. Their support and partnership were invaluable in bringing together such a successful and informative webinar.

Student committee's virtual program on "Corporate Law - Opportunities, Practice Areas, and Success Strategies" was a resounding success. It attracted a significant turnout, and participants found great value in the insightful sessions. We explored various aspects of corporate law, making complex concepts accessible through real-life case studies. The program also highlighted the evolving role of corporate lawyers in today's world. Thank you to all who participated and contributed to this achievement.

The Law and Representation Committee had submitted another representation to the CBDT regarding issues with Forms 10B and 10BB, requesting an extension of due dates due to extensive information requirements and ongoing software revisions. They also seek relaxation of requirements related to disclosing information about relatives of trustees, settlors, founders, and associated concerns, aiming to address practical obstacles faced by auditors and trusts in complying with the new forms and regulations. Further , the Government has initiated its annual budget preparation process and is actively seeking input and suggestions. Our Chamber's Law & Representation Committee is dedicated to crafting a strong and influential representation document to present to the Government. Chamber would greatly appreciate your participation in this effort. If you have any thoughts, ideas, or suggestions that you believe should be considered for the budget, please don't hesitate to send them to our Chamber's office. Your input is valuable, and it can help shape important decisions

In a recent and significant Supreme Court ruling, it has been clarified that availing benefits under the Most Favoured Nation (MFN) clause in Double Taxation Avoidance Agreements (DTAA) is not automatic. To claim such benefits, a specific notification under Section 90(1) of the Income-tax Act, 1961 is mandatory. Moreover, the MFN clause's application is contingent on the third state, with which India has a DTAA, being a member of the Organisation for Economic Cooperation and Development (OECD) at the time of entering into the agreement. This judgment underscores the vital role of notifications under Section 90(1) in DTAA implementation. The implications of this ruling are profound, especially concerning the application of the MFN clause to various income streams though this decision is with regard to Dividend taxability , such as fees for technical services. In cases where the necessary subsequent notifications are absent, taxpayers may not be able to benefit from the MFN clause. This could potentially lead to significant tax demands and interest for Indian payers who deducted tax at a lower rate or a restricted scope under the MFN clause. The ability of Indian payers to recover such taxes and interest, especially in concluded transactions, will be tested. The aftermath of this ruling will be closely watched,

particularly in terms of how counterparties to DTAA agreements with India respond. It could lead to bilateral negotiations with India for the full implementation of the MFN clause. Additionally, it will be interesting to see India's stance on the MFN clause's implementation, given the Supreme Court's observation that if the Indian Parliament refuses to give effect to a DTAA's MFN clause, the treaty continues to bind the Union, leaving the Union in default. In summary, this Supreme Court ruling has far-reaching implications, potentially impacting many assesses who have relied on the MFN clause for withholding taxes on various payments to non-residents. It could result in tax and interest demands for past years. Stay informed about this development, as it may have significant implications for your tax obligations.

Our active Delhi chapter of the Chamber is taking a proactive approach by conducting a comprehensive discussion on this recent Supreme Court ruling. This vital judgment will be subjected to an in-depth analysis, led by our esteemed chairperson, Hon'ble ITAT JM Shri Sudhanshu Srivastava – Lucknow bench, and our distinguished speakers, CA Saurav Bhattacharya and Adv Ruchesh Sinha. Together, they will delve into the implications and nuances of this ruling, ensuring that our members gain a thorough understanding of its impact

In a press release on 26.10.2023, CBDT shared data indicating improved taxpayer compliance in direct taxes. The recent surge in individual income tax returns in India, a staggering 90% increase between 2013-14 and 2021-22, seems like a success story of widening the taxpayer base. However, when we dig deeper, a more complex picture emerges. While the number of tax returns has grown significantly, this hasn't resulted in a proportionate increase in tax revenue. A substantial portion of these returns, particularly in the lowest income bracket, may not contribute significantly to government funds due to tax exemptions or incomes falling below the taxable limit. Interestingly, a substantial migration of taxpayers to higher income brackets has occurred. Returns in the Rs 5 lakh to Rs 10 lakh and Rs 10 lakh to Rs 25 lakh brackets have surged remarkably. But here's the catch: despite more people moving into these higher brackets, the top 1% earners' proportional contribution to taxes has slightly decreased. This data underscores the need for a comprehensive analysis of tax policies and their actual impact on revenue collection. While expanding the tax base is a positive step, it's equally crucial to ensure that this expansion leads to substantial revenue growth.

Joining the Chamber's Residential Refresher Courses (RRC) is an invaluable experience. These courses, whether in Direct Tax, Indirect Tax, International Tax, or FEMA, offer exceptional advantages. The Chamber ensures top-notch education with analytical studies, covering contemporary topics of professional interest. Regardless of age, participants find a unique platform to share knowledge, build friendships, and foster brotherhood during these three- or four-day programs. This year's venues are exceptional: the 12th RRC on Indirect

Tax in January 2024 will be at the luxurious ANANTA SPA & RESORT in Jaipur, while the 47th RRC on Direct Tax in February-March 2024 will be hosted at the prestigious TAJ HOTEL & CONVENTION CENTRE in Agra. The topics selected for both RRCs are not only contemporary but also highly relevant. Beyond the education provided at RRCs, there's an opportunity to explore the beautiful cities of Jaipur and Agra.. We urge members to enrol for these RRCs at the earliest. For comprehensive details about both RRCs, including program agendas, topics, rates, and esteemed speakers, kindly visit our Chamber's website. Don't miss out on staying updated with the latest developments and networking with fellow Tax Professionals. Enroll today!

Last month, the International Tax Committee announced the 2nd FEMA RRC at Doubletree by HILTON, Ahmedabad, Gujarat, from December 15th to 17th, 2023. Enrolment for the FEMA RRC reached full capacity quickly, even before the early bird deadline. However, local participants can still join this insightful event on an NRRC basis.

Chamber congratulates the Student Committee for organizing the upcoming "Webinar on Bridging Divides – Embracing the Mediation Act, 2023." This enlightening event will shed light on the transformative Mediation Act 2023, which democratizes mediation as a career and mandates it in certain civil disputes. It's a must-attend for legal professionals, mediators, and those interested in conflict resolution across sectors. Join us on November 7th, 2023, and explore the possibilities this act offers.

I am delighted to announce our latest journal edition, which focuses on the crucial topic of the "Prevention of Money Laundering Act (PMLA) and its Interaction with Other Laws." I want to express my sincere appreciation to our Journal Committee for creating this insightful narrative. This issue offers an in-depth understanding of PMLA and its interplay with other laws, which is vital for maintaining financial transparency. I am confident that our members will find this issue to be a helpful and comprehensive guide. My sincere gratitude goes out to all the contributors and our hardworking committee, who continue to make each issue a triumph in addressing key topics.

Wishing you all a very Happy and Prosperous New Year.

With best wishes,

HARESH KENIA
President

Understanding the Prevention of Money Laundering Act (PMLA) 2002

CA Siddharth Banwat

Overview

This chapter introduces the origin of the concept of 'money laundering' and anti-money laundering measures adopted by United Nations and its members states. These measures are targeted to detect and prevent the process of converting or routing funds originated from illicit/illegal/criminal activities using normal financial channels such that original source of fund is discoloured and made to appear as that to have been generated through legitimate sources. It introduces the concept, steps involved in the process of laundering money which is typically adopted by persons/entities engaged in the process and also discusses forms of deployment of the tainted funds.

It provides an insight on the backdrop of United Nations resolution adopted in its General Assembly in 1998 so that member states and resultant introduction of special legal framework to tackle the menace of money laundering by various member states including but not limited to formulation of law, appointment of designated authority for detection, administration and prosecution of the offences covered under the law. It gives an overview of the legislative history of anti-money laundering laws in India prior to enactment of special law on prevention of money laundering, overall scheme of Prevention of Money Laundering Act, 2002 and rules and regulations framed thereunder.

On 7 March 2023, the government included VDAs under the ambit of the PMLA. The inclusion of VDAs under the Prevention of Money Laundering Act 2002 (PMLA) in India is a significant step. It requires Virtual Asset Service Providers (VASPs), including crypto exchanges, to verify client identities and report suspicious transactions. This move enhances scrutiny and reporting, making it more challenging for money launderers to exploit cryptocurrencies. However, it also places compliance responsibilities on VASPs to uphold anti-money laundering and know-your-customer (KYC) requirements like financial institutions. However, money laundering through cryptocurrencies is a growing concern globally which may be mitigated by effective regulation, international cooperation, and advanced technological tools.

1. Money Laundering – The Origin

1.1. The concept of "money-laundering" is not of a recent origin. It finds its origin as early as 13th Century when oceans and seas were originally used for international trade and pirates would rampantly purge and plunder shipments for valuable commodities and/or assets. Though pirates were pioneers in the practice of laundering, history traces the origin of money laundering in 20th Century when wealthy Chinese merchants would move their profits outside of China, as the government did not support commercial trading. They would then channel money into other enterprises.

1.2. In the US, in the 1920s when alcohol was made illegal (often referred as 'prohibition era') it led to strong black market for alcohol resulting in increased organised crime to channelise profits originated therefrom. Over decades, the scope and form of illegal/illicit activities kept widening and multi dimensionally making money laundering more prominent. The criminalisation of the actual or attempted laundering of proceeds of crime is of recent origin.

1.3. In 1993, a UN Report noted that *"The basic characteristics of the laundering of the proceeds of crime, which to a large extent also mark the operations of organized and transnational crime, are its global nature, the flexibility and adaptability of its operations, the use of the latest technological means and professional assistance, the ingenuity of its operators and the vast resources at their disposal."* The United Nations Office on Drugs and Crime ('UNODC') was established to implement the UN's drug and crime programmes in an integrated manner, addressing the interrelated issues of drug control, crime prevention and international terrorism in the context of sustainable development and human security. Money laundering is one of the key issues delved by UNODC.

2. Money Laundering – The Concept

2.1. Money Laundering is a process by which the origins and ownership of money - generated through or because of criminal activity is concealed. In effect, the money is 'cleaned' or 'laundered' through legitimate means and, consequentially the proceeds lose their original (criminal) identity and is given legitimate identity or source. This process is usually completed several times and commonly this process occurs in respect of the proceeds of illicit activities such as drugs/human trafficking, prostitution, corruption, illegal arms smuggling, terrorism, betting, cyber-crimes, frauds and so on.

2.2. Therefore, Money Laundering is not an independent crime in itself, it depends upon another crime, the proceeds of which is the subject matter of the crime in a money laundering offence. From the legal point of view, the defining and criminalizing factor in money laundering is referred to as 'predicate offences' which is understood as the criminal offences which lead to generation of the proceeds and thus, making laundering consequential.

2.3. Ideally, hiding or disguising the source of certain proceeds will automatically not tantamount to money laundering unless these proceeds were obtained from a criminal activity. Therefore, what exactly amounts to money laundering, which actions and who can be prosecuted - is largely dependent on what constitutes a predicate offence for the purpose of money laundering.

2.4. As Money Laundering is a process that typically follows three stages namely:

1. **Placement** (i.e. moving the funds from direct association with the crime)
2. **Layering** (i.e. disguising the trail to foil pursuit)
3. **Integration** (i.e. making the money available to the criminal from what seem to be legitimate sources)

The process is reflected in the Figure below:

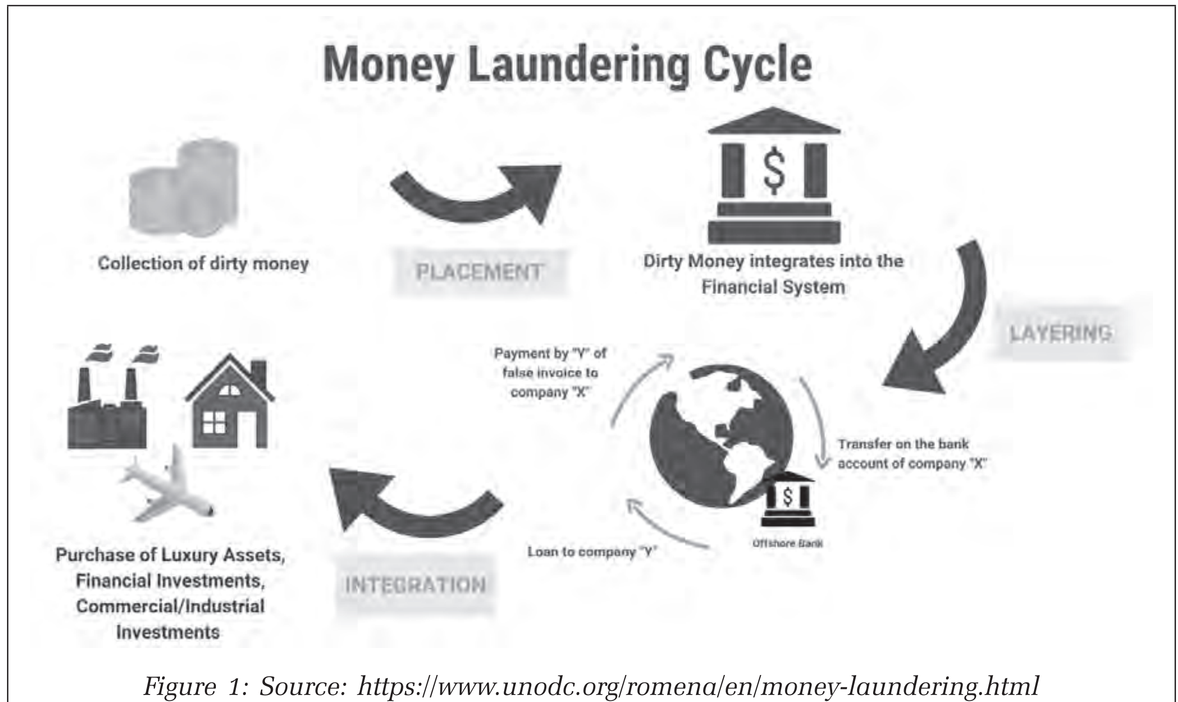

Figure 1: Source: https://www.unodc.org/romena/en/money-laundering.html

2.5. In real world, money laundering may not have all three stages at one time. Some stages could be combined, or several stages repeat several times, or different stages in isolation and at times even at longer time-gaps. In modern world, Money laundering occurs through banks and through financial institutions or intermediaries i.e. securities brokers/intermediaries, leasing companies, insurance companies, collective investment vehicles, offshore entities, trading entities and real estate companies. More often, jurisdictions that do not have taxation and/or lack a developed financial and legal framework for detection/prevention of money laundering are used for this purpose.

2.6. In Indian context, money laundering is generally understood and referred as 'Hawala' transactions. 'Hawala' is an alternate remittance system that facilitated the movement of money, and it derives meaning from an Arabic word meaning - the transfer of money or information between two

persons using a third person. However, money laundering would also cover in its gamut cases involving bribery, corruption, terror financing, bank frauds, corporate frauds, abuse of drugs and narcotic substance etc.

2.7. In view of the gravity and scope of the money laundering, a need was felt worldwide to take legal measures to prevent and detect money laundering.

3. Brief history of the anti-money laundering laws in India

3.1. The major statues that had measures for addressing the issues of money laundering before enactment of specific law on prevention of money laundering were:

a) The Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974 (COFEPOSA)

b) The Smugglers and Foreign Exchange Manipulators Act, 1976 (SAFEMA)

c) The Benami Transactions (Prohibition) Act, 1988

d) The Narcotic Drugs and Psychotropic Substances Act, 1985 (NDPSA)

e) The Foreign Exchange Management Act, 1999 (FEMA)

f) The Prevention of Illicit Traffic in Narcotic Drugs and Psychotropic Substances Act, 1988.

3.2. The Political Declaration adopted by the Special Session of the United Nations General Assembly held on 8th to 10th June 1998 called upon the Member States to adopt national money-laundering legislation and programme. Based on aforesaid declaration and with the intent to implement the resolution adopted at UN meeting, the Prevention of Money-Laundering Bill, 1998 was first introduced in the Lok Sabha on 4 August 1998. It was a focused legislation for preventing money laundering and connected activities, confiscation of proceeds of crime, setting up of agencies and mechanism for coordinating measures for combating money laundering etc. The afore-stated Bill was referred to the Department-related Standing Committee on Finance, which presented its 12th Report on 4th March 1999 to the Lok Sabha.

3.3. After incorporating the recommendations of the Standing Committee, the Government introduced the Prevention of Money-Laundering Bill, 1999 in the Lok Sabha on 29th October 1999. It was considered and passed in the Lok Sabha on 12th February 1999 and the Rajya Sabha on 25th July 2002. The Prevention of Money Laundering Bill, 2002 as passed by both Houses received the assent of the President on 17 January 2003[1]. It finally came into force on 1 July 2005.

3.4. The Prevention of Money-Laundering Act, 2002 (**'PMLA'**) forms the core of the legal framework of anti-Money Laundering (**'AML'**) in India. The Act of 2002 was amended thrice, first in 2005, then in 2009 and then in 2012. The rationale of the amendments and their timelines are summarised as follows:

1. Act No. 15 of 2003 – Notification dated 20.01.2003 [DL-33004/2003/Pausa 30, 1924 (Saka)].

3.4.1. To overcome some of the difficulties that were being faced in its enforcement and increase the coverage of the PMLA 2002 Act and with a view to include payment system(s), the Prevention of Money-Laundering (Amendment) Bill, 2005 was introduced and became Prevention of Money-Laundering (Amendment) Act, 2005 on 21 May 2005.

3.4.2. To further strengthen anti Money Laundering/Countering Financing of Terrorism (AML/CFT) legal framework, the Prevention of Money-Laundering (Amendment) Bill, 2008 was introduced in the Rajya Sabha on 17 October 2008 and was referred to the Standing Committee on Finance. Based on Committee's 80th Report dated 19 December 2008, the Bill was passed by both houses in February 2009 and became Prevention of Money-Laundering (Amendment) Act, 2009 on 6 March 2009.

3.4.3. India became a member of the Financial Action Task Force ('FATF')[2] and the Asia/Pacific Group on Money Laundering[3] ('APG'), which are committed to effective implementation and enforcement of internationally accepted standards. Consequent to the submission of an Action Plan to the FATF to bring anti-money laundering legislation of India at par with the international standards and to obviate any of the deficiencies in the Act, that have been experienced by the implementing agencies, the Prevention of Money-Laundering (Amendment) Bill, 2011 was introduced in the Lok Sabha on 27 December 2011 and after considering recommendation of Standing Committee on Finance, Lok Sabha considered and passed the Bill on 29 November, 2012. The Prevention of Money Laundering (Amendment) Act, 2012[4] was notified on 3 January 2013 and the new law came into effect from 15 February 2016.

3.4.4. The Prevention of Money-Laundering (Amendment) Act, 2012 brought in effect following changes to the provisions of PMLA:

i. Introduction of the concept of 'corresponding law' to link the provisions of Indian law with the laws of foreign countries and provides for transfer of the proceeds of the foreign predicate offence in any manner in India;

ii. Introduction of the concept of 'reporting entity' to include therein a banking company, financial institution, intermediary or a person carrying on a designated business or profession;

iii. Expanding the definition of offence of money-laundering

2. The Financial Action Task Force (FATF) is an inter-governmental body established in 1989 by the Ministers of its Member jurisdictions.

3. The Asia/Pacific Group on Money Laundering (APG) is an autonomous and collaborative international organisation founded in 1997.

4. Act No. 2 of 2013 notified on 3rd January 2013.

to include therein the activities like concealment, acquisition, possession and use of proceeds of crime as criminal activities;

iv. Removal of capping of amount of fine (INR 5 lakhs) to be levied on anyone who committed a crime of money laundering;

v. Introducing provision for attachment and confiscation of the proceeds of crime, for a period not exceeding 180 days from the date of order;

vi. Confer power upon the ED to call from any reporting entities for records of transactions or any additional information that may be required for the purposes of investigation and also to make inquiries of non-compliance by the reporting entities;

vii. It provides that in any proceedings relating to proceeds of crime under the PMLA, unless the contrary is proved, it shall be presumed that such proceeds of crime is involved in money-laundering; and

viii. It provides for the process of transfer of the cases of Scheduled offences pending in a court, which had taken cognizance of the offence, to the Special Court for trial of offence of money-laundering and also provides that the Special Court shall, on receipt of such case proceed to deal with it from the stage at which it is committed.

3.5. It is pertinent to note that, the changes to the provisions of PMLA have also been brought through various Finance Acts and/or subsequent notifications issued in accordance with the provisions of PMLA by the Government of India.

3.6. In addition to the provisions of PMLA, other certain enactments made by Government of India or changes made to the existing enactments as a measure of strengthening AML includes the following:

3.6.1. The enactment of the Fugitive Economic Offenders Act, 2018, whereby all assets of an individual (as against the assets from the proceeds of crime), against whom an arrest warrant has been issued for committal of certain offences of which the value exceeds INR 1 billion, are confiscated.

3.6.2. The enactment of the Companies (Significant Beneficial Owners) Rules, 2018 by the Companies (Amendment) Act, 2017 as per provisions of Companies Act, 2013. These rules have been made to adhere with the recommendations made by the FATF to its member countries, to make suitable changes to the national legislation to identify individuals who ultimately have significant beneficial shareholding in the reporting corporate entities.

3.6.3. The enactment of The Prevention of Corruption (Amendment) Act, 2018 adding new offences to the list of Scheduled Offences under the PMLA.

3.6.4. The Jan Vishwas (Amendment of Provisions) Act, 2023 decriminalised and rationalised the offences which were earlier covered under the scope of PMLA as Scheduled Offence i.e. Offences under the Environment Protection Act, 1986 and Offences under the Air Prevention and Control of Pollution Act, 1981.

4. Broad overview of PMLA

4.1. PMLA, and the rules issued thereunder, provides the key legislative framework for the prevention, identification and prosecution of offences covered under the scope of money laundering.

4.2. The broad break-up of various sections of PMLA is as under:

a. Chapter II - Offence of Money Laundering & punishment [*Section 3 and 4*]

b. Chapter III - Process and procedure regarding attachment, adjudication and confiscation [*Section 5, Section 6, Section 7, Section 9, Section 10 and Section 11*];

c. Chapter IV - The Prevention of Money-laundering (Manner of Receiving the Records Authenticated Outside India) Rules 2005 and The Prevention of Money-laundering (Maintenance of Records) Rules, 2005 [*Section 12, Section 12A, Section 12AA, Section 13, Section 14, Section 15*];

d. Chapter V - Provisions regarding Survey, Search and Seizure and Retention of Records – [*Section 16, Section 17, Section 18, Section 20, Section 21, Section 22*];

e. Chapter VIII - Provisions regarding statutory obligation on part of authorities (including other authorities) to assist the Enforcement Directorate in its preventive/regulatory functions [*Section 48, Section 49, Section 52, Section 53, Section 54, Section 63, Section 69, Section 72A*]; and

f. Chapter IX - Provisions regarding International Cooperation and Exchange of Information in order to provide the database for monitoring cross border suspicious transactions [*Section 55, Section 56, Section 57, Section 58, Section 58B, Section 59, Section 60, Section 61*].

g. Chapter VI & VII - Appellate authority and Special Courts [*Section 25, Section 26, Sections 35 to 47*]

h. Chapter X - Miscellaneous [*Sections 62 to 75*]

4.3. In 2019, Finance Act, 2019 inserted an explanation in Section 3 of the PMLA to clarify that money laundering is not a one-time, instantaneous offence that ceases with the concealment, possession, acquisition, use or projection of the proceeds of crime as untainted property or through claiming it as untainted. In other words, a person shall be liable to be prosecuted for the offence of money laundering for as long as the said person is enjoying the "proceeds of crime" – thus, making the offence of money laundering a continuous offence.

4.4. Parts A–C of the PMLA schedule lays down the list of Scheduled Offence - commission of which would attract the provisions of the PMLA. The list of Scheduled Offences is as under:

4.4.1. **Part A enlists offences under various legislations,** including the following:

a) Indian Penal Code, 1860 (‘**IPC**’);

b) Narcotics Drugs and Psychotropic Substances Act, 1985 (‘**NDPSA**’);

c) Explosive Substances Act, 1908 & Explosives Act, 1884;

d) Unlawful Activities (Prevention) Act, 1967 (‘**UAPA**’);

e) Prevention of Corruption Act, 1988 (“**PCA**”);

f) SEBI Act, 1992;

g) Customs Act, 1962;

h) Foreigners Act, 1946;

i) Arms Act, 1959;

j) Antiquities and Art Treasures Act, 1972;

k) Copyright Act, 1957

l) Trademark Act, 1999;

m) Information Technology Act, 2000; Companies Act, 2013 (“**CA 2013**”);

n) Wild Life (Protection) Act, 1972;

o) Immoral Traffic (Prevention) Act, 1956;

p) Bonded Labour System (Abolition) Act, 1976 & Child Labour (Prohibition and Regulation) Act, 1986;

q) Transplantation of Human Organs Act, 1994; Juvenile Justice (Care and Protection of Children) Act, 2000;

r) Emigration Act, 1983;

s) Passports Act, 1967;

t) Foreigners Act, 1946;

u) Biological Diversity Act, 2002;

v) Protection of Plant Varieties and Farmers’ Rights Act, 2001;

w) Water (Prevention and Control of Pollution) Act, 1974; and

x) Suppression of Unlawful Acts against Safety of Maritime Navigation and Fixed Platforms on Continental Shelf Act, 2002.

4.4.2. **Part B offence (offence under Section 132 of the Customs Act, 1962)** - where the total value involved in such offence is INR 1 crore or more.

4.4.3. **Part C deals with transborder crimes** and reflects the commitment to tackle money laundering across international boundaries. On similar lines, a wilful attempt to evade any tax, penalty or interest as referred to in Section 51 of the Black Money (Undisclosed Foreign Income and Assets) and Imposition of Tax Act, 2015 (“**Black Money Act**”) qualifies as a Scheduled Offence.

4.5. The provisions of PMLA empowers the relevant authorities to attach and confiscate assets of equivalent value in India or abroad where the asset constituting the proceeds of crime is taken and held abroad and cannot be forfeited.

4.6. The provisions of PMLA confers extraterritorial jurisdiction to the authorities constituted thereunder in cases having cross-border implications. Meaning thereby, authorities under PMLA shall have jurisdiction where any proceeds of crime arising out of a Scheduled Offence committed in India have been remitted or attempted to be remitted outside India; or where any conduct by a person at a place outside India which constitutes an offence at that place and which would have qualified as a Scheduled Offence had it been committed in India, and where any proceeds arising out of such conduct thereafter may have been remitted to India.

4.7. The PMLA does not specifically provide for a limitation period with respect to the offences covered by it. Meaning thereby, the offence under Sections 3 and 4 of the PMLA would continue as-long-as the accused continues to hold the proceeds of crime, and/or as-long-as such person is involved in the activity connected with the proceeds of crime projecting the same as untainted property.

4.8. The primary legal authority responsible for investigating and prosecuting money laundering offences under the PMLA at the national level is the Directorate of Enforcement (**"ED"**), under the Department of Revenue, Ministry of Finance. The ED is empowered to initiate proceedings for attachment of property and launch proceedings in the designated Special Court for the offence of money laundering. The Financial Intelligence Unit – India (**"FIU"**) under the Department of Revenue, Ministry of Finance is the central national agency responsible for receiving, processing, analysing, and disseminating information relating to suspect financial transactions to enforcement agencies and foreign FIUs.

4.8.1. The FIU is an independent body accountable to the Economic Intelligence Council, headed by the Union Finance Minister of India. The FIU's primary functions are to receive cash/suspicious transaction reports (**'STRs'**), analyse them and, as appropriate, disseminate valuable financial information to intelligence/enforcement agencies and regulatory authorities. FIU's other functions include, inter alia:

a. **Collection of Information:** Act as the central reception point for receiving cash transaction reports, NPO transaction reports, cross-border wire transfer reports, reports on the purchase or sale of immovable property and STRs from various Reporting Entities.

b. **Analysis of Information:** Analyse information received to uncover transaction patterns suggesting potential money laundering and related crimes.

c. **Sharing of Information:** Share information with national intelligence/law enforcement agencies, national regulatory authorities and foreign FIUs.

d. **Act as Central Repository:** Establish and maintain a national database of reports received from Reporting Entities.

e. **Coordination**: Coordinate and strengthen the collection

and sharing of financial intelligence through an effective national, regional, and global network to combat money laundering and related crimes.

f. **Research and Analysis:** Monitor and identify strategic key areas on money laundering trends, typologies, and development.

4.8.2. As explained in para 4.7 above, the PMLA does not specifically provide any limitation period for taking action in respect of a Scheduled Offence and on same lines, PMLA does not provide any limitation period in which the FIU must bring an enforcement action for a non-compliance.

4.8.3. Apart from the ED and FIU, other regulators are also empowered to enforce AML guidelines which includes:

i. The **Securities and Exchange Board of India ('SEBI')**: SEBI has issued detailed know your customer ("KYC") norms and requirements for financial intermediaries and investors in the securities market.

ii. The **Reserve Bank of India ('RBI')**: RBI has prescribed KYC and AML guidelines for banks and other financial institutions regulated by it.

iii. **Insurance Regulatory and Development Authority of India ('IRDAI')**: IRDAI has prescribed certain AML guidelines on combating the financing of terrorism (**"CFT"**), applicable to certain categories of insurers. It has also released master guidelines consolidating and updating the guidelines on AML/CFT, covering provisions of the PMLA and PML Rules, and other applicable norms.

iv. **Economic Offences Wing (EOW)**, Central Bureau **of Investigation ('CBI')**: CBI is a specialised police establishment established for the investigation of specific types of crimes such as corruption by public servants, serious economic offences, fraud and crime with inter-state/all-India ramifications.

v. **Income Tax Department:** Income Tax Department is empowered to take steps to prevent the offence of money laundering by imposing tax on undisclosed foreign income and assets of Indian residents and also administer prohibition of Benami Property transactions.

4.8.4. On November 22, 2022, the Ministry of Finance issued a Notification amending the PMLA, allowing the ED to share information about economic offenders with 15 more agencies, in addition to the 10 government agencies (which include the CBI, RBI, SEBI, IRDAI, Intelligence Bureau, and FIU) that were previously permitted. These additional bodies include:

1. National Investigation Agency.

2. Serious Fraud Investigation Office.
3. State Police Department.
4. Regulator, as defined under clause (fa) of rule 2 of the PML Rules.
5. Directorate General of Foreign Trade.
6. Ministry of External Affairs.
7. Competition Commission of India.
8. Special Investigation Team constituted, vide Notification of the Government of India, Ministry of Finance, Department of Revenue.
9. National Intelligence Grid.
10. Central Vigilance Commission.
11. Defence Intelligence Agency.
12. National Technical Research Organisation.
13. Military Intelligence.
14. Inquiry authority under Central Civil Services Rules.
15. Wildlife Crime Control Bureau.

4.9. The PMLA, along with the PML Rules framed thereunder, prescribes certain compliance and reporting requirements of reporting entities that include, inter alia, banking companies and financial institutions registered with Reporting Entities such as the RBI (viz. non-banking finance companies (**'NBFCs'**), payment system operators, etc.), intermediaries (viz. entities registered with securities market regulators, pension fund regulators, etc.) or persons carrying out a designated business or profession as may be prescribed (viz. a person carrying out activities for playing games of chance such as casinos, dealers in precious metals, precious stones and other high-value goods, and persons engaged in the safekeeping and administration of cash and liquid securities on behalf of other persons).

4.10. The AML compliance requirements includes customer identification, customer due diligence (CDD), customer acceptance, and the tracking and reporting of some prescribed transactions that may qualify as proceeds of crime under the PMLA. In this regard, PML Rules empower financial regulators such as the RBI, SEBI and IRDAI to issue guidelines and directions in connection with the compliance that the respective Reporting Entities must adhere to. In line with the mandate, the SEBI Master Circular on Guidelines on Anti-Money Laundering (AML) Standards and Combating the Financing of Terrorism (CFT) (**"SEBI Master Circular"**) applies to all intermediaries registered with the SEBI, which includes stockbrokers, investment advisers, merchant bankers, depository participants, etc. The RBI Master Directions and the SEBI Master Circular lay down specific enhanced procedures for the respective entities supervised by them to undertake CDD in relation to their clients, as well as the procedures and manner of maintaining records of certain prescribed transactions.

4.11. The Ministry of Finance through a notification dated March 7 2023 has extended the compliance requirements, such as verification of identities, maintenance of records and enhanced due diligence as provided for in the

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PMLA to the various service providers of virtual digital assets. Through the same notification, it also issued the Prevention of Money Laundering (Maintenance of Records) Amendment Rules, 2023, to make the existing rules and regulations on client due diligence and recordkeeping more stringent. The amendments also require implementation of group-wide policies for compliance with provisions of Chapter IV of the PMLA, widening the definition of Non-Profit Organisations ('NPOs') and revising thresholds for ascertainment of beneficial ownership (from 25% to 10%), which would mean more individuals will come under the purview of the regulator(s).

4.12. Another notification dated May 3 2023 was issued bringing the practicing professionals in the field of Chartered Accountancy (CA), Company Secretaries (CS) and Cost and Works Accountants (CWA) under the ambit of the PMLA if any financial transactions are executed by them on behalf of clients. However, this inclusion has been restricted to include professionals when they carry out limited activities prescribed in the notification.

5. Important terms forming core of the PMLA

5.1. Section 3 of PMLA lays down scope of offence of money laundering and provides that whosoever directly or indirectly attempts to indulge or knowingly assists or knowingly is a party or is actually involved in any process or activity connected with the proceeds of crime including its concealment, possession, acquisition, or use and projecting or claiming it as untainted property shall be guilty of offence of money laundering. Accordingly, the primary definition which defines the scope of applicability of provision of PMLA would be of the term "proceeds of crime".

5.2. The term **Proceeds of crim**e[5] is defined to mean any property derived or obtained by any person as a result of criminal activity relating to a scheduled offence (whether directly or indirectly) or the value of any such property. In case where such property is taken or held outside the country, then the property equivalent in value held within the country or abroad is regarded as proceeds of crime. In simple words, criminal activity relating to a scheduled offence consequentially resulting in any property or the value of such property or equivalent value of any other property held in the country or abroad (in case where property derived from criminal activity is held outside country) would be termed as proceeds of crime.

5.3. The scheduled offence leads to generation of proceeds of crime would mean offences specified in Part A-C of the Schedule of PMLA and as elaborated in para 4.4 above. It is pertinent to note that it is elementary that scope of PMLA deals only with those specified scheduled offences as listed in Part A-C of the Schedule.

5. Section 2(iv) of PMLA.

5.4. The term **property**[6] under PMLA has been widely defined to mean any property or assets of every description, whether corporeal or incorporeal, movable or immovable, tangible or intangible and includes deeds and instruments evidencing title to, or interest in, such property or assets, wherever located.

5.5. On broader level, PMLA is a hybrid statute which has regulatory, preventive and penal aspects to it considering the peculiar nature of money laundering – which requires prevention, regulation and prosecution. The above definitions lay down the foundation of PMLA in India providing its scope and coverage. From regulatory perspective, PMLA lays down various reporting obligations on persons regulated by other regulators to identify beneficial owners and report suspicious transactions falling within the ambit of PMLA for review and action by designated authorities. Accordingly, few terms which form core of PMLA compliance as discussed below.

5.6. The term **beneficial owner**[7] means an individual who ultimately owns or controls a client of a reporting entity or the person on whose behalf a transaction is being conducted and includes a person who exercises ultimate effective control over a juridical person.

5.7. The term **client**[8] as referred in definition of beneficial owner would mean a person who is engaged in financial transactions or activity with a reporting entity and includes a person on whose behalf the person who engaged in the transaction or activity is acting.

5.8. **Reporting entity**[9] means banking company, financial institutions, intermediary or a person carrying on a designated business or profession[10]. The scope of designated business or profession covers enterprise carrying on gaming of chance activities (including casinos), real estate agent[11], dealer in precious metals, stones and high value goods, person engaged in safe keeping of cash and liquid securities and any other person which government may notify.

In addition to above several terms used in defining these terms have been defined in section 2 of PMLA.

6. Section 2(v) of PMLA.
7. Section 2(fa) of PMLA.
8. Section 2(ha) of PMLA.
9. Section 2(wa) of PMLA.
10. Section 2(sa) of PMLA.
11. Section 2(va) of PMLA.

Understanding the Prevention of Money Laundering Act (PMLA) 2002

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Overview

Money laundering is a process involving the transformation of unlawfully obtained funds into legitimate assets through complex financial transactions, concealing their illicit origins. It typically occurs in stages: placement, layering, and integration. Money laundering is often linked to criminal activities such as drug trafficking, fraud, corruption, and tax evasion, with the aim of making ill-gotten gains appear legal to avoid detection by authorities.

The Prevention of Money Laundering Act (PMLA) is India's primary legislation against money laundering and terrorism financing. PMLA came into force on July 1, 2005, and its retroactive application is a subject of debate.

The retroactive application of PMLA hinges on whether it can be used to prosecute offenses committed before its enactment. Article 20(1) of the Indian Constitution, protecting against double jeopardy, is central to this debate. Some argue that PMLA can be applied retrospectively, focusing on the money laundering act itself, while others contend that it contradicts established legal norms.

Explanation (ii) of PMLA emphasizes the ongoing nature of money laundering, allowing for prosecution even after the Act's enactment. Various high courts have provided differing interpretations of retroactivity, with some courts supporting its application and others rejecting it.

The interaction of PMLA with income tax and allied laws, as well as its comparison with similar laws in other jurisdictions, adds complexity to the issue. Ultimately, the retroactive application of PMLA remains a contentious legal matter in India, with ongoing judicial proceedings shaping its interpretation and implementation.

1. Object and Purpose

Money-laundering poses a serious threat not only to the financial systems of countries, but also to their integrity and sovereignty. To obviate such threats, international community had taken some initiatives. It had been felt that to prevent money-laundering and connected activities, a comprehensive legislation was needed. To achieve this objective, the Prevention of Money-laundering Bill, 1998 was introduced in the Parliament. The Bill was referred to the Standing Committee on Finance, which presented its report on 4th March, 1999 to the Lok Sabha.

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The Central Government broadly accepted the recommendation of the Standing Committee and incorporated them in the said Bill along with some other desired changes.

Statement of objects and reasons

It is being realised, world over, that money-laundering poses a serious threat not only to the financial systems of countries, but also to their integrity and sovereignty. Some of the initiatives taken by the international community to obviate such threat are outlined below:—

(a) the United Nations Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances, to which India is a party, calls for prevention of laundering of proceeds of drug crimes and other connected activities and confiscation of proceeds derived from such offence.

(b) the Basle Statement of Principles, enunciated in 1989, outlined basic policies and procedures that banks should follow in order to assist the law enforcement agencies in tackling the problem of money- laundering.

(c) the Financial Action Task Force established at the summit of seven major industrial nations, held in Paris from 14th to 16th July, 1989, to examine the problem of money-laundering has made forty recommendations, which provide the foundation material for comprehensive legislation to combat the problem of money-laundering. The recommendations were classified under various heads. Some of the important heads are—

(i) declaration of laundering of monies carried through serious crimes a criminal offence;

(ii) to work out modalities of disclosure by financial institutions regarding reportable transactions;

(iii) confiscation of the proceeds of crime;

(iv) declaring money-laundering to be an extraditable offence; and

(v) promoting international co-operation in investigation of money- laundering.

(d) the Political Declaration and Global Programme of Action adopted by United Nations General Assembly by its Resolution No. S-17/2 of 23rd February, 1990, inter alia, calls upon the member States to develop mechanism to prevent financial institutions from being used for laundering of drug related money and enactment of legislation to prevent such laundering.

(e) the United Nations in the Special Session on countering World Drug Problem Together concluded on the 8th to the 10th June, 1998 has made another declaration regarding the need to combat money- laundering. India is a signatory to this declaration.

In view of an urgent need for the enactment or a comprehensive legislation inter alia for preventing money-laundering and connected activities confiscation of proceeds of crime, setting up of agencies and mechanisms for co-ordinating measures for combating money-laundering, etc., the Prevention of Money-Laundering Bill, 1998 was introduced in the Lok Sabha on the 4th August, 1998. The Bill was referred to the Standing Committee on Finance, which presented its report on the 4th March, 1999 to the Lok Sabha. The recommendations of the Standing Committee accepted by the Central Government are that (a) the expressions "banking company"

and "person" may be defined; (b) in Part I of the Schedule under Indian Penal Code the word offence under section 477A relating to falsification of accounts should be omitted; (c) 'knowingly' be inserted in clause 3(b) relating to the definition of money- laundering; (d) the banking companies financial institutions and intermediaries should be required to furnish information of transactions to the Director instead of Commissioner of Income-tax (e) the banking companies should also be brought within the ambit of clause II relating to obligations of financial institutions and intermediaries; (f) a definite time-limit of 24 hours should be provided for producing a person about to be searched or arrested person before the Gazetted Officer or Magistrate; (g) the words "unless otherwise proved to the satisfaction of the authority concerned" may be inserted in clause 22 relating to presumption on inter-connected transactions; (h) vacancy in the office of the Chairperson of an Appellate Tribunal, by reason of his death, resignation or otherwise, the senior-most member shall act as the Chairperson till the date on which a new Chairperson appointed in accordance with the provisions of this Act to fill the vacancy, enters upon his office; (i) the appellant before the Appellate Tribunal may be authorised to engage any authorised representative as defined under section 288 of the Income-tax Act, 1961, (j) the punishment for vexatious search and for false information may be enhanced from three months imprisonment to two years imprisonment, or fine of rupees ten thousand to fine of rupees fifty thousand or both; (k) the word 'good faith' may be incorporated in the clause relating to Bar of legal proceedings. The Central Government have broadly accepted the above recommendations and made provisions of the said recommendations in the Bill.

In addition to above recommendations of the standing committee the Central Government proposed to (a) relax the conditions prescribed for grant of bail so that the Court may grant bail to a person who is below sixteen years of age, or woman, or sick or infirm, (b) levy of fine for default of non-compliance of the issue of summons, etc. (c) make provisions for having reciprocal arrangement for assistance in certain matters and procedure for attachment and confiscation of property so as to facilitate the transfer of funds involved in money-laundering kept outside the country and extradition of the accused persons from abroad.

2. Territorial application

Sub-section (2) of section 1 of the Act provides that the said Act extends to the whole of India. Unlike CrPC, the authorities under PMLA are not territorially restricted. The territorial application is widened by Part C of the Schedule which extends the scope of the Act to 'an offence which is the offence of cross border implications'.

The expression 'offence of cross border implications' is defined in section 2(ra) to mean-

(i) any conduct by a person at a place outside India which constitutes an offence at that place and which would have constituted an offence specified in Part A, Part B or Part C of the Schedule, had it been committed in India and if such person transfers in any manner the proceeds of such conduct or part thereof to India; or

(ii) any offence specified in Part A, Part B or Part C of the Schedule which has been committed in India and the proceeds of crime, or part thereof have been transferred to a place outside India or any attempt has been made to transfer the proceeds of crime, or part thereof from India to a place outside India.

The aforesaid definition covers two situations. Firstly, an offence which is committed outside India and proceeds therefrom are brought into India and, secondly, an offence which is committed in India and the proceeds therefrom have been transferred or attempted to have been transferred outside India. Therefore, the extra-territorial application of the statute will be triggered if either of the two events are triggered outside India, i.e., the scheduled offence is committed outside India or such an offence having been committed in India, the proceeds therefrom are transferred or attempted to be transferred outside India.

3. Effective date with issues on retrospective/retroactive application

A prevalent argument suggests that if an act of money laundering occurred before July 1, 2005, it cannot be encompassed by the scope of the PMLA due to constitutional restrictions outlined in Article 20(1)[1] of the Indian Constitution.

While assessing the challenge based on Article 20(1), it also needs to be considered that the law in question deals with the prosecution of money laundering activities. It doesn't establish a distinct penalty for a crime already outlined or sanctioned under the Penal Code. The Act doesn't punish the underlying offense itself. Instead, that offense serves as the foundation for bringing charges of money laundering. Clearly, the crime of money laundering hinges on the commission of a predicate offense, which, in turn, could have led to the acquisition of financial gains.

Proceeds of crime cannot exist if no criminal offense, listed as a scheduled offense under the Act, has been committed. Without the commission of a scheduled offense, the concept of laundering proceeds of crime would not be applicable in any way.

Explanation (ii) to Section 3 elucidates that money laundering is an ongoing activity, persisting as long as the individual is directly or indirectly involved in "enjoying" the proceeds of crime through actions like concealing, possessing, acquiring, or using them, or presenting them as legitimate assets. The term "enjoying" is deliberately chosen to emphasize its application in the present and continuous sense. Therefore, based on a careful interpretation of Explanation (ii), it's apparent that the actions subject to prosecution under the Act are primarily focused on the act of laundering criminally obtained gains and profits. These activities and processes that fit the definition of money laundering can occur or be engaged in even after the Act has been enacted.

In ***Samsuddin vs. Union of India***[2], the Hon'ble Kerala High Court rejected the challenge to the retroactive application of provisions of PMLA and held as follows "The time of commission of the scheduled offences is therefore not relevant in the context of the prosecution under the Act. What is relevant in the context of the prosecution is the time of commission of the act of money laundering."

In ***Ajay Kumar Gupta vs. Adjudicating Authority,***[3] the Hon'ble Madras High Court held that if the offence was committed prior to

1. "20. Protection in respect of conviction for offences
   (1) No person shall be convicted of any offence except for violation of the law in force at the time of the commission of the act charged as an offence, nor be subjected to a penalty greater than that which might have been inflicted under the law in force at the time of the commission of the offence."
2. 2016 SCC OnLine Ker 41249.
3. 2017 SCC OnLine Mad 37651.

1 July 2005, then the provisions of PMLA are not applicable since it would amount to giving retrospective effect to the provisions of a penal statute which is directly contrary to Article 20 of the Constitution of India[4].

In ***Dyani Antony Paul vs. Union of India,***[5] the Hon'ble Karnataka High Court held that since it is seen that money laundering is a continuing offence and as such question of it being made retrospective effect does not arise.

In ***Prakash Industries Ltd. vs. Directorate of Enforcement***[6], the Hon'ble Delhi High Court reiterated the well settled principle relating to the retroactive application of penal provisions that merely because a requisite or facet for initiation of action pertains to a period prior to the enforcement of the statute, that would not be sufficient to characterize the statute as being retrospective[7].

in ***Hari Shankar Gurjar vs. Directorate of Enforcement***[8], the Hon'ble Madhya Pradesh High Court upheld the order passed by the trial court which held that offence of money laundering was committed even through the main offence was committed prior to it being included in the list of scheduled offences under the PMLA.

Merely because the predicate offense, even though it forms the originating trigger for an offense of money laundering, may have been committed prior to the commencement of the Act, a person who launders proceeds of crime after its enforcement would still be liable to be tried for that offense[9].

Finally, in ***Vijay Madanlal Choudhary (supra),*** the Hon'ble Supreme Court held that for constituting an offence of money laundering under PMLA, there must be a 'preceding criminal activity/offence'. If proceeds of crime are generated as a result of such an offence, then PMLA would be attracted notwithstanding the fact that the offence may have been committed prior to its introduction in the Schedule of PMLA.

4. Scope and Charge

PMLA mainly contains provisions relating to the offence of money laundering. The term money laundering is defined in Section 3 of the Act to mean as under-

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

As mentioned here in supra, the scope of Section 3 has been widened by the Explanation introduced in 2019, and which has been held to be clarificatory by the Hon'ble Supreme Court.

The Supreme Court has also clarified that all properties recovered or attached by the investigating agency in connection with the criminal activity relating to a scheduled offence under the general law cannot be regarded as proceeds of crime. For a property

4. ibid para 19.
5. 2020 SCC OnLine Kar 4995
6. 2022 SCC OnLine Del 2087.
7. paragraph 117 of Prakash Industries
8. 2023 SCC OnLine MP 816.
9. paragraph 63 of Prakash Industries.

to be characterised as proceeds of crime, it must be derived or obtained directly or indirectly, "as a result of" criminal activity relating to a scheduled offence. The Court stated that "every crime property need not be termed as proceeds of crime but the converse may be true". The Court further held that the authorities under the Act cannot resort to action against any person for money-laundering on an assumption that the property recovered by them must be proceeds of crime and that a scheduled offence has been committed, unless the same is registered with the jurisdictional police or pending inquiry by way of complaint before the competent forum. For, the expression "derived or obtained" is indicative of criminal activity relating to a scheduled offence already accomplished. Similarly, in the event the person named in the criminal activity relating to a scheduled offence is finally absolved by a Court of competent jurisdiction owing to an order of discharge, acquittal or because of quashing of the criminal case (scheduled offence) against him/her, there can be no action for money-laundering against such a person or person claiming through him in relation to the property linked to the stated scheduled offence.

Element of mens rea

The use of the word "knowingly" in section 3 of the Act signifies that the element of mens rea must be present in the offence. Normally, in criminal cases the burden of proving the offense lies on the prosecution, however, in PMLA, in view of the language of section 24, the burden of proving that the proceeds of crime are not involved in money laundering rests on the person charged with the offence.

5. International Mandate and practice in other jurisdictions

United States of America

The United States has a robust legal framework to combat money laundering and terrorist financing, and enforcement is a top priority for law enforcement agencies. Financial institutions, businesses, and individuals are subject to rigorous AML and ATF regulations to prevent and report suspicious financial activities. In the United States, the primary law governing money laundering is the "Money Laundering Control Act" (MLCA) and various other laws and regulations at both the federal and state levels. The MLCA is a federal law that criminalizes money laundering activities. It was enacted as part of the Anti-Drug Abuse Act of 1986.

It defines money laundering as engaging in financial transactions involving proceeds of unlawful activity with the intent to promote the illegal activity, conceal its origins, or evade taxes. The key federal law related to money laundering is the Bank Secrecy Act (BSA). The BSA is a comprehensive federal law that mandates financial institutions to maintain certain records and file reports that have anti-money laundering (AML) and anti-terrorism financing (ATF) purposes.

The BSA includes provisions for Currency Transaction Reports (CTRs) and Suspicious Activity Reports (SARs), which financial institutions must file to report large cash transactions and suspicious activities. The U.S. Department of the Treasury's Financial Crimes Enforcement Network (FinCEN) issues regulations and guidance to implement the BSA and enforce AML/ATF measures. These regulations cover various industries, including banks, casinos, money services businesses, and dealers in precious metals and stones.

The United Kingdom

The United Kingdom has comprehensive money laundering laws and regulations designed to combat money laundering and terrorist financing. The key legislation governing money laundering in the UK includes:

Proceeds of Crime Act 2002 (POCA): The Proceeds of Crime Act is the primary piece of legislation in the UK related to money laundering. It establishes various offenses related to money laundering, including acquiring, using, or possessing the proceeds of criminal conduct. POCA also includes provisions for civil recovery orders, which allow authorities to seize assets that are believed to be the proceeds of crime.

The Money Laundering, Terrorist Financing, and Transfer of Funds (Information on the Payer) Regulations 2017 (MLRs) are the main set of regulations in the UK implementing the European Union's Fourth Money Laundering Directive. The MLRs set out requirements for anti-money laundering (AML) and counter-terrorist financing (CTF) controls, including customer due diligence (CDD), reporting of suspicious activities, and record-keeping. The regulations apply to various sectors, including financial institutions, estate agents, lawyers, and accountants.

Criminal Finances Act 2017: The Criminal Finances Act introduced several measures to enhance the UK's ability to combat money laundering, including the creation of new corporate offenses related to facilitating tax evasion. It also introduced the concept of "unexplained wealth orders" (UWOs), which allow authorities to require individuals to explain the source of their wealth.

Sanctions and Anti-Money Laundering Act 2018: This legislation enables the UK to impose sanctions independently of the European Union and enhances the UK's ability to target money laundering and terrorist financing activities.

National Crime Agency (NCA): The National Crime Agency is the UK's primary agency responsible for tackling serious and organized crime, including money laundering. It has powers to investigate and take action against money laundering and related criminal activities.

France

Money laundering laws in France are governed by a combination of domestic legislation and international agreements aimed at preventing and combating money laundering and the financing of terrorism. Here is an overview of the key aspects of money laundering laws in France:

French Penal Code: Money laundering is a criminal offense in France, as defined in the French Penal Code (Code pénal). Money laundering involves knowingly participating in financial transactions that aim to conceal or legitimize the proceeds of criminal activities. Penalties for money laundering convictions in France can include significant fines and imprisonment.

Anti-Money Laundering (AML) Legislation: France has established AML regulations in compliance with European Union directives. These regulations apply to various entities, including financial institutions (banks, insurance companies, etc.), designated non-financial businesses and professions (DNFBPs), such as lawyers and accountants, and entities involved in real estate transactions. AML regulations require these entities to implement AML programs, conduct customer due diligence (CDD), and report suspicious transactions to the relevant authorities.

Tracfin: Tracfin is the French Financial Intelligence Unit (FIU), responsible for receiving, analyzing, and disseminating information regarding suspicious financial

transactions. It plays a crucial role in coordinating efforts to combat money laundering and terrorist financing in France.

Supervisory Authorities: Various supervisory authorities oversee AML compliance in the financial sector. For example, the French Prudential Supervision and Resolution Authority (ACPR) supervises banks, insurance companies, and other financial institutions. The French Market Authority (AMF) oversees AML compliance in the securities and investment sector.

International Cooperation: France actively participates in international organizations and agreements aimed at combating money laundering and terrorist financing. This includes membership in the Financial Action Task Force (FATF) and adherence to its recommendations.

Sanctions and Enforcement: French authorities have the power to impose sanctions on entities and individuals found to be in violation of AML regulations. Law enforcement agencies, including the French police and judiciary, investigate and prosecute money laundering cases.

Asset Forfeiture:French law provides for asset forfeiture in cases involving the proceeds of crime, including money laundering. Illegally acquired assets can be seized and confiscated.

Whistleblower Protections: France has introduced protections for whistleblowers who report money laundering or other financial crimes. These protections are designed to encourage individuals to come forward with information about suspected illegal activities.

6. Impact on Income Tax, GST, ED, RBI, Data Privacy etc.

Income tax

Both PMLA and the Income-tax Act share a common objective of identifying and curbing financial crimes, including tax evasion, undisclosed income, and money laundering. Authorities under both acts may coordinate their efforts to streamline investigations and ensure that both financial crimes and tax-related violations are addressed comprehensively. Under PMLA, assets acquired through money laundering can be seized and confiscated. If these assets are subject to tax evasion or undisclosed income, the Income Tax Department may also pursue actions against them. Evidence collected during income tax investigations may be shared with PMLA authorities if it relates to money laundering activities.

There are various provisions under the Act which require a person to report particulars in respect of his income and other assets. Equally, there are provisions which seek to assess the income which was not reported or which escaped assessment. Section 139 requires the taxpayer to furnish his return of income with the prescribed particulars. The fourth proviso to sub-section (1) thereof requires specified assesses to also disclose if they hold any asset (including any financial interest in any entity) located outside India or hold signing authority in any account located outside India.

The Income Tax Act also contains various provisions for detecting undisclosed income and assets. Section 131 gives the tax authorities the power regarding discovery, production of evidence etc,. Section 132 makes provision for search and seizure and the powers thereunder include the power to seize books, documents, cash, jewellery, other valuables etc and retention of the same for a certain period of time. Section 133 vests in the authorities the power to requisition information from third parties. Section 133A makes provision for survey at business premises for inspecting books of accounts, tallying stock, verification of cash, etc. Section 133B provides for collection of information

from tax-payers. Section 147 permits the authorities to bring to tax the income which in their opinion has escaped assessment.

In case of defaults under the Income-tax Act, there are penal provisions contained in Chapter XXI which provide for monetary penalties at different rates for various defaults. Chapter XXII of the Income tax Act provides for prosecutions against various offences such as willful evasion of tax; failure to furnish tax returns or produce accounts/documents, falsification of accounts/false statement in affidavit; failure to deduct and deposit taxes; etc.

GST

Section 66 of the PMLA contains a provision for sharing of information in connection with the effective implementation of the Act. Recently, by amendment notification number GSR 491 (E) dated 7th July 2023, Goods and Service Tax Network (GSTN) was added to the parent notification dated 27th June 2006 as one more body/authority. However, this does not mean that an offence under GST law is covered under PMLA. Offences pertaining to GST are not covered under the Schedule to the Act. The limited effect of this notification is that GSTN, as a body/authority has to coordinate with Director, FIU-India and other notified agencies in sharing material or information in its possession as per section 66 of the Act.

Data Privacy Laws

While PMLA focuses on combating money laundering and related financial crimes, data privacy laws aim to protect individuals' personal information. PMLA may require financial institutions, including banks, to collect and report certain customer information for anti-money laundering purposes. Data privacy laws, such as The Digital Personal Data Protection Act, 2023, mandate that organizations collecting and processing personal data must adhere to strict data protection principles, including obtaining consent and ensuring data security.

RBI

Reserve Bank of India (Hereinafter as "RBI"), being the apex body of banks and NBFCs issues directions from time to time including directions pertaining to its KYC norms. Such norms ensure that the banking operations are carried out in a secured manner and the public's interest is protected.

The KYC measures which India has adopted in PML (Maintenance of Records) Rules, 2005 enacted in authority of section 73 of PMLA, 2002 are in lines with the preventive measures enunciated in the FATF Recommendations of International Standards on combating Money Laundering and the Financing of Terrorism & Proliferation. In line with the given recommendation, Reserve Bank of India (RBI) has issued its master directions [(RBI/DBR/2015-16/18 Master Direction DBR.AML.BC.No.81/14.01.001/2015-16 (Updated as on May 29, 2019)] on KYC policy for its regulated entities The guidelines were further refined in 2004 in light of the recommendations made by the Financial Action Task Force (FATF) on Anti-Money Laundering (AML) standards and on combating the Financing of Terrorists (CFT).

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Offences under the Prevention of Money Laundering Act, 2002

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Overview

In this article, the authors discuss the offences under Prevention of Money Laundering Act (PMLA) in context of India's efforts to combat money laundering and the expansion of the Act's scope. The PMLA, originally introduced in 1999 and enacted in 2002, aligns with international obligations to combat organized crime and money laundering.

The article discusses various aspects of the PMLA, including the punishment for money laundering and the concept of "proceeds of crime." It further delves into the interpretation of the Act's offenses, the connection between the predicate offense and money laundering, and the controversial use of "and" and "or" in the legislation.

The article also seeks to explore potential conflicts between Section 3 of the Act and Article 20 of the Indian Constitution and also examine the inclusion of less heinous offenses in the list of predicate offenses and questions the rational nexus between these offenses and the original purpose of the PMLA i.e., fighting organised crime and drug trade. Through the article, the authors also seek to highlight certain shortcomings of the legislation that need to be addressed, emphasizing the need for a more rational and balanced approach to achieve the intended purpose of the legislation.

Introduction

Money laundering poses a grave threat to a nation's economic stability and integrity. For a jurisdiction like India, striving for global recognition and economic growth, it must establish robust, internationally compliant legal frameworks. As our nation intends to work towards comprehensive global policies, promoting foreign investments and the start-up culture and aims to be in the space of an 'economic global giant', it is inevitable for a nation like ours to ensure that the laws are water-tight with adequate safeguards that provide the stakeholders with the necessary comfort at all given times.

The Prevention of Money Laundering Act, 2002 ("PMLA"), originally introduced in 1999, aligns with India's international obligations to combat organized crime and money laundering, expanding its scope beyond its initial focus. The Legislation has its origins in initially combating the drug trade and the prevention of the disbursement of funds for drugs. However, given the position today, the ambit and the scope of the PMLA have been

widened to include various white-collar crimes as well.

Section 3 of the PMLA refers to money laundering and encompasses various categories. This Section criminalizes anyone, directly or indirectly, engaging in activities related to the proceeds of crime, including concealing, owning, or using them to portray them as legitimate funds. Its broad scope covers all facets of handling illicit assets, emphasizing both punitive and preventive measures.

In summary, the PMLA serves a dual purpose of not only punishing money laundering but also preventing it, reinforcing India's commitment to combat financial crimes on a global scale while safeguarding its economic and financial sectors.

Offences under the PMLA Act

The PMLA weaves an intricate web of offences relating to the main offence i.e., the offence of Money Laundering and the predicate offences thereof. The predicate offences consist of three parts viz, Part A, B and C. The main offence in the Legislation relates to Money Laundering which is defined in Section 3 of the PMLA.

Under Section 3, it has been said that anyone who tries, either directly or indirectly, to engage in, assist with, be part of, or actively participate in any activity related to the proceeds of crime, such as concealing, owning, acquiring, or using them, and projecting the same as untainted, will be charged with the crime of money laundering.

As can be seen from a bare reading and understanding of the said Section, it has a wide reach. It captures every process and activity in dealing with the proceeds of crime and is not limited to the happening of the final act of integration of tainted property in the formal economy only. Every part of the transaction which will ultimately achieve the main objective has been covered in the said scope. The Section uses the phrase 'directly or indirectly' to ensure that all categories of persons are brought into the said ambit. The Scheme of PMLA clearly shows that it does not merely purport to punish the offence of money laundering but also prevents it.

Having regard to the definition contained in Section 3, a question may arise that the direct knowledge of the accused that he was dealing with the proceeds of crime, would be a condition precedent or sine qua non for invoking the said provision. Answering this in the negative, the Hon'ble Supreme Court in the case of ***Anoop Bartaria vs. Deputy Director Enforcement Directorate***[1] has held that the definition itself suggests knowledge cannot be a pre-condition. Apart from knowing, if a person directly or indirectly attempts to indulge or is actually involved in the process or activity connected with the proceeds of crime, he/she is also guilty of the offence of money laundering. The ideology behind such an interpretation is that justice, fair play, good conscience and the fundamental principles of criminal jurisprudence demand that a restrictive approach should not be adopted. The acts, conduct and actual activities performed must be the determinative and the guiding factor. Res Ipsa loquitur, like they say in legal parlance!

However, it is clarified that to prevent arbitrariness, it is only such property, derived

1. [(2023) 149 taxmann.com 412 (SC)/(2023) 178 SCL 465 (SC)].

or obtained, as a result of criminal activity relating to a scheduled offence which can be regarded as proceeds of crime. The authorities cannot resort to action against any person for money laundering on an assumption and presumption that the property recovered by them must be proceeds of crime and that a scheduled offence has been committed. Unless the said crime is registered with the jurisdictional police or is pending an inquiry by way of complaint, the corresponding action under PMLA cannot be resorted to. The expression "derived or obtained" is indicative of criminal activity relating to a scheduled offence already accomplished. This acts as an inherent jurisdictional safeguard and prevents misuse.

At this juncture, it becomes important to discuss the meaning of 'proceeds of crime'. Section 2(1)(u) states that proceeds of crime means and includes property derived or obtained as a result of criminal activity relating to a scheduled offence. Hence, it can be seen that the definition refers to scheduled/ predicate offences which would trigger the rigours of the Act. The Scheduled Offences are enumerated as under:

- **Part A** primarily deals with offences enumerated primarily under the India Penal Code, 1860 ('IPC'), Narcotic Drugs and Psychotropic Substances Act, 1985 ('NDPS') and other Acts levying punishment such as the Wildlife Protection Act, 1972, Arms Act, 1959, Prevention of Corruption Act, 1988 amongst others.
- **Part B** deals with offences enumerated under the Customs Act, of 1962.
- **Part C** deals with offences in Part A being offences having cross-border implications and also include wilful attempts to evade tax under the Black Money (Undisclosed Foreign Income and Assets) and Imposition of Tax Act, 2015.

The punishment for the aforesaid offence has been laid down in Section 4 of the Act wherein it has been laid down that if a person is found guilty of offence under Section 3 of the Act, he/she shall be punishable with rigorous imprisonment which shall not be less than three years which may extend to 7 years and shall also be liable to fine. If the predicate offence relates to paragraph 2 of Part A of the Schedule, then the maximum period of imprisonment shall extend to 10 years. Apart from the aforesaid offences, there are also offences relating to giving false information or non-cooperation with the proceedings as envisaged in Section 63 of the Act.

The seriousness of the enactment and the purpose it seeks to achieve is clear from the reading of Section 4 itself. Rigorous punishment has been stated to ensure deterrence in view of the gravity of the offence involved herein. However, at the same time, and to ensure an adequate system of checks and balances, Hon'ble Supreme Court in ***Vijay Madanlal Choudhary vs. Union of India***[2] held that the term "proceeds of crime" needs to be construed strictly as it is one of the core ingredients constituting the offence of money laundering.

2. [(2022) SCC OnLine SC 929/(2022) 140 taxmann.com 610 (SC)].

Interpretational issues relating to the offences under the Act

The extent of dependability of the main offence on the scheduled offence in itself is a pandora box and has been discussed in various decisions of the Hon'ble Supreme Court as well as various High Courts of the country and has been subject-matter of various amendments as well. Along with the aforesaid debate, there is also a debate surrounding the retrospective application of the said legislation as there are many offences which pre-date the enactment of PMLA and hence, whether the perpetrators are eligible for protections enshrined under Article 20 of the Constitution of India. This has been discussed in the later part of the article.

The connection between the Predicate Offence and Offence of Money Laundering

It is to be noted that predicate offences are inextricably linked to the main offence i.e., the offence of money laundering. The speech of the then Finance Minister, Mr. P. Chidambaram, while introducing the Prevention of Money Laundering (Amendment) Bill, 2012 in the Rajya Sabha on December 17, 2012, stated as follows:

> *"…firstly, we must remember that money-laundering is a very technically-defined offence. It is not the way we understand 'money-laundering' in a colloquial sense. It is a technically-defined offence.* ***It postulates that there must be a predicate offence and it is dealing with the proceeds of a crime. That is the offence of money-laundering. It is more than simply converting black-money into white or white money into black.*** *That is an offence under the Income Tax Act. There must be a crime as defined in the Schedule. As a result of that crime, there must be certain proceeds — It could be cash; it could be property. And anyone who directly or indirectly indulges or assists or is involved in any process or activity connected with the proceeds of crime and projects it as untainted property is guilty of offence of money-laundering. So, it is a very technical offence.* ***The predicate offences are all listed in the Schedule. Unless there is a predicate offence, there cannot be an offence of money-laundering."***

[emphasis supplied]

However, the aforesaid position was subject to debate given the conflicting judgments of various High Courts of the country. The Hon'ble Bombay High in the case of ***Babulal Verma and Ors. vs. Enforcement Directorate and Ors.***[3] held that if the investigative agency investigating the scheduled offence has filed a closure report, the same will not wipe out or cease to continue the investigation under PMLA. A similar view of also expressed by the Hon'ble Karnataka High Court[4].

Whereas the Hon'ble Delhi High Court had in the case of ***Mahanivesh Oils & Foods Pvt. Ltd. vs. Directorate of Enforcement***[5] held that predicate offence is the premise based on

3. [2021 SCC OnLine Bom 392].
4. *Sachin Narayan v. Income Tax Department [W.P.(C) No. 5299 of 2019].*
5. [(2016) SCC OnLine Del 475], Also see *Prakash Industries Ltd. v Directorate of Enforcement, [(2022) SCC OnLine Del 2087].*

the proceedings under PMLA stand and once the premise fails the proceedings under PMLA must also cease.

This position has been reiterated by the Hon'ble Supreme Court as well in the decision of ***P. Chidambaram vs. Directorate of Enforcement [(2019) 9 SCC 24]***. The inborn linkage of the scheduled offence with the offence of money laundering is also found in the Explanation to the definition of 'proceeds of crime' under Section 2(u) of the Act.

However, as of date, the debate has been put to rest by the judgment of the Hon'ble Supreme Court in the case of ***Vijay Madanlal Choudhary vs. Union of India (supra)*** wherein the Hon'ble Court even though the PMLA is a complete code in itself, it is only in respect of matters connected with the offence of money laundering and for that, the existence of proceeds of crime under Section 2(1)(u) is quintessential. Absent the existence of proceeds of crime, the authorities under PMLA cannot step in. This judgment is welcoming as it seeks to provide a justice-oriented approach which is necessary and upholds the true spirit and purpose of this enactment.

What would be the impact of compounding the predicate offence on the proceedings under PMLA?

The aforesaid issue has been answered very recently by Hon'ble Telangana High Court in the case of ***Manturi Shashi Kumar vs. Director, Directorate of Enforcement***[6] wherein it has been held that if the person is finally discharged or acquitted of the scheduled offence or the criminal case against him is quashed by the court, there can be no offence of money laundering against him. It is immaterial for the purpose of PMLA whether acquittal is on merit or composition. Thus, this judgment speaks of the larger purpose, which is acquittal of the scheduled offence. Whether the acquittal is on technicalities, merits, the stage of the proceedings, the charges and the trail and compounding and composition thereof is immaterial. While this view may attract conflicting judgments, it is interesting to see that the Hon'ble High Court yet again has applied the purposive interpretation principles while seeking to achieve the true purpose of the said enactment.

While the aforesaid decision has placed reliance upon the judgment of ***Vijay Madanlal Choudhary (supra)***, however, as discussed, we are likely to get a contrary view on this as well. As stated, the Hon'ble Bombay High Court in the case of ***Babulal Verma vs. Enforcement Directorate (supra),*** as well as ***Radha Mohan Lakhotia vs. Deputy Director***, PMLA, Directorate of Enforcement[7], took a view that mere filing of closure report by the investigating agency in a predicate offence will not lead to closure of the proceedings under the PMLA as well. Extending this rationale further, one can argue that the acquittal on technicalities or compounding thereof should be disregarded and it is only the acquittal on the merits of the case which can be considered for determining the applicability of the PMLA.

6. [2023] 151 taxmann.com 171 (Telangana).
7. [(2010) SCC Online Bom 1116].

The curious case of 'And', 'Or'

Another controversy which remains is the Explanation to Section 3 of the Act inserted by way of Finance (No.2) Act, 2019 w.e.f. 01.08.2019. It is to be noted that the main provision of Section 3 uses the term 'and' to lay down that the person participates in any activity related to the proceeds of a crime 'and' projects or claims it as untainted property will be guilty of the offence laid down in Section 3 of the Act. However, the Explanation has made all the processes of concealment, possession, acquisition, use, projecting as untainted property and claiming as untainted property an offence as the Explanation uses the disjunction 'or'.

This has been interpreted and stated that is not open to read the different activities conjunctively because of the word "and". If that interpretation is accepted, one can argue, that the effectiveness of Section 3 of the Act can be easily frustrated.

Section 3 addresses itself to three things namely, (i) person; (ii) process or activity; and (iii) product. Insofar as persons are covered, they are, (i) those who directly or indirectly attempt to indulge; or (ii) those who knowingly assist; or (iii) those who are knowingly a party; or (iv) those who are actually involved. Insofar as process is concerned, the Section identifies six different activities, namely (i) concealment; (ii) possession; (iii) acquisition; (iv) use; (v) projecting; or (vi) claiming as untainted property, <u>any one of which is sufficient to constitute the offence</u>. Insofar as the product is concerned, Section 3 identifies 'proceeds of crime' or the property representing the proceeds or obtained in the process there (Section 2(1)(u)). Thus, in short, these are important ingredients and the Hon'ble Supreme Court has in the case of ***Y. Balaji vs. Karthik Desari***[8] clarified the said position and understanding of the law.

However, a contrary argument to this is that the Explanation enlarges the scope of the main provision itself, which is contrary to the settled principles of interpretation of Statutes[9]. Also, the whole purpose of the Act gets shifted as the main intent is to focus on the conversion of such property. Given this interpretation, there would be no difference between the predicate offence and the main offence of money laundering as has been envisaged under the Act.

The aforesaid argument was also made before the Hon'ble Bench presiding over the case of ***Vijay Madanlal Choudhary (supra)*** and ***Y. Balaji (supra)*** wherein reference was made to Article 3 of the Vienna Convention and it was submitted that mere acquisition and use of the proceed was not sought to be criminalised. Rather it was the conversion or integration of the said proceed of crime into the formal economy that was sought to be criminalised by way of the said Legislation. However, the said argument was rejected by Hon'ble Court as the Court opined that the interpretation suggested would undermine the purpose of Section 3 of the Act and go against the Financial Action Task Force (FATF)'s stance on the use of the word "and" before "projecting or claiming" in this context. The Court refused to accept that Section 3 should only find force once

8. [2023] 150 taxmann.com 329 (SC).

9. *Bihta Co-operative Development and Cane Marketing Union Ltd. v. Bank of Bihar [AIR 1967 SC 389].*

the money has been laundered as according to it, that had never been the rationale of the Legislation nor of the International Conventions.

Case Study – Anomaly between the main offence and predicate offence

In common parlance, the law of Money Laundering involves three steps Placement, Layering and Integration. Placement is where the accused places the proceeds of the crime into the normal financial system. Layering is said to be done where money is introduced into the normal financial system and is layered or spread into various transactions within the financial system so that any link with the origin of the wealth is lost. And, the third stage is Integration, where the benefit or proceeds are made available as untainted money. There is much merit in this understanding of the law and this also indicates that, by its nature, the offence of money laundering has to be constituted by determinate actions and once the third stage is complete, can the entire process of money laundering be said to be completed.

Now, however, given the change brought in by the amendment, such that each of the processes of concealment, possession, acquisition, use, projecting or claiming as untainted property has been made into offence, i.e., if anyone is found in any of the one activity, then the person would be made liable for money laundering.

This creates an anomaly as even if any of the activities is treated as money laundering then there would be no difference between the main offence and money laundering. For example, we can take the case of a wildlife poacher. If the poacher illegally kills an elephant for its tusk and conceals it at certain premises then automatically the offence of Money Laundering can get triggered as he has derived a property as a result of a criminal offence under the Wildlife (Protection) Act, 1972 and has concealed the same. This interpretation suggested by the legislature would defeat the very logic of money laundering.

In this regard, reference may also be made to the illustration used in the decision of the Hon'ble Supreme Court in the case of ***Y. Balaji vs. Karthik Desari (supra)*** wherein the Hon'ble Court has formulated that Section 3 of the Act addresses an offence which involves three things namely, (i) person; (ii) process or activity; and (iii) product. To substantiate the aforesaid aspect, the Hon'ble Supreme Court has given the illustration of a public servant receiving illegal gratification.

However, it is submitted that as the concept of Money Laundering involves Placement, Layering and Integration and neither of the aforesaid processes would be carried out in the said example given by the Authors, and yet PMLA can get attracted. This interpretation would also lead to there being no difference between the predicate offence and the main offence. The Hon'ble Supreme Court ruled that merely acquiring the same and using the same would be guilty of money laundering as it falls in the 'Three P's' that the Hon'ble Supreme Court has formulated i.e., the 'person' has acquired it and then used the same. Even though the crucial step of layering the money is not present in the aforesaid process and this interpretation does not align with the Placement, Layering and Integration Theory.

Conflict between Section 3 of the Act with Article 20 of the Constitution of India

Article 20 of the Constitution of India forbids conviction for any person retrospectively. It states that no one can be convicted for an

Act that was not an offence at the time of its commission, and no one can be given punishment greater than what was provided in the law prevalent at the time of its commission.

Given the said legal basis, there arises an anomalous position as to how can legal proceedings be justified in a case where both the main offence and the use of its proceeds are claimed to have occurred before the PMLA Legislation was enacted.

It can be seen that the subject matter of the Legislation is not the predicate offence rather it is the offence of money laundering. In simple terms, it can be said that in certain cases it may so happen that offence of money laundering was committed at the time when money laundering itself was not an offence or at a time when the predicate offence or scheduled offence was not an offence. This issue too has been the subject of litigation in various High Courts as well as the Hon'ble Supreme Court. The principal argument taken by the Government is that the offence prescribed under Section 3 of the Act is a continuing offence and the factum of date of acquisition in a given case is of no relevance. The possession of any property linked to a scheduled offence irrespective of when it was acquired would itself constitute the offence of money laundering.

In this controversy too there are conflicting judgments of the various High Courts of the country. The Hon'ble Delhi High Court in the case of ***Mahanivesh Oils & Foods Pvt. Ltd. (supra)*** has held that if the argument of the Government is accepted then the person guilty of predicate offence would also become guilty of the offence of money laundering under the Act before the enactment coming into force and thereby be punished by greater punitive measure than as could be inflicted at the time when the scheduled offence was committed. This was held to be against the fundamental rights enshrined under Article 20.

Given the lapse of time, the proceeds derived from a scheduled offence may have undergone significant changes and have been integrated into the economy. The properties could also be traced in the hands of persons unconnected with the scheduled offence. Thus, one can state that there is no indication from the express language of the PMLA, that the Legislature intended it to be retroactive or operative with retrospective effect.

However, various other High Courts like the High Court of Kerala, Karnataka and Allahabad have maintained the view that the offence under Section 3 of the Act is an independent offence and therefore, for the said purposes the date of laundering would be relevant which includes involvement in any process or activity by which the illicit money is being projected as untainted. Thus, what is important is not the date when the illegal money was obtained, but when such money is being processed for projecting it untainted.

Hon'ble Supreme Court in ***Vijay Madanlal Choudhary (supra)*** though has not dwelt into this issue in detail, however, has made certain observations in this regard in para 43 and has stated that if someone engages in or continues to be involved, directly or indirectly, with the money gained from criminal activity, even if the criminal act is classified as a scheduled offence afterwards, they could still face prosecution as long as the conversion is after the enactment of PMLA as the relevant date is the date on which the person indulges in the process or activity connected with the proceeds of crime.

Disproportionality between the predicate and the main offence

The object of PMLA initially was to curb the menace of the drug trade and ensure that it reduces the ills of organised crime. However, the Government has included in the list of predicate offences various other offences which have no bearing on the original intent of the Act. The Schedule Offences now also include offences such as theft, robbery and cheating amongst other less heinous offences. Given the position today, the scope and ambit of the Legislation have been expanded to a large extent.

It was argued by the parties in the case of ***Vijay Madanlal Choudhary (supra)*** that predicate offences do not have any rational nexus with the object and reasons of the enactment and hence, as such unreasonable, arbitrary and violative of Articles 14 and 21 of the Constitution of India. However, the Hon'ble Court dispelled the arguments by stating that money laundering by itself is an independent offence and hence, not dependent on the schedule offence. Rather the schedule offences are only indicative and part of the legislative policy. In this regard, it can be stated that that schedule and the offences thereof may lack the crucial element of reasonability and proportionality, however, given the larger purpose of the Scheme of the PLMA, this aspect has not been given much importance in the development of the jurisprudence thereof.

The way forward

As can be seen from the judgment of the Hon'ble Supreme Court and the arguments raised in the case, the enactment has some serious lapses which defeat the test of reasonability as enshrined in the rule of law. It can be seen that the arguments have not been accepted by the Courts and Courts have largely been driven by value judgment behind the offence of Money Laundering and its ills and not in rationalising the same in view of the adequate safeguards and the statutory protections required in light of the correct interpretational principles.

Consequently, various aspects of the aforesaid decision have been doubted now in several decisions of the Hon'ble Supreme Court, especially by a bench of the Hon'ble Supreme Court led by the then CJI in the case of ***Union of India vs. Ganpati Dealcom Private Limited***[10] and also very recently in the case of ***Pankaj Bansal vs. Union of India & Ors.***[11] With the impending review of the decision in ***Vijay Madanlal Choudhary (supra)***, it will be interesting to see which way the Hon'ble Supreme Court would decide the fate of the said enactment.

10. (2023) 3 SCC 315.
11. Criminal Appeal Nos. 3051-3052 of 2023.

PMLA and Taxation Laws: Unravelling the Live Nexus Between Tax Laws, Money Laundering, Benami Law, Black Money Act and Other Allied Laws Dealing with the Economic Offences in the Country

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Advocate

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Advocate

Overview

The author who had earlier authored the revolutionary article titled "IF YOU LIVE IN INDIA: YOU CAN BE HELD AS AN OFFENDER EVEN IF YOU HAVE NOT COMMITTED A CRIME YOURSELF" (published in CTC International Taxation Compendium: Edition-November, 2020) have once again analysed the situation prevailing in the country.

In the present article, the authors have candidly brought to light a burning issue being faced by the citizens and business entities of the country emphasising that all the laws dealing with the economic offences of the country such as Tax Laws, Anti- Money Laundering Law, Benami Law, Black Money Act etc., have strong interplay with each other and there would be situations where any transactions involving violations of the nature constituting offences under more than one of such laws shall have cumulative effect and the legal consequences are hugely cascading. Therefore, it is imperative to have awareness and compliance of these laws on a holistic basis because individualistic or standalone approach will neither set up adequate compliance mechanism nor bring proper solution and peace of mind for living and doing business in India.

It would have been observed and felt almost by everyone in the country by now that since 2014 (the year when the present Government assumed power), the Government has been persistently and consistently cleansing and streamlining the economy. Soon after taking over of the charge of the country, it was indeed felt by the Government that the tax laws in themselves on a standalone basis were not sufficient to stop the revenue leakages and other serious dents happening in the economy particularly because of the huge disorganisation in the economic system, unauthorised flow of huge money outside the country, money laundering, tax evasion, stashing of wealth and properties in benami names within and outside the country. Therefore, various laws dealing with the economic offences were either reinforced or freshly introduced in support of the tax laws with a view to curb all these malpractices happening in the country.

The demonetization which was perceived to be an unprecedented shocker in 2016 was one of such bold moves which was first of its kind and then it was coupled with the re-introduction of Benami Law through substantive amendments in the PBPT Act, 1988 and introduction of Black Money (Undisclosed Foreign Income and

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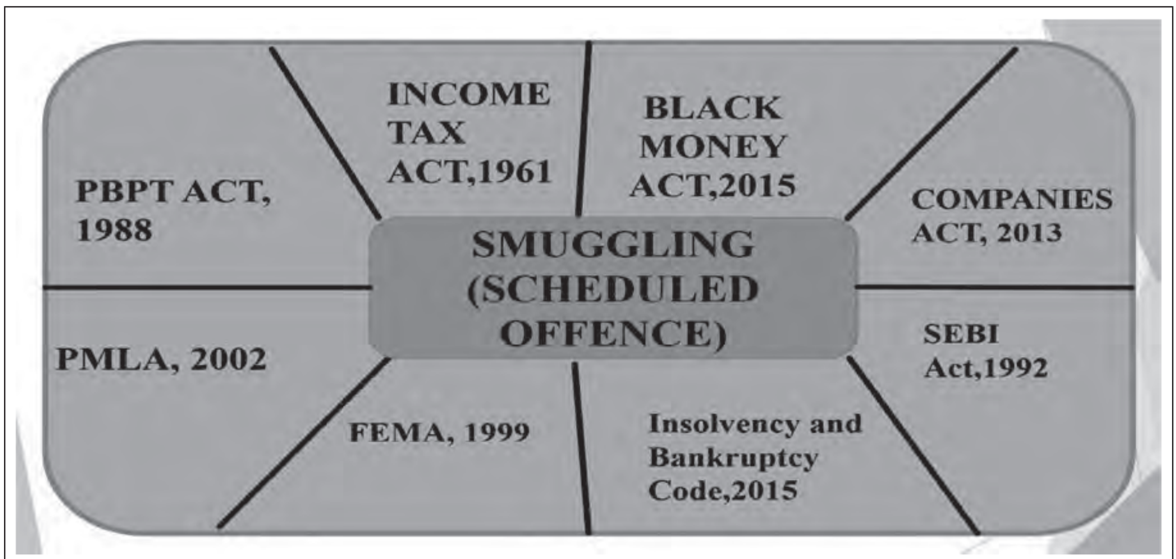
Assets) and Imposition of Tax Act, 2015 and Fugitive Economic Offences Act, 2018 and reinforcement of existing laws by making various amendments the allied laws such as PMLA, FEMA, FCRA so forth and so on.

Apart from this, the implementation and enforcement of Tax Laws were also restrengthened and streamlined by implementing uniform laws in the tax regime, by bringing into force GST thereby replacing multiple indirect tax laws such as Excise, VAT, Sales Tax etc. One of the top-notch measure in this direction was implementing the faceless hearing mechanism in relation to income tax assessment and appeal proceedings.

In light of the above developments, the legal mechanism of our country witnessed a drastic change and consequently citizens of this country and business entities and other organisations became directly affected by it. Therefore, it has become imperative for everyone to realign and reset his thinking and manner of working in the personal financial affairs as well as carrying out of the business so as to ensure fullest possible compliance of each of such laws and to avoid any non-compliance or violation, even an unintended one, because the cost of non-compliance has become unbearable and legal consequences are too much cascading.

The first step in this direction is to evaluate as to whether all these laws dealing with economic offences work in isolation or concurrently on a cumulative basis, so that the compliance mechanism of these laws can be worked out and implemented accordingly. Having witnessed major developments happening on the part of the investigation agencies as well as various courts and after examining the provisions contained in these laws, a clear impression which comes out undisputedly is that these laws are not working in isolation but creating a concurrent and cumulative effect. Therefore, one cannot imagine and simply live in a fool's paradise by making compliance of these laws on individual and isolated basis alone.



It can be easily seen that if a transaction done by a person or an entity is leading to violations giving rise to commission of offences in more than one laws, then the legal consequences will

take place separately as well as cumulatively under all the respective legislations wherever violations have taken place. This is because of the reason that reading of these legislations would clearly reveal that every legislation is embedded with a specific provision laying down that the said law is in addition and not in subjugation of any other law and that in case of any inconsistency the provisions of the concerned law shall have superseding effect over the other law. For a quick reference, let us refer to respective sections in some of these statutes e.g.:

- **Section 67 of the PBPT Act, 1988**

"67. Act to have overriding effect — The provisions of this Act shall have effect, notwithstanding anything inconsistent therewith contained in any other law for the time being in force."

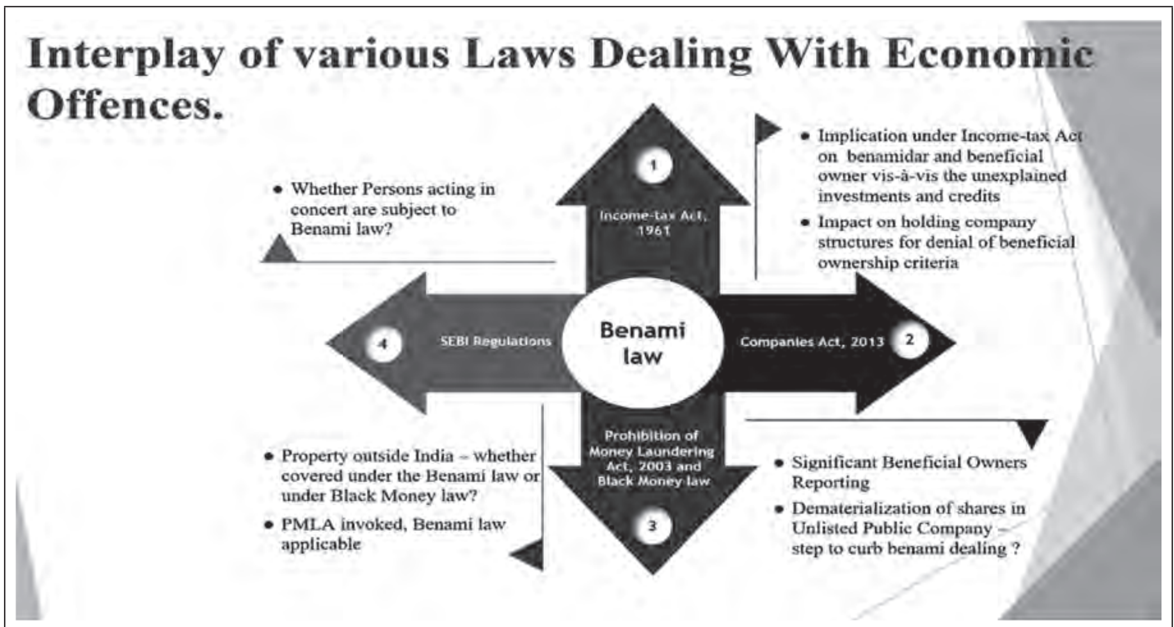
- **Section 71 of the PMLA, 2005**

"71. Act to have overriding effect — The provisions of this Act shall have effect notwithstanding anything inconsistent therewith contained in any other law for the time being in force."

After making a reading of the above provisions, one would indeed be clear of all possible doubts and would also have a clear understanding that a wrong action can lead to appropriate legal actions under multiple laws if the violations have happened (knowingly or unknowingly) under such other laws.

Interplay of various Laws Dealing with Economic Offences

In the present discussion, since we are focusing on the interplay of direct tax laws with other allied economic laws, let us understand that how Income Tax law will have direct interplay with these allied laws with the help of the following representations.



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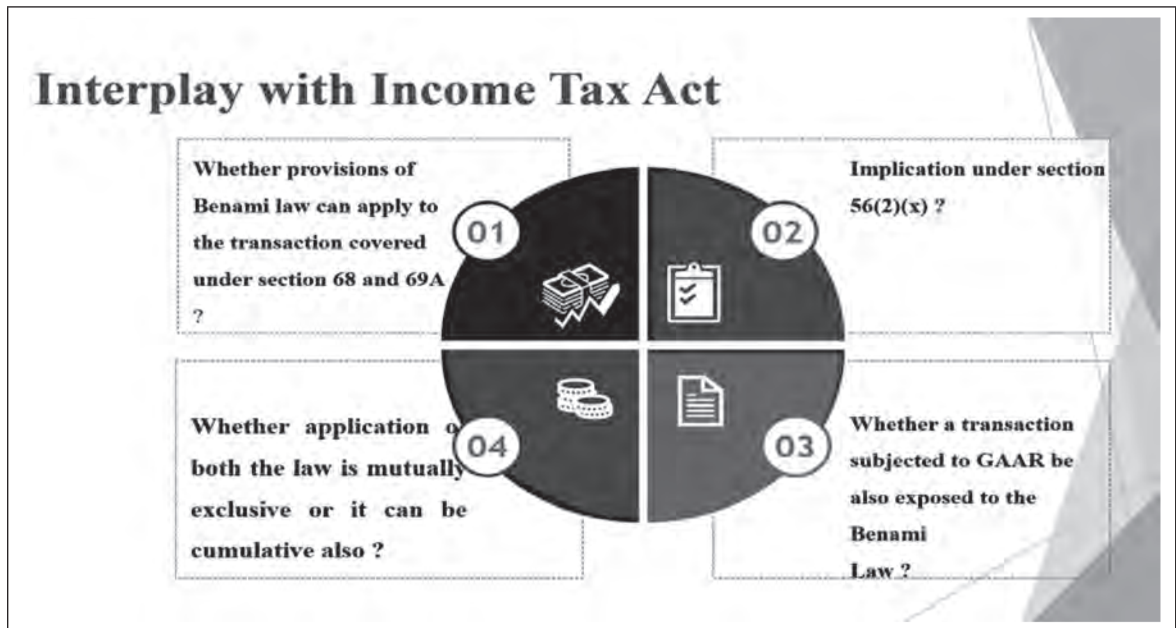
1. *Income tax vis-a-vis Benami Law*

This question is generally asked from us by many that if a Benami Property has been acquired using tax paid money, whether still the provisions of PBPT Act can be invoked and the said property be declared as a 'Benami Property'?

Answer to this question is very clear as far as Benami law is concerned. The Benami transaction has been defined under section 2(9)(A) to 2(9)(D) and the exceptions (which are actually the only exceptions under the law) are given under section 2(9)(A) of the PBPT Act, 1988. Nowhere under the main provisions or in the exceptions, it has been provided to save a transaction or property from being benami if tax paid money has been used to do such transaction or acquire such property. A transaction or property shall be Benami if the requisite ingredients are available and the conditions prescribed under the PBPT Act are met. The provisions w.r.t. scope and operation of the Act and definition of benami transactions and properties have been drafted in a sweeping manner. The manner in which this Act has been designed and structured, its canvass has become quite wide. This law may be perceived as harsh or draconian or whatever, but it is what it is. The Act has been duly passed by the Parliament and as we know it has not been held as unconstitutional by any court of law so far. Thus, it deserves to be complied in full legal sense to avoid any adverse actions under this law.

Interplay with Income Tax Act

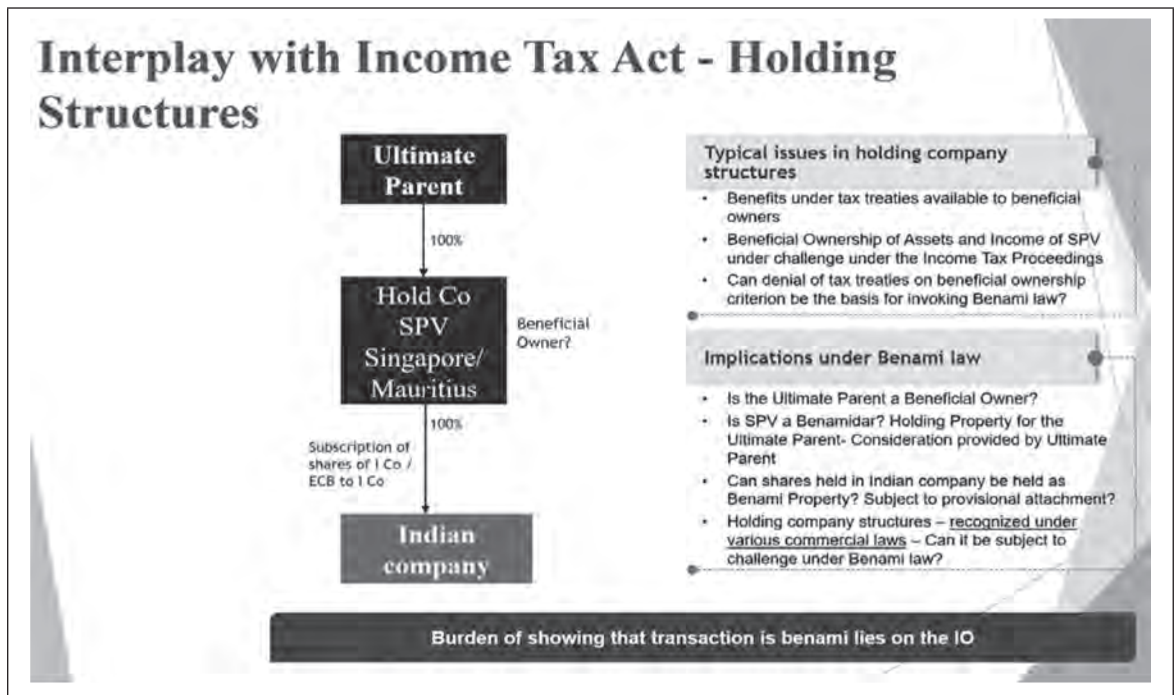


Apart from the above, we can notice many practical cases where during or soon after the proceedings under income tax law, action has been taken under the benami law also to rope in those very transactions or properties under benami law which have been subjected to or due to any reasons these could not be subject to income tax assessments. In these cases, either an action under one of these laws has led to an action under the other law or if a person could escape from the clutches of one of these laws, it became imperative for the

enforcement department to rope him into the other. Few such case studies are discussed hereunder for easy understanding:

(a) Share Capital received by a company (M/s R Ltd.) from M/s B Ltd. admitted to be bogus by Mr. R (Director and major shareholder in M/s R Ltd):

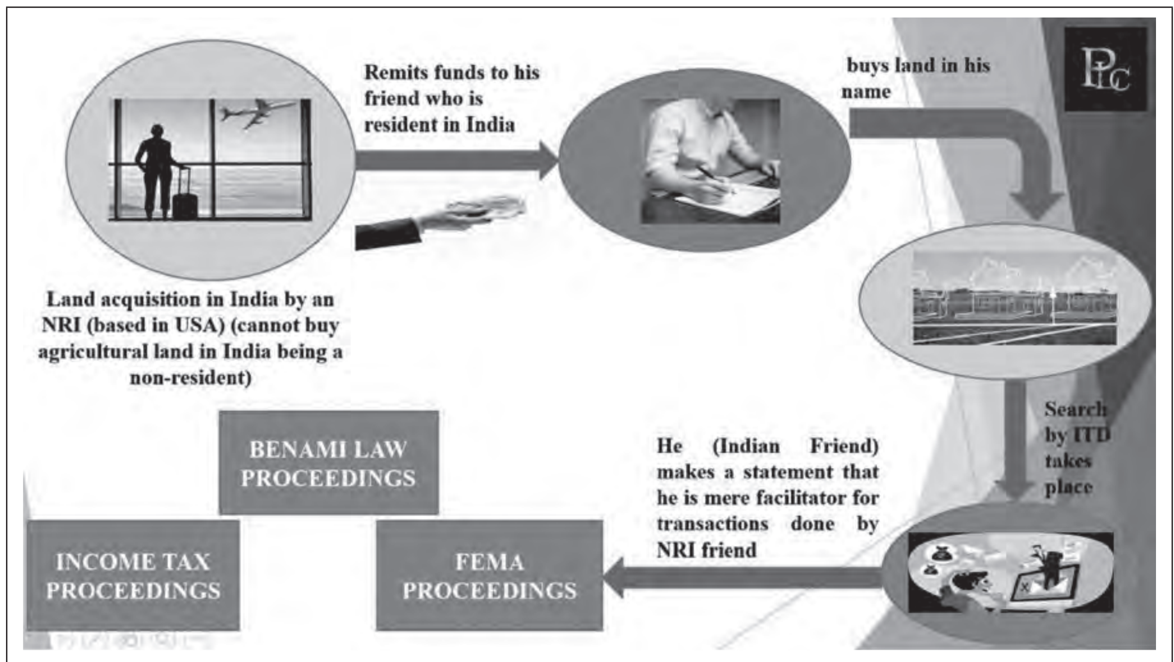
During the search action by the investigation wing of the Income Tax Department upon Mr. R and his group companies, Mr. R agreed to make some surrender and offered to pay additional income tax. In this process, Mr. R admitted in the statement recorded during the course of search that the share capital received by his company M/s R Limited from one M/s B Limited was bogus and therefore he paid Income Tax on the amount so surrendered. Subsequently after one month, Benami Prohibition Unit also recorded his statement u/s 19 of the PBPT Act and reconfirmed these facts from him. Thereafter, the Initiating Officer (of BPU) carried out the proceedings u/s 24 and attached the Share Certificates issued by M/s R Limited to M/s B Limited by declaring the same as 'benami'. He also made attachment of the part of the amount received from M/s B Limited by M/s R Limited which was lying unutilized in the bank account of M/s R Limited. And he also attached the property which was acquired by M/s R Limited utilizing the amount received by it from M/s B Limited on account of aforesaid share capital.



(a) Land purchased and held in Gujarat by Mr. I (a resident Indian) on behalf on Mr. Z (his NRI friend settled in Zambia):

Mr. Z was keen to own or invest in some agricultural land in India but being a non-resident, he was indeed not legally authorized

to do so. Therefore, he took help of his Indian resident friend Mr. I and remitted requisite funds to him from abroad. Mr. I purchased the land and maintained it. A search action took place by the Income Tax Department upon the builder who had sold land to Mr. I, wherein Mr. I was also unfortunately covered. During the course of search, there were some allegations of some extra money in cash having been paid over and above the cheque amount. Sensing some difficulties, Mr. I stated before the search officials that he was holding the said piece of land on behalf of his NRI friend Mr. Z. Soon after the search proceedings ended, BPU came into action and passed an order u/s 24(3) making attachment of the said land by declaring it as Benami Property, Mr. I as Benamidar and Mr. Z as Beneficial Owner. Apart from it, proceedings under FEMA have also been launched.



(b) Cash found in the lockers during the course of income tax search upon Mr. E is explained to be belonging to his employer entity M/s C Ltd.:

During the course of search Mr. E explained that cash belongs to his employer company namely M/s C Ltd. which was given by its directors for safe custody purposes and for administrative convenience. Subsequently BPU came into action and declared the cash as Benami Transaction, Mr. E as benamidar and M/s C Ltd. as the beneficial owner.

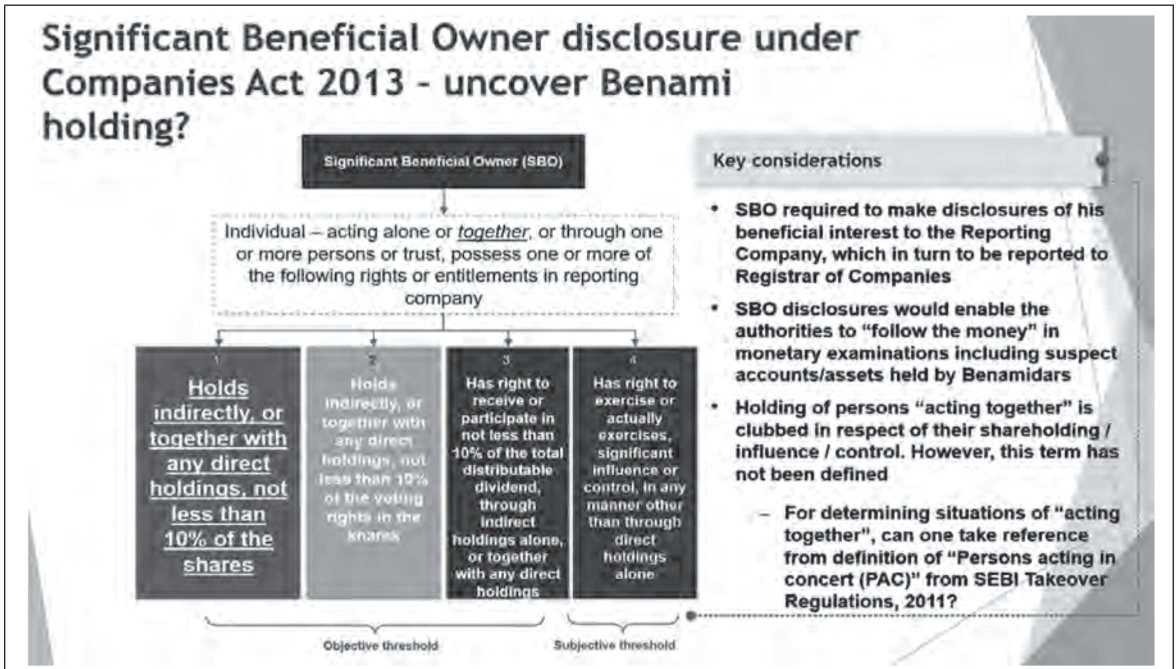
(c) Gold found during the search at home of Mr. G explained by him to be belonging to his friends, relatives or other persons. However, BPU treated gold as Benami Property by invoking Section 2(9)(D) of PBPT Act, 1988 and alleged that Mr. G made a transaction/arrangement in respect of said gold whereas, person providing the consideration was not traceable or fictious.

(d) An infrastructure company M/s S Ltd. with a view to create a huge land bank

of 2000 acres for developing a mega township, deputes 20 companies to buy land for it:

During the course of income search action upon these 20 companies, their directors stated that they were buying land on behalf of M/s S Ltd. and were working only on the instructions of Mr. S (CMD of M/s S Ltd.).

Subsequently, proceedings u/s 24 of the PBPT Act were initiated by the Benami Prohibition Unit wherein the Initiating Officer made attachment of the land parcels purchased by these companies on the ground that these lands were benami, these companies being benamidar and M/s S Ltd. being the beneficial owner.



(e) M/s RB, a partnership firm engaged in the business of retail trade and distribution of liquor products is found to have submitted different partnership deeds to excise department and income tax department:

M/s RB was indeed wary of few things and therefore, while applying for license it inadvertently submitted a deed which contained names of different partners as compared to the partnership deed which was used for Income Tax return and its final accounting purposes. As this fact came to the knowledge of the Income Tax Department, BPU came into action and passed order u/s 24(3) making attachment of the bank account of M/s RB as well as the amount deposited with the excise department as earnest money and declared the same as 'benami'.

There are hundreds of other cases which have been taken up by the BPUs all over the country pointing out that canvas of income tax law and benami law put together has become extremely large and sweeping. Thus, from the above live examples it can easily be inferred that there is a direct and strong interplay between income tax law and benami law and therefore one must take care of compliance of these laws on holistic basis and not on individualistic basis.

2. Income Tax Law and PMLA (Anti-Money Laundering Law)

This question is quite often asked from us as to whether 'income tax-evasion' is also 'money-laundering'. The answer to this question lies in an answer to another question as to whether 'income tax-evasion' has been marked as a 'Scheduled Offence' under PMLA, 2002. A bare reading of the list of scheduled offences as appended to PMLA would reveal that 'income tax evasion' as such has not been included in the list. Law of PMLA is clear that offence of 'money-laundering' is not a standalone offence. It is a piggy backing law and is dependent firstly upon the commission of the scheduled offence. Thus, if there is no scheduled offence, the question of offence of 'money laundering' does not arise. And thus, income tax evasion, as such, is not an offence of money laundering under PMLA. However, a precaution to be taken here is that in the process if any other offence has been committed which fall in category of scheduled offence being punishable under Indian Penal Code or any other law marked in the schedule such as forgery, cheating, falsification, counterfeiting etc., etc., then allied activity of tax evasion may also be dragged into the investigation under PMLA, 2002.

As a live example we can make a quick reference to Disproportionate Assets case (popularly known as 'DA Cases') filed by CBI, ACB, Vigilance Departments etc., wherein the investigation agency carrying out investigation of a government official facing allegations under Prevention of Corruption Act, would find out tax paid income, untaxed income, declared income, undeclared income, declared and undeclared assets and expenses pertaining to the check period and would then compute amount of assets/wealth possessed by the said official which are disproportionate to his tax paid/ declared income. The amount so arrived at is called as 'Disproportionate Asset' of the said official.

Similarly, evasion of GST (Good & Service Tax) has also not been mentioned in the list of scheduled offences and would face similar situation under PMLA as income tax evasion.

However, situation under Custom duty and Black Money Act is different. Both of these have been included in the list of scheduled offences, as reproduced below for ready reference:

Paragraph 12 of scheduled offences makes a specific mention of under the heading offences under the Customs Act, 1962

"Section 135: Evasion of duty or prohibitions"

Similarly, Part B of the scheduled offences under the heading offences under the Customs Act, 1962 makes a specific mention of Section 132

"Section 132- False declaration, false documents, etc."

Similarly, Part C of the List makes a mention about Black Money (Undisclosed Foreign

Income and Assets) and Imposition of Tax Act, 2015 violations as under:

"Section 51- Punishment for wilful attempt to evade tax."

Paragraph 29 of the Schedule mention Section 447 of the Companies Act, 2013

"Section 447- Punishment for fraud."

Paragraph 11 of the Schedule mentions offences committed under Section 12A r/w Section 24 of the Securities and Exchange Board of India Act, 1992

"Section 12A- Prohibition of manipulative and deceptive devices, insider trading and substantial acquisition of securities or control.

"Section 24- Offences."

Thus, above description specifically made under PMLA makes violations under these offences covered under PMLA also. However, one important aspect to be noted here is that provisions of PMLA shall get attracted only once prosecution is launched under these specific sections under these respective Acts as have been mentioned in the list of scheduled offences as reproduced above. It other words mere imposition of taxes, duties or penalties would not ipso facto trigger provisions of PMLA, unless prosecution is also launched under the Sections mentioned in the list of Scheduled Offences.

3. Income Tax and GST

The interplay between these two is quite prominent and live in most of the cases. It is quite prevalent nowadays as we get to see that action by one of these departments is followed by the other. If there are cases of bogus/inflated purchases or bogus/suppressed sales or inappropriate input tax credits, the legal consequences pertaining to tax evasions and other related violations would be under both of these laws and so would be the legal actions by both of the enforcement departments.

4. Income Tax Act and Black Money (Undisclosed Foreign Income and Assets) and Imposition of Tax Act, 2015

The objective of bringing out BMA is to bring to tax untaxed foreign income and assets located outside India earned/acquired by the Indians while they were residents of India. Income Tax Act suffer from few constraints such as limitation of time and various other fetters, and therefore BMA has been introduced by the Government which seem to have been made as a timeless beauty and quite wide & sweeping in its scope and operation and quite stringent in its nature.

The penal provisions of BMA get triggered if there is non-disclosure by a person while filing income tax return in India w.r.t. particulars of foreign income or assets located outside India. It is seen that many persons are facing severe actions under this law due to lapses/ omissions in making adequate disclosure of their assets/income located abroad such as foreign- bank accounts, securities/shares, properties, financial interests in any assets/properties in any manner.

Since the enforcement of BMA is with the Income Tax Department, connect between the both is quite live and active. It is also because of the provisions contained under BMA which empower the Assessing Officer (under BMA) to make the assessment of any foreign asset of Indian Resident/ Non-Resident in the year in which it comes to the notice of Assessing Officer irrespective of the year in which it was acquired by the said person provided he

was Resident when the said foreign asset was acquired. Further, the provisions empower the AO to make its assessment on its current valuation (as per the rules prescribed) and not on its original cost of acquisition in the hands of the said person. The legal consequences and financial implications are quite severe and unbearable and therefore adequate care need to be exercised for making full and true disclosure while filing income tax return.

Coordinated Actions by Multiple Agencies

For coordinated and synchronized working amongst various investigation and enforcement agencies numerous measures are being taken by the Government. Sharing of information is the foundation for the same. Therefore, measures have been taken for exchange of information between the agencies such as:

(a) MOU Between CBDT and SEBI: Following MOU dated 08.07.2020 has been entered to facilitate sharing of information and data between these two organisations:

Press Release
PR No.38/2020

SEBI signs MoU with CBDT

Securities and Exchange Board of India (SEBI) signed a Memorandum of Understanding (MoU) with Central Board of Direct Taxes (CBDT), Government of India, today, for data exchange between the two organizations. The MoU was signed by Ms. Anu J Singh, Pr. DGIT (Systems), CBDT and Ms. Madhabi Puri Buch, Whole Time Member, SEBI in the presence of senior officers from both the organizations via video conference.

The MoU will facilitate the sharing of data and information between CBDT and SEBI on an automatic and regular basis. The MoU will ensure that both CBDT and SEBI have seamless linkage for data exchange. In addition to regular exchange of data, CBDT and SEBI will also exchange with each other, on request and suo moto basis, any information available in their respective databases, for the purpose of carrying out scrutiny, inspection, investigation and prosecution.

The MoU is an ongoing initiative of CBDT and SEBI, who are already collaborating through various existing mechanisms. A Data Exchange Steering Group has also been constituted for the initiative, which will meet periodically to review the data exchange status and take steps to further improve the effectiveness of the data sharing mechanism.

The MoU marks the beginning of enhanced cooperation and synergy between SEBI and CBDT. The MoU comes into force from today.

Mumbai
July 08, 2020

(b) The Government came out with a notification dated 22.11.2022 exercising its powers under section 66(1) of the PMLA, 2002 for adding various organizations to the existing list of organisations who have been made statutorily duty bound to share any information, documents and data pertaining to the offence of money laundering with the Directorate of Enforcement. Copy reproduced hereunder for ready reference:

MINISTRY OF FINANCE
(Department of Revenue)
NOTIFICATION
New Delhi, the 22nd November, 2022

G.S.R. 832(E).— In exercise of the powers conferred by clause (ii) of sub-section (1) of section 66 of the Prevention of Money-laundering Act, 2002 (15 of 2003), the Central Government, on being satisfied that

it is necessary in the public interest so to do, hereby makes the following amendments to amend the notification of the Government of India, in the Ministry of Finance, Department of Revenue, published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i), vide number G.S.R. 382(E), dated the 27th June, 2006, namely:-

In the said notification, after serial number (10) and the entry relating thereto, the following serial numbers and entries shall be inserted, namely:-

"(11) National Investigating Agency;

(12) Serious Fraud Investigation Office;

(13) State Police Department;

(14) Regulator, as defined under clause (fa) of rule 2 of the Prevention of Money-laundering (Maintenance of Records) Rules, 2005;

(15) Director General of Foreign Trade;

(16) Ministry of External Affairs;

(17) Competition Commission of India;

(18) Special Investigation Team constituted, vide notification of the Government of India, Ministry of Finance, Department of Revenue published in the Gazette of India, Extraordinary, Part-I, Section-I, vide number F.No.11/2/2009-Ad.E.D. dated the 29th May, 2014;

(19) National Intelligence Grid;

(20) Central Vigilance Commission;

(21) Defence Intelligence Agency;

(22) National Technical Research Organisation;

(23) Military Intelligence;

(24) An inquiry authority appointed under sub-rule (2) of rule 14 of the Central Civil Services (Classification, Control and Appeal) Rules, 1965 or the provisions of the Public Servants (Inquiries) Act, 1850 (37 of 1850) and any other preliminary enquiry authority appointed with concurrence of the Central Vigilance Commission, by the Disciplinary Authority, with the prior approval of the Central Government;

(25) Wildlife Crime Control Bureau."

[F.No. P-12011/8/2020-ES Cell-DOR]

Note : The principal notification was published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i), vide number G.S.R. 382(E), dated the 27th June, 2006 and subsequently amended vide number G.S.R. 609(E), dated the 1st October, 2020.

(c) Recent notification 7th July, 2023 covering GST Department also in the list of organizations who are duty bound to provide information/ data/ documents with the Directorate of Enforcement. With the implementation of the said order, the information stored on the GST Network can now be shared, as may be required, under the PMLA Act.

MINISTRY OF FINANCE
(Department of Revenue)
NOTIFICATION
New Delhi, the 7th July, 2023

G.S.R. 491(E).—In exercise of the powers conferred by clause (ii) of sub-section (1) of section 66 of the Prevention of Money-laundering Act, 2002 (15 of 2003), the Central Government, being satisfied that it is necessary in the public interest to do so, hereby makes the following further amendment in

the notification of the Government of India, in the Ministry of Finance, Department of Revenue, published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i), vide number G.S.R. 381(E), dated the 27th June, 2006, namely:-

In the said notification, after serial number (25) and the entry relating thereto, the following serial number and entry shall be inserted, namely:-

"(26) Goods and Services Tax Network"

(d) Notification dated 7th March 2023 wherein the Government made any entity dealing in Virtual Digital Assets (Bitcoin, Crypto Currency, Virtual IPRs/ Licenses etc.) as "Reporting Entity" under PMLA, 2002

MINISTRY OF FINANCE
(Department of Revenue)
NOTIFICATION
New Delhi, the 7th March, 2023

S.O. 1072(E).—In exercise of the powers conferred by sub-clause (vi) of clause (sa) of sub-section (1) of section 2 of the Prevention of Money-laundering Act, 2002 (15 of 2003) (hereinafter referred to the as the Act), the Central Government hereby notifies that the following activities when carried out for or on behalf of another natural or legal person in the course of business as an activity for the purposes of said sub sub-clause, namely:-

(i) exchange between virtual digital assets and fiat currencies;

(ii) exchange between one or more forms of virtual digital assets;

transfer of virtual digital assets;

(iv) safekeeping or administration of virtual digital assets or instruments enabling control over virtual digital assets; and

(v) participation in and provision of financial services related to an issuer's offer and sale of a virtual digital asset.

Explanation:- For the purposes of this notification "virtual digital asset" shall have the same meaning assigned to it in clause (47A) of section 2 of the Income-tax Act, 1961 (43 of 1961). ......"

(e) In addition to the above the Government issued two important notifications dated 3rd May 2023 and 9th May 2023 which made the Professionals and other persons as Reporting Entity under PMLA, 2002 in case prescribed transactions are done on behalf of the clients.

MINISTRY OF FINANCE
(Department of Revenue)
NOTIFICATION
New Delhi, the 3rd May, 2023

S.O. 2036(E).—In exercise of the powers conferred by sub-clause (vi) of clause (sa) of sub-section (1) of section 2 of the Prevention of Money-laundering Act, 2002 (15 of 2003), the Central Government hereby notifies that the financial transactions carried out by a relevant person on behalf of his client, in the course of his or her profession, in relation to the following activities-

(i) buying and selling of any immovable property;

(ii) managing of client money, securities or other assets;

(iii) management of bank, savings or securities accounts;

(iv) organisation of contributions for the creation, operation or management of companies;

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(v) creation, operation or management of companies, limited liability partnerships or trusts, and buying and selling of business entities,

shall be an activity for the purposes of said sub-section.

Explanation 1.- For the purposes of this notification 'relevant person' includes –

(i) an individual who obtained a certificate of practice under section 6 of the Chartered Accountants Act, 1949 (38 of 1949) and practicing individually or through a firm, in whatever manner it has been constituted;

(ii) an individual who obtained a certificate of practice under section 6 of the Company Secretaries Act, 1980 (56 of 1980) and practicing individually or through a firm, in whatever manner it has been constituted;

(iii) an individual who has obtained a certificate of practice under section 6 of the Cost and Works Accountants Act, 1959 (23 of 1959) and practicing individually or through a firm, in whatever manner it has been constituted.

Explanation 2.- For the purposes of this notification 'firm' shall have the same meaning assigned to it in sub-clause (i) of clause (23) of section 2 of the Income-tax Act, 1961 (43 of 1961).

[F. No. P-12011/12/2022-ES Cell-DOR]

MINISTRY OF FINANCE
(Department of Revenue)
NOTIFICATION New Delhi,
the 9th May, 2023

S.O. 2135(E).—In exercise of the powers conferred by sub-clause (vi) of clause (sa) of sub-section (1) of section 2 of the Prevention of Money-laundering Act, 2002 (15 of 2003) (hereinafter referred to the as the Act), the Central Government hereby notifies that the following activities when carried out in the course of business on behalf of or for another person, as the case may be, as an activity for the purposes of said sub-clause, namely:-

(i) acting as a formation agent of companies and limited liability partnerships;

(ii) acting as (or arranging for another person to act as) a director or secretary of a company, a partner of a firm or a similar position in relation to other companies and limited liability partnerships;

(iii) providing a registered office, business address or accommodation, correspondence or administrative address for a company or a limited liability partnership or a trust;

(iv) acting as (or arranging for another person to act as) a trustee of an express trust or performing the equivalent function for another type of trust; and

(v) acting as (or arranging for another person to act as) a nominee shareholder for another person.

Explanation.–For removal of doubts, it is clarified that the following activities shall not be regarded as activity for the purposes of sub-clause of clause (sa) of sub-section (1) of section 2 of the Act, namely:-

(a) any activity that is carried out as part of any agreement of lease, sub-lease, tenancy or any other agreement or arrangement for the use of land or building or any space and the consideration is subjected to deduction of income-tax as defined under section

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194-I of Income-tax Act, 1961 (43 of 1961); or

(b) any activity that is carried out by an employee on behalf of his employer in the course of or in relation to his employment; or

(c) any activity that is carried out by an advocate, a chartered accountant, cost accountant or company secretary in practice, who is engaged in the formation of a company to the extent of filing a declaration as required under clause (b) of sub-section (1) of section 7 of Companies Act, 2013 (18 of 2013); or

(d) any activity of a person which falls within the meaning of an intermediary as defined in clause (n) of sub-section (1) of section 2 of the Prevention of Money-laundering Act, 2002 (15 of 2003). …….”

It is also noteworthy here to refer to Section 72A of PMLA, 2002 introduced by the Finance Act, 2019 which provide for constitution of Inter-Ministerial Coordination Committee and provides as under:

“72A. Inter-ministerial Co-ordination Committee.

The Central Government may, by notification, constitute an Inter-ministerial Co-ordination Committee for inter-departmental and inter-agency coordination for the following purposes, namely:—

(a) operational co-operation between the Government, law enforcement agencies, the Financial Intelligence Unit, India and the regulators or supervisors;

(b) policy co-operation and co-ordination across all relevant or competent authorities;

(c) such consultation among the concerned authorities, the financial sector and other sectors, as are appropriate, and are related to anti money-laundering or countering the financing of terrorism laws, regulations and guidelines;

(d) development and implementing policies on anti money-laundering or countering the financing of terrorism; and

(e) any other matter as the Central Government may, by notification, specify in this behalf.”

Thus, from the above discussion it is candid clear that viewed from any angle, there is live connect, nexus and interplay between all these laws dealing with the economic offences in the country. The laws have been drafted like that and being implemented/enforced like that. Henceforth, well-coordinated and synchronized enforcement and implementation is going to be norms of the day. Thus, quite obviously, compliance of these laws also needs to be made in a holistic manner and cannot be made in isolation without holistic awareness and understanding.

It would not be exaggeration to say that it is beginning of a new legal era and therefore everyone must reset and realign to pace with it before getting bogged down with the unintended consequences and sufferings.

PMLA and Taxation Laws: unravelling the Nexus Between Money Laundering and Tax Evasion

Rahul Hakani
Advocate

Overview

The Article explains the linkages between the PMLA and Income tax Act and the Black Money Act. Pursuant to these linkages information is communicated between the authorities under the respective laws. The Article explains the interplay between these laws.

Part I - Direct Tax laws

Introduction

On several occasions nowadays it is seen that where action is taken against any person under The Prevention of Money -Laundering Act,2002 (hereinafter referred to as PMLA) then the same is followed by action under the Income tax Act, 1961 (hereinafter referred to as the Income tax Act). This happens essentially because of existence of statutory provisions prescribing exchange of information between the authorities under the Income Tax Act and the PMLA. This is one of the reasons that there is an interplay between the two laws. The Supreme Court in ***Vijay Madanlal Choudhary vs. UOI 2022 SCC Online 929*** has held existence and registration of scheduled offence is a sine qua non for initiating action under PMLA. Thus, whether violation of Income Tax Act or the violation of Black Money (Undisclosed Foreign Income and Assets) and Imposition of Tax Act, 2015 (the Black Money law) is a scheduled offence under the PMLA will also be a relevant factor for the interplay between these laws.

Exchange of Information

Section 66 of PMLA provides as under :

"66. Disclosure of information.

(1) The Director or any other authority specified by him by a general or special order in this behalf may furnish or cause to be furnished to—

(i) any officer, authority or body performing any functions under any law relating to imposition of any tax, duty or cess or to dealings in foreign exchange, or prevention of illicit traffic in the narcotic drugs and psychotropic substances under the Narcotic Drugs and Psychotropic Substances Act, 1985 (61 of 1985); or

(ii) such other officer, authority or body performing functions under any other law as the Central Government may, if in its opinion it

is necessary so to do in the public interest, specify, by notification in the Official Gazette, in this behalf, any information received or obtained by such Director or any other authority, specified by him in the performance of their functions under this Act, as may, in the opinion of the Director or the other authority, so specified by him, be necessary for the purpose of the officer, authority or body specified in clause (i) or clause (ii) to perform his or its functions under that law.

(2) If the Director or other authority specified under sub-section (1) is of the opinion, on the basis of information or material in his possession, that the provisions of any other law for the time being in force are contravened, then the Director or such other authority shall share the information with the concerned agency for necessary action." (emphasis supplied)

Section 66(1) provides that the Authority under PMLA may either *suo moto* or on request by various officer/authorities specified therein furnish any information received or obtained by them in the performance of their functions under PMLA. Further, such information shall be furnished only if in the opinion of the authority under PMLA, such information will be necessary for the purpose of the tax authority etc to perform their functions under that respective law.

Thus, under Section 66(1) the authorities under PMLA are not required to come to a conclusion about violation of other laws before sharing the information with the authorities under that law. Thus, even if they suspect some violation, they can share the information. **For Eg** – If during search the PMLA authorities find certain money, bullion, property etc then they can share such information with the Income Tax authorities even though no tax liability may ultimately arise. Further the information has to be shared only if in the opinion of the authorities under PMLA such information will be relevant for the authorities under other laws. Hence, on a literal interpretation, authorities under other laws cannot compel the authorities under PMLA to share the information.

As per Section 66(2) if the authorities under PMLA are of the opinion, on the basis of information or material in their possession, that the provisions of any other law for the time being in force are contravened then it is mandatory for the authorities under PMLA to share the information with the concerned agency under that other laws.

Section 138 of the Income tax Act deals with disclosure or exchange of information. Section 138 of the Income tax Act is similar to Section 66 of the PMLA. Section 138 provides as under:

"138. Disclosure of information respecting assessees.

(1) (a) The Board or any other income-tax authority specified by it by a general or special order in this behalf may furnish or cause to be furnished to—

(i) any officer, authority or body performing any functions under any law relating to the imposition of any tax, duty or cess, or to dealings in foreign exchange as defined in [clause

(n) of section 2 of the Foreign Exchange Management Act, 1999 (42 of 1999)]; or

(ii) such officer, authority or body performing functions under any other law as the Central Government may, if in its opinion it is necessary so to do in the public interest, specify by notification in the Official Gazette in this behalf,

any such information received or obtained by any income-tax authority in the performance of his functions under this Act, as may, in the opinion of the Board or other income-tax authority, be necessary for the purpose of enabling the officer, authority or body to perform his or its functions under that law.

(b) Where a person makes an application to the Principal Chief Commissioner or Chief Commissioner or Principal Commissioner or Commissioner in the prescribed form 2 for any information relating to any assessee received or obtained by any income-tax authority in the performance of his functions under this Act, the Principal Chief Commissioner or Chief Commissioner or Principal Commissioner or Commissioner may, if he is satisfied that it is in the public interest so to do, furnish or cause to be furnished the information asked for and his decision in this behalf shall be final and shall not be called in question in any court of law.

(2) Notwithstanding anything contained in sub-section (1) or any other law for the time being in force, the Central Government may, having regard to the practices and usages customary or any other relevant factors, by order notified in the Official Gazette, direct that no information or document shall be furnished or produced by a public servant in respect of such matters relating to such class of assessees or except to such authorities as may be specified in the order."

NOTIFICATION NO. 32/2013 [F.NO.225/62/2013-ITA.II]/SO 937(E), DATED 18-4-2013 states as under :

"Whereas the Central Government is of the opinion that it is necessary to do so in the public interest; and, therefore, in pursuance of sub-clause (ii) of clause (a) of sub-section(1) of section 138 of the Income-tax Act, 1961, the Central Government hereby specifies officers of the rank of Joint Director and above serving in Directorate of Enforcement, Department of Revenue, Ministry of Finance, Government of India, who are performing functions under the Foreign Exchange Management Act, 1999 and the Prevention of Money Laundering Act, 2002, for the purpose of the said clause."

Thus, under Section 138 of the Income tax Act, information with the income tax authorities can be shared with the authorities under PMLA.

As per Section 84 of the Black money Law, provisions of Section 138 of the Income tax Act is applicable. Further, authorities under the Black Money Law are same as Income tax

authorities. Thus, exchange of information under Black Money law and PMLA is also permissible.

There is nothing in PMLA or the Income tax Act which states that information supplied has to be acted upon ipso facto. The recipient agency has to conduct it's own independent investigation before coming to the conclusion whether there is any violation of the law dealt with by the recipient agency.

The Supreme Court in ***K.T.M.S Mohamed vs. UOI, [1992] 197 ITR 196 (SC)*** was dealing with a situation wherein the Enforcement Directorate under FERA had exchanged information with the Income Tax Officer that the Assessee was owner of ₹ 6 lakhs based on the statement recorded of the assessee itself, which was subsequently retracted. Further prosecution was launched under the Income tax Act. The ITO made the addition of ₹ 6 lakhs u/s 69A. However, the addition was deleted by ITAT. Thereafter, the prosecution was set aside. Hence, the information received under FERA did not ipso facto lead to addition under the Income tax Act. The Supreme Court further held that statements recorded under FERA cannot be used for Income Tax purposes. The relevant portion is as under:

*"**29.** Therefore, the significance of a statement recorded under the provisions of the Foreign Exchange Regulation Act during the investigation or a proceeding under the said Act so as to bring them within the meaning of a judicial proceeding must be examined only qua the provisions of the Foreign Exchange Regulation Act but not with reference to the provisions of any other alien Act or Acts such as the Income-tax Act.*

***30.** If it is to be approved and held that the authorities under the Income-tax Act can launch a prosecution for perjury on the basis of statement recorded by the Enforcement Officer, then, on the same analogy, the enforcement authority can also, in a given situation launch a prosecution for perjury on the basis of any inculpatory statement recorded by the income-tax authority, if repudiated subsequently before the enforcement authority. In our opinion, such a course cannot be and should not be legally permitted."*

In ***Harish Fabiani vs. ED 2022 SCC OnLine Del 3121*** the Delhi High Court, after considering the Supreme Court's decision in the case of ***Vijay Madanlal Choudhary vs. Union of India 2022 SCC OnLine SC 929*** held that the relevant authorities receiving information by virtue of PMLA must evaluate whether an offence under the respective Act has in fact been committed.

Hence, once the recipient receives any information from other agency, then before taking any action they must evaluate whether the information received constitutes any violation of law dealt with by them.

Income Tax Act & PMLA

As stated earlier that one of the factors for initiation of action under PMLA is the existence and registration of a scheduled offence. Scheduled offences are given in Part A, B and C of the Schedule to the PMLA.

Offences under the Income tax Act is not a scheduled offence. Hence, if prosecution is launched for any offence under the Income tax Act, then that will not give power to the authorities under the PMLA to take action. However, if complaint under the Income tax Act is filed which also includes offences under the Indian Penal Code, 1860 or any other law

prescribed under the Schedule then perhaps the authorities under PMLA can swing into action.

However, if an action is initiated under PMLA then by virtue of provisions dealing with exchange of information, action can be initiated under the Income tax Act. For example, a person is prosecuted under The Prevention Of Corruption Act, 1988. Offence under said Act are scheduled offences under PMLA. Thus, the authorities under PMLA will initiate action. If during their investigation, they find unaccounted transactions then they will report the same to the Income Tax Authorities. Accordingly, the Income Tax department will also take action.

Thus, action initiated by the Income Tax department will mostly not culminate into an action under PMLA as offences under the Income Tax act is not a scheduled offence. However, action under PMLA wherein the authorities suspect violation of income tax Act or reach a conclusion as to the violation of income tax act, will culminate into an action under the income tax Act.

Black Money Law & PMLA

Part C of the Schedule to PMLA prescribes the offence of wilful attempt to evade any tax, penalty or interest referred to in Section 51 of the Black Money (Undisclosed Foreign Income and Assets) and Imposition of Tax Act, 2015.

Section 51 of the Black money Law provides as under :

*"**51.** (1) If a person, being a resident other than not ordinarily resident in India within the meaning of clause (6) of section 6 of the Income-tax Act, wilfully attempts in any manner whatsoever to evade any tax, penalty or interest chargeable or imposable under this Act, he shall be punishable with rigorous imprisonment for a term which shall not be less than three years but which may extend to ten years and with fine.*

(2) If a person wilfully attempts in any manner whatsoever to evade the payment of any tax, penalty or interest under this Act, he shall, without prejudice to any penalty that may be imposable on him under any other provision of this Act, be punishable with rigorous imprisonment for a term which shall not be less than three months but which may extend to three years and shall, in the discretion of the court, also be liable to fine.

(3) For the purposes of this section, a wilful attempt to evade any tax, penalty or interest chargeable or imposable under this Act or the payment thereof shall include a case where any person—

(i) has in his possession or control any books of account or other documents (being books of account or other documents relevant to any proceeding under this Act) containing a false entry or statement; or

(ii) makes or causes to be made any false entry or statement in such books of account or other documents; or

(iii) wilfully omits or causes to be omitted any relevant entry or statement in such books of

account or other documents; or

(iv) *causes any other circumstance to exist which will have the effect of enabling such person to evade any tax, penalty or interest chargeable or imposable under this Act or the payment thereof."*

Thus, where a criminal complaint is filed under the Black Money Law for the offence prescribed u/s 51 of the Act, then the provisions of PMLA can be invoked.

Offences u/s 50 (Punishment for failure to furnish in return of income, any information about an asset (including financial interest in any entity) located outside India.) and Section 52 (False statement in Verification) are not prescribed in Part C of the Schedule. Thus, if criminal complaint under the Black Money law is filed for offence u/s 50 or 52 then the PMLA Act cannot be invoked.

Conclusion

Black Money Law, Benami Law, GST law and PMLA are now regarded as extensions of Income Tax Act particularly due to the interplay between these laws on account of statutory provisions providing for the exchange of information. Further implementation of these provisions with use of digital technology has resulted into speedy action by the Authorities under various laws. Some of these laws have provisions relating to provisional attachments, arrests etc which require immediate solutions. These laws have both civil provisions as well as criminal provisions. Professionals can no longer specialise in one of these laws but are now required to specialise in all these laws including criminal laws to enable them to provide a holistic and speedy solution to their clients.

"Let us not be caught this time. So many times Maya has caught us, so many times have we exchanged our freedom for sugar dolls which melted when the water touched them. Don't be deceived. Maya is a great cheat. Get out. Do not let her catch you this time. Do not sell your priceless heritage for such delusions. Arise, awake, stop not till the goal is reached."

— *Swami Vivekananda*

"The whole universe is only the self with variations, one tune made bearable by variations. Sometimes there are discords, but they only make the subsequent harmony more perfect."

— *Mahatma Gandhi*

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PMLA and Taxation Laws: Unravelling the Nexus Between Money Laundering and Tax Evasion

CA Gunjan Prabhakaran

CA Prerna Chopra

Overview

This article explores the intricate relationship between the Prevention of Money Laundering Act, 2002 (PMLA) and India's Indirect tax laws, particularly Goods and Services Tax (GST) and Customs laws. PMLA focuses on combating money laundering and financing of terrorism, while Indirect tax laws govern and prevent tax evasion in domestic and cross-border transactions. The article emphasizes the importance of cooperation and information sharing between law enforcement agencies and tax authorities in combating financial crimes.

The interplay between PMLA and Indirect tax laws involves various aspects, such as reporting mechanisms, provisional attachment of assets, investigation, and information sharing. It highlights how tax evasion and money laundering often go hand in hand, making it essential for authorities to work together to combat these financial transgressions.

The article also discusses recent developments, such as the inclusion of the Goods and Services Tax Network (GSTN) under PMLA for data disclosure. It examines legal complexities surrounding GSTN's authority to share information with the Financial Intelligence Unit (FIU) and the possibility of GST offenses falling under scheduled offenses of PMLA.

Challenges related to GSTN's authority, the non-inclusion of GST offenses under scheduled offenses, and the need for strict compliance and documentation by taxpayers are discussed. The conclusion emphasizes the importance of understanding the relationship between PMLA and Indirect tax laws and staying updated with legislative changes to ensure legal compliance and transparency in business operations. It also highlights the potential benefits of collaborative efforts in curbing revenue losses and tax evasion associated with GST and Customs Law.

Part II- Indirect Tax Laws

A. Introduction

The Prevention of Money Laundering Act, 2002 (PMLA) and Indirect tax laws i.e., Goods and Services Tax (GST) and Customs laws, specifically, are two fundamental legislations in India that aim to combat

financial crimes and regulate the Indirect tax system, respectively. While PMLA focuses on preventing money laundering and combating the finance of terrorism, Indirect tax laws govern streamlining the taxation system and preventing tax evasion with respect to domestic and cross-border supply of goods/ services. In this article, we will delve into the finer points of the interplay between PMLA and Indirect tax laws, providing valuable insights for tax professionals.

The intricate nexus between PMLA and taxation jurisprudence constitutes a pivotal facet of financial governance and enforcement. PMLA is a statutory framework directed towards the thwarting of illicit monetary transactions and the countering of the financial underpinnings of terrorism, whereas Indirect tax statutes are crafted with the intent of overseeing fiscal matters and accruing revenue for State disbursements ensuring that there is no leakage of tax in entire supply chain.

Certainly, the intricate interplay between PMLA and Indirect tax law encompasses a multifaceted tapestry that entails information exchange, the scrutiny of financial improprieties, and seamless coordination between law enforcement agencies and tax authorities. Money laundering and tax evasion are frequently intertwined, rendering it incumbent upon authorities to forge synergistic efforts aimed at combating these financial transgressions and upholding compliance with tax statutes.

B. Interplay of PMLA and Indirect Tax Law

GST Law is still settling since its introduction in July 2017 and witnessed many changes along with challenges to both Revenue and taxpayers in this short span of 6 years. While taxpayers are struggling with frequently changing legal provisions and nuances in compliances, Revenue is working on various measures to provide ease of doing business along with plugging tax avoidance. In the recent past, the Industry has witnessed that the Directorate General of Analytics and Risk Management (DGARM) has worked extensively in finding wrongdoing in GST with internal analytical modules, which has resulted in many findings of GST evasion by fake invoices, availing incorrect input tax credit, etc. This extensive effort of DGARM was well supported by effective and frequent GST Audits by the department.

PMLA was enacted in 2002 (came into effect in 2005) to prevent money laundering and confiscate properties derived from criminal activities. It provides for the attachment, seizure, and confiscation of proceeds of crime, as well as the establishment of a specialized agency, the Enforcement Directorate (ED), to enforce the provisions of the Act. PMLA has undergone several amendments over the years to strengthen its effectiveness in combating money laundering.

The interplay between PMLA and Indirect tax laws (primarily GST and Customs Law) in India is of great importance in the fight against financial crimes and the enforcement of tax regulations. The PMLA has the primary objective of preventing money laundering activities and seizing the illicit proceeds generated from criminal activities. The Indirect tax laws are responsible for regulating the taxation of domestic and overseas supply of goods and services across the world to ensure that there are no tax evasions.

Firstly, it is relevant to understand how offences under GST Act become a means to launder money and under which

circumstances offences under GST may coincide with offences under PMLA.

Certainly, there is no iota of doubt that offence or any illegal activity under any of the one law i.e., PMLA or Indirect tax laws, is directly or indirectly intrinsically linked to the offence or violation of the other law. In order to understand this interplay between PMLA and GST Law, it would be pertinent to take an illustration i.e., Let's say, Mr. A issued a tax invoice to Mr. B without any underlying supply of goods or services or both. Mr. B utilizes the input tax credit availed based on the fake invoice[1]. Further, Mr. B issues tax invoices against an underlying supply to its customer. In this case, Mr. B has utilized fraudulent input tax credit without receiving the goods and services, in contravention of Section 16(2)(b) of the Central Goods & Service Tax Act (CGST Act), so he shall be liable for demand and recovery of the said input tax credit, along with penal action, under Section 74 of CGST Act for wrongful availment of input tax credit and interest under Section 50 of CGST Act. In this case, since there is fake invoicing by the supplier, the supplier can be charged with an offence by the competent authority under the Indian Penal Code (IPC) under Section 120B (criminal conspiracy), Section 467 (forgery of valuable security, will, etc.,) and Section 471 (using as genuine a forged document or electronic record) for laundering of money and then the said offence would fall under the ambit of PMLA as a scheduled offence.

Having regard to the fact that the offence of tax evasion under Indirect tax law coincides with the offence of money laundering under PMLA or vice-versa, there is undoubtedly an inter-play between PMLA and Indirect tax legislation. Hence, it would be critical to deep dive and unfold the key areas where PMLA and Indirect tax legislation (specifically GST and Customs Law) are interconnected and often occur together:

- ***Reporting Mechanisms***: The first point of interplay is the reporting mechanisms required by both laws. Reporting entities under Section 2 (wa) of PMLA are obligated to report high-value transactions, which are often the same transactions scrutinized by the tax authorities under GST Law in audits, search and seizure investigations. A discrepancy in such reporting would certainly trigger an alarm under both PMLA and GST investigation and may lead to severe financial implications in the forms of huge tax demands, penalties, and interest along with prosecution proceedings in severe economic offences.
- ***Provisional Attachment***: Under PMLA, ED by virtue of Section 5 of PMLA has the power to provisionally attach and confiscate the properties suspected to be involved in the offence of money laundering under Section 3 of PMLA. This includes properties/assets that may have been acquired using the "proceeds of crime" as defined under Section 2(1)(u) of PMLA. In peculiar scenarios like smuggling of gold, illegal imports, fake invoicing, underreporting income/sales

1. Circular No. 171/03/2022-GST, Dated the 6th July 2022.

turnover, illegal benefit of input tax credit etc. GST and Customs authorities are also empowered to provisionally attach and confiscate properties to safeguard the interest of revenue during investigations into tax evasion or fraudulent activities.

- ***Investigation and Information Sharing***: PMLA empowers the ED to investigate money laundering offences and gather information from various sources, including government agencies. Similarly, GST and Customs authorities have the power to investigate cases of tax evasion and gather information from taxpayers, banks, and other relevant entities. The interplay between PMLA and GST laws allows for the sharing of information and coordination between the ED and GST authorities in cases involving economic offences like improper importation of goods under Section 111 of the Customs Act, fake or wrong invoicing, falsifying or tampering with records or documents etc. under Section 122 of CGST Act.

- ***Tax Evasion and Money Laundering***: Tax evasion and money laundering often go hand in hand. GST and Customs laws aim to prevent tax evasion by ensuring proper compliance with tax payments and reporting of transactions. PMLA, on the other hand, focuses on identifying and prosecuting individuals involved in money laundering activities. The interplay between these laws becomes crucial when tax evasion is used as a means to launder money or *vice-versa.*

- ***Penalties, Confiscation and Imprisonment***: Both PMLA and GST/ Customs laws provide for penalties, confiscation of assets and imprisonment proceedings in certain cases (rare cases of hard, habitual, deliberate defaulters). PMLA allows for the confiscation of proceeds of crime, while GST and Customs laws provide for penalties and recovery of tax evaded up to five times the value of goods in certain cases (for example Section 114AA of Customs Act, Section 122 of CGST Act etc.)

To sum up, it is imperative to note that ED is precluded from independently investigating tax-related offences under PMLA. Consequently, the ED lacks the authority to singularly pursue cases pertaining to GST violations in isolation. However, the ED does possess the jurisdiction to initiate inquiries into GST violations provided they are coupled with any other scheduled offence as defined under Section 2(1)(y) of PMLA.

Having said that there is an interplay between the economic offences under PMLA and Indirect tax law, vide Prevention of Money-laundering (Maintenance of Records) Fourth Amendment Rules, 2020, Notification No. G.S.R. 800(E) dated December 28, 2020, the Government of India has designated the Central Board of Indirect Taxes and Customs (CBIC) as its regulator for the collection of data in respect of customers and ensuring compliance by two specific sectors which are prone to dubious and huge cash transactions i.e., Real Estate Agents and Dealers of Precious Metal and Precious Stones (DPMS).

Obligation for Real Estate Agents and DPMS under PMLA under the guidelines issued by CBIC

The CBIC has been designated as the regulatory body i.e., Directorate General of Audit, Indirect taxes & Customs for DPMS and the Real Estate Agents, as these sectors are

covered under the ambit of Designated Non-financial Businesses and Professions (DNFBPs) under PMLA. In light of this, the CBIC has issued Anti-Money Laundering (AML)/ Combating the Finance of Terrorism (CFT) guidelines for Real Estate Agents and DPMS in the years 2022[2] and 2023 respectively[3]. Key points with respect to these guidelines issued are as under:

- The AML/CFT guidelines for the Real Estate sector prescribe for categorization of clients into high-risk and low-risk based on their location, nature of business, trading turnover, etc., and directs the reporting entities to conduct risk assessment of clients who are non-resident, HNI, trusts, charities, NGOs, etc.
- According to the information provided in the context, the Government of India has made it mandatory for Real Estate Agents with a turnover of more than 20 lakhs in a year to comply with the provisions of PMLA. Real Estate Agents are now required to keep records of transactions and adhere to the norms of Know Your Client (KYC) verification. They must also develop a mechanism for detecting suspicious transactions and maintaining records as stipulated under PMLA Rules, 2005.
- In summary, the interplay of PMLA and GST relates to the compliance obligations of Real Estate Agents in India. Real Estate Agents with a turnover of more than 20 lakhs in a year are required to comply with the provisions of PMLA and rules thereunder, in addition to their obligations under RERA. This includes maintaining records of transactions, adhering to KYC norms, and developing mechanisms for detecting suspicious transactions.
- Guidelines for DPMS are also exhaustive in nature and require various compliances to be undertaken by DPMS, where they undertake cash transactions exceeding INR 10,00,000 with a customer, whether in one single transaction or multiple transactions which are connected.

PMLA primarily deal with anti-money laundering measures, while GST is a tax regime that aims to unify Indirect taxes across the country. The interplay between these two laws arises because Real Estate Agents and DPMS are now required to comply with both sets of regulations in terms of reporting and disclosure requirements.

GSTN under PMLA for the purpose of disseminating information only

As a next step towards plugging revenue losses, the Department of Revenue (DOR), Ministry of Finance vide Notification No. G.S.R. 491(E) dated 07 July 2023 (Notification) issued under the provision of Section 66(1)(ii) of PMLA has included the Goods and Services Tax Network (GSTN) under the provisions

2. Directorate General of Audit, Indirect Taxes and Customs Guidelines for Reporting Entities (Real Estate Agents) under the Prevention of Money Laundering Act, 2002, December 30, 2022.
3. Directorate General of Audit, Indirect Taxes and Customs Guidelines for Reporting Entities (Dealers in Precious Metals and Precious Stones) under the Prevention of Money Laundering Act, 2002, February 17, 2023.

of PMLA for the purpose of disclosure of the information by the Director, Financial Intelligence Unit (FIU) empowered under PMLA.

This step of the Government appears to be a part of a broader plan to bring gradually all financial wrongdoings under PMLA as this is widening the ambit of the network within which FIU can share data. In this aspect, it is pertinent to note that the Government in November 2022 vide Notification No. G.S.R. 832(E) dated 22 November 2022, the DOR had allowed ED to share information about economic offenders with 15 more external agencies in addition to the 10 external agencies specified earlier.

With this backdrop, it is imperative to understand the impact of this recent Notification issued under PMLA with respect to prevailing practices and procedures under the GST regime.

The recent Notification has amended the base Notification No. G.S.R. 381(E), dated 27 June 2006 which dealt with the disclosure of information under Section 66 of the PMLA by the Director, FIU, or any other authority specified by him.

It is to be noted vide a different Notification No. G.S.R. 382(E), dated 27 June 2006 that the Director, the ED is empowered for disclosure of information under Section 66 of the PMLA, or any other authority specified by him. Further, there has been no recent amendment under this Notification in respect of the inclusion of "GSTN".

This, in turn, means that it is the Director of FIU (not ED) who is only empowered to disclose the information and data with GSTN.

Here, it would be tricky to understand the provisions of the GST legalisation which empower the GSTN in respect of the disclosure of information to any agency or any authority (specifically FIU in the present context).

- Section 158 of CGST provides for the disclosure of information by a public servant. Here, it would be relevant to note that the GSTN, is a company registered under the Companies Act, 2013 and cannot be treated as a person to be a public servant in terms of Section 156 of the CGST Act hence this section is not applicable for deriving the powers of "GSTN" to disclose information with any authority or agency.
- Section 158A (effective from 01 October 2023) which provides for consent-based sharing of information furnished by taxable persons. This section inter-alia provides that before sharing of information by the common portal with other systems in respect of information furnished by taxable persons consent should be obtained from the taxpayer (supplier/recipient). It appears that practically this section would not be applicable in the case of sharing of information by GSTN to FIU because it would not be feasible for GSTN to seek consent from the taxpayer every time the data is shared with FIU.

In conclusion, currently, in terms of the provisions of GST law, GSTN is not legally empowered to disclose and share information with FIU but what needs to be pondered in the coming times is whether the GSTN being a non-government and non-profit entity can disclose and share the information with any external agencies under the aegis of the Government of India?

However, it is also important to understand that the Government is working extensively with an approach to bring all kinds of financial frauds under the ambit of PMLA to make that prime legislation to deal with it,

and there are other Governmental agencies that are privy to data of GSTN and the data can be accessed by any authorities dealing with the offences of money laundering or tax evasion through the mutual understanding between the agencies. Therefore, it can be very well concluded that the recent development of sharing information with GSTN by FIU would empower GST authorities/Directorate General of GST Intelligence to initiate new investigations based on the information received from FIU. This in turn will lead to an increase in the GST collection for the exchequer and would help the GST authorities to regulate the menace of fraudulent activities (specifically fake invoicing, fake input tax credit) in a more stringent and transparent manner.

Offences under GST are not within the ambit of scheduled offence under PMLA directly

By virtue of this Notification, the moot question which has been a point of ongoing debate is whether the offences under the GST Act would now fall under the ambit of "offence of money laundering" under Section 3 of the PMLA.

At this juncture, it is important to note that it is absolutely a myth that offences under the GST legalisation would get covered under the "offence of money laundering" because GST offences have not been included in the list of scheduled offences in terms of Section 2(y) under Part A of the Schedule to PMLA.

Unless the offence is covered under Part A of the Schedule of PMLA, then such an offence cannot be brought within the ambit of "offence of money laundering".

However, it is critical to note that offences under Customs Law get covered under PMLA by way of specific entry under Part A Paragraph 12 of the Schedule to PMLA (i.e., Offence under Customs Act, 1962, Section 135 "Evasion of duty or prohibition" or Part B of the Schedule to the PMLA (i.e., offence under Customs Act, 1962, Section 132 "False declarations, False documents etc.").

Thus, this is amply clear that by virtue of the recent Notification, GST offences do not in any way get directly compassed under the "offence of money laundering" under PMLA. Currently, offences under GST are not considered predicate/scheduled offences but certainly the offence under Sections 135 and 132 of the Customs Act, 1962 falls within the ambit of predicate/scheduled offences under PMLA.

Attention is invited to the Allahabad High Court judgment in the matter of Govind Enterprises[4] wherein the allegation of the GST department was that the petitioners were engaged in circular trading. In the case of circular trading, there involves a criminal conspiracy among a group of players to defraud revenue by issuing fake/bogus invoices, thereby attracting Section 120B of IPC, and by issuing bogus e-way bills, the accused would also attract provisions of Section 467 and 471 of IPC, resulting in various scheduled offences, giving the competent authority power to invoke provisions of PMLA. The Court held that there is no bar under GST laws to invoke prosecution under IPC, an officer can invoke prosecution under IPC. It is important to note that Section 131 of the CGST Act states that the penalty imposed under the provisions of

4. *Govind Enterprises vs. State of U.P. 2019 (27) G. S. T. L. 161 (All.).*

the CGST Act shall not prevent the infliction of any other punishment to which the person affected thereby is liable under provisions of this Act or under any other law for time being in force. Hence, in the instances of circular trading, there is every possibility that the provisions of PMLA could be invoked because the GST laws do not state otherwise.

Nonetheless, in the event of an offence falling within the scope of scheduled offences, such as those outlined in the IPC, for which the ED is already conducting an inquiry, and if during the course of this investigation, the ED comes across indications of a breach of the provisions related to GST resulting in tax evasion, it is empowered to simultaneously initiate an investigation into the matter.

C. Challenges and Way Forward

With this interplay between PMLA and Indirect tax legalisation, the following are the key challenges and way forward in respect of the operation of two laws in India:

- ***GSTN is not empowered to share the information with FIU under the current legal landscape***

  It is pertinent to note that by virtue of Section 150(n) of CGST, GSTN is empowered to furnish an information return to such authority or agency as may be prescribed. This in turn means that GSTN is empowered to share the data and information of taxpayers to authorities and agencies which are primarily established under the GST Law.

  Under the current legislative provisions of PMLA and GST Law, there is an ambiguity in terms of the legal power of the GSTN to share information and data with FIU. However, this aspect would be imperative as GSTN possesses critical financial information in terms of the transactions undertaken by the taxpayer which is relevant for identification of money laundering activity. The Government of India would certainly settle this anomaly in view of the current time where the exchange of information and data with FIU plays a pivotal role in identifying and combating the menace of money laundering and financial terrorism.

- ***GSTN not being a "public servant" is not authorised to disclose any information***

  Section 158 of CGST provides for the disclosure of information as a lawful exercise by a public servant or any other statutory authority, of his or its powers under any law for the time being in force. GSTN being a company registered under the Companies Act, 2013 cannot by any stretch of imagination be termed as a person deemed to be a public servant in terms of Section 156 of the CGST Act and hence this aspect of sharing and exchange of information by GSTN with FIU in the capacity of "person deemed to be a public servant" lacks tenability in the eyes of law.

- ***GST offences of general nature unlikely to get scooped under the ambit of "scheduled offence" of PMLA***

  The CBIC has recently worked towards decriminalization of offences envisaged under GST Law, so, it is unlikely that GST offences of a general nature would get specifically covered under scheduled offences under PMLA. Further, it must be noted that GST authorities are already empowered to recover the benefits made from criminal offences under GST along with the provisions for imprisonment in rare cases. However, offences of severe nature like fake

invoicing and fabrication of tax invoices for passing input tax credit etc. can be brought within the scope of scheduled offences under PMLA as akin to offences under the Customs Law (as mentioned under scheduled offences).

Certainly, there are challenges due to the interplay of PMLA and Indirect tax law which are inevitable but as lawyers, chartered accountants and tax professionals it becomes our responsibility to ensure the following measures are taken by or on behalf of taxpayers in the course of carrying out their business operations:

- Transactions of clients are reported before any governmental/tax authority in a fair, transparent and uniform manner;
- Proper documentation like invoices, contracts, payment details etc. for each transaction is duly maintained by the clients; and
- Books of account are duly maintained and certified by an independent third-party chartered accountant.

so that these steps act as safeguard measures during the process of dispute resolution under PMLA or any Indirect tax enquiry/ investigation.

D. Conclusion

Comprehending the intricate relationship between PMLA and the laws governing Indirect taxes is of paramount importance for legal and tax experts. Despite belonging to distinct regulatory spheres, these two legal frameworks frequently align in their overarching objectives, which primarily revolve around upholding economic integrity and fostering governance. Consequently, a thorough grasp and thorough examination of both these legal domains can prove instrumental in ensuring strict adherence to legal requirements and controlling tax evasion.

Furthermore, the dynamic nature of these laws necessitates a continuous commitment to staying abreast of the latest legislative revisions and judicial interpretations. For professionals operating within the complex landscape of the Indian tax and legal systems, the synergy between PMLA and Indirect tax goes beyond academic curiosity; it becomes an imperative practical requirement. A profound comprehension of this symbiotic relationship not only ensures legal conformity but also sets the stage for cultivating a business environment that is more transparent and accountable in its operations.

Undoubtedly, PMLA represents a critical legislative instrument geared towards thwarting and managing money laundering activities within India. These recent initiatives undertaken by the Government of India unquestionably facilitate enhanced cooperation between FIU and tax authorities. This collaborative approach promises to be particularly effective in curbing revenue leakages and tax evasion associated with GST and Customs Law.

"Then he sees that this attachment is all delusion."

— *Swami Vivekananda*

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Role of Enforcement Agencies: Coordinating Actions under PMLA and Other Relevant Laws

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Overview

In this article, we attempt to highlight the battle against money laundering in India, with a specific focus on the legislative framework embodied under the provisions of the Prevention of Money Laundering Act (PMLA). Money laundering, an enduring financial menace, has persisted throughout history, posing a persistent challenge on a global scale and India, as a nation, has been no stranger to this issue. The PMLA, enacted in 2002 and fully operationalized in 2005, stands as India's robust response to the intricate web of money laundering.

Our exploration begins with an extensive historical and socio-economic investigation, tracing the evolution of anti-money laundering regulations in India. We then delve into the core provisions enshrined within the PMLA, dissecting its essential elements, and the ripple effects of recent amendments. The article meticulously examines the interplay between the PMLA and other legal regimes within India, most notably those under the purview of the Reserve Bank of India (RBI), the Securities and Exchange Board of India (SEBI), and corporate law. This comprehensive analysis unravels the complex dynamics between these legal frameworks, shedding light on the challenges and opportunities inherent in harmonizing them. Our exploration includes a detailed breakdown of specific transgressions under the PMLA, augmented by real-world case studies. Additionally, we scrutinize the regulatory roles assumed by the RBI and SEBI, deciphering their linkages to the PMLA and corporate law. This meticulous analysis offers a holistic view of the relentless battle against money laundering.

We have also examined as to how the PMLA intersects with other pertinent laws in India, such as the Indian Bankruptcy Code,2016, and the Prevention of Corruption Act, 1988. We identify areas of synergy and discord between these legal systems, underscoring the imperative of their harmonious coexistence in India's pursuit of financial integrity and the eradication of corruption.

Lastly, our attention is directed towards the profound ramifications of the 2023 PMLA amendments, heralding a transformative phase in the Indian legal landscape. These amendments represent a monumental stride in India's endeavor to combat money laundering effectively. The revised PMLA casts a broader net, placing onerous obligations on 'Reporting Entities,' an encompassing term that includes various entities and professionals

engaged in designated businesses. These obligations necessitate rigorous due diligence, intensified reporting requirements, and heightened monitoring and record-keeping. Advanced verification methods are mandated to ascertain the identities of clients and beneficial owners. Moreover, the imperative of reporting suspicious transactions to the Financial Intelligence Unit – India (FIU-IND) stands as a central pillar of these amendments. Reporting entities must not only report but also enlist on the FIU-IND's FINNET 2.0 portal, designating personnel responsible for compliance.

In conclusion, these PMLA amendments epitomize India's unwavering commitment to fortify its financial security, aligning with international standards and best practices. Realizing the effective implementation of these substantial changes necessitates the provision of explicit guidelines, comprehensive training, and requisite resources. Vigilant monitoring and ongoing evaluations are pivotal to ensure compliance and to identify areas necessitating further refinement. While these amendments represent a significant stride forward, the ongoing imperative in the fight against money laundering in India's dynamic financial landscape lies in addressing extant gaps.

Abstract

Money laundering, an age-old practice with historical roots, has remained a persistent issue throughout human history. Within India, the Hawala system has traditionally served as a prevalent technique for money transfer. This system enables intermediaries to facilitate cross-border fund transfers without the necessity of physically relocating currency. Money laundering has posed a considerable challenge worldwide, and India has not been immune to this issue. In response, the Indian government took action by introducing the Prevention of Money Laundering Act ("PMLA") in 2002, which subsequently came into force on July 1, 2005. The central aim of this legislation is to combat and regulate money laundering, a practice characterized by the concealment or obfuscation of the proceeds of illegal activities, including their acquisition, possession, or utilization, with the intent of portraying them as legitimate assets.

This article provides a thorough analysis of enforcement agencies' role in India regarding the PMLA and related laws. It covers the historical and socio-economic evolution of anti-money laundering regulations, the PMLA's key provisions, and the impact of recent amendments. The article explores the intricate interplay between the PMLA and other Indian laws, including those governed by the Reserve Bank of India (RBI), Securities and Exchange Board of India (SEBI), and company law, shedding light on the challenges and opportunities in harmonizing these legal frameworks. Specific offenses under the PMLA are dissected, accompanied by an analysis of real-world case studies. The regulatory functions of RBI and SEBI are examined in conjunction with their connections to the PMLA, while also exploring the linkages between company law and anti-money laundering efforts. In conclusion, this article offers a comprehensive understanding of the evolving role of enforcement agencies in coordinating actions under the PMLA and related laws. It emphasizes the importance of effective coordination to combat financial crimes, uphold regulatory integrity, and safeguard India's financial system.

Keywords

Amendments, Enforcement Agencies, Financial Crimes, Jurisprudence, RBI, Regulatory Framework, and SEBI

Introduction

In the realm of global finance, where secrecy and deception often entwine, money laundering has persisted as a craft that transcends time. In the Indian subcontinent, the struggle to combat this intricate challenge has undergone an evolutionary journey inscribed with the annals of history. In India, a considerable portion of the nation's industrial and business entities operated under the shadow of corrupt marketplace practices. These organizations, in their interactions with shareholders, employees, and other stakeholders, exhibited scant regard for enduring human and organizational values. With only a few exceptions, private sector entities were found to engage in various unethical maneuvers, seeking to exploit their customers on one hand while evading their obligations to the state on the other[1].

In the Indian context, numerous privately owned business enterprises were entangled in what can be termed as corporate misgovernance[2]. The distinction lies in the fact that, unlike state-owned organizations where employees at all levels were observed participating in or contributing to corporate misgovernance, privately held businesses primarily saw top-level employees engaging in such practices.

Money laundering facially appears to comprise one or more clear and simple financial transactions, however on the contrary, it involves and comprises a complex web of financial and other transactions. It has been held that the money laundering transaction must essentially involve the following three stages:

(i) The Placement Stage: the malfeasant introduces the crime money into the normal financial system;

(ii) The Layering Stage: the money introduced into the financial system is layered/spread out into several transactions within the financial system with an objective of concealing the fountain source of the money and to make the origin/identity virtually disappear.

(iii) The Integration Stage: the money is thereafter integrated into the financial system in such a way that its original association with crime is totally obliterated and the money could be used by the malfeasant and/or the accomplices to convert it as untainted/ clean money.

In order to understand the pivotal role of agencies involved in enforcing PMLA and related laws, we will explore the historical evolution of anti-money laundering regulations in Indian law context.

1. Nirajan Man Singh and P. Sandhya, "Hawala Financing: An Aid to Terrorism", (2008) 4 NSLR 108.
2. Corporate Frauds Vis-À-Vis Criminal Liability : A Critical Analysis Concerning India, US, and UK, 3.1 JCLJ (2022) 1188 at page 1190.

History and Development

In India, there exist several governmental agencies actively engaged in the monitoring and prevention of corporate fraud. One such agency is the Special Police Establishment (S.P.E.), which established by the Government of India in 1941, it serves as the precursor to the Central Bureau of Investigation (C.B.I.). Initially, during World War II, the S.P.E. played a crucial role in investigating cases of bribery and corruption related to transactions involving India's War and Supply Department[3].

Further, in 1946, the Delhi Special Police Establishment Act came into force, reshaping the S.P.E.'s role. It was shifted to the Home Department, and its authority was expanded to encompass all departments under the Indian government.

Initially, the Central Government's mandate for reporting offenses was primarily confined to instances of corruption involving Central Government employees. However, as the landscape evolved and a multitude of public-sector undertakings emerged, personnel within these organizations eventually fell under the purview of the C.B.I. Similarly, when commercial banks underwent nationalization in 1969, public-sector banks and their employees were also brought within the ambit of the C.B.I.'s jurisdiction.

Introduction of PMLA in the Indian Legal Framework

The legislative journey that led to the creation of PMLA began in 1998 when the initial Prevention of Money Laundering Bill was presented in Parliament. Subsequently, the PMLA Bill underwent a comprehensive review by the Standing Committee on Finance. In 1999, this committee furnished its report to the Lok Sabha, encapsulating crucial recommendations. Building upon the committee's suggestions, the Government introduced the Prevention of Money Laundering Bill, 1999, in Parliament. Following the due legislative process, the Bill garnered the approval of the President, ultimately culminating in its transformation into PMLA. This pivotal legislation officially came into effect on July 1, 2005.

In the context of Prevention of Money Laundering Act, 2002, predicate offences are the foundation for building the offences involving money laundering. The Hon'ble Courts in India in plethora of judgements have emphasized on the significance of the predicate offences. In substance, proceeds generated, with an aid of any criminal activity, when laundered, squarely attracts the offence of money laundering.

This legislation serves as a means to prevent economic offenses and establish provisions for the seizure of assets acquired through or associated with money laundering activities. It also outlines penalties for individuals involved in such unlawful practices. The Directorate of Enforcement, housed within the Department of Revenue under the Ministry of Finance, is tasked with the investigation of money laundering cases.

Moreover, the Financial Intelligence Unit-India (FIU-IND), operating within the Department

3. Supra note 2; Aditya Balasubramanian, Anticorruption and the CBI: A History of Development and (Incomplete) Decolonization, CENTER FOR THE ADVANCED STUDY OF INDIA(2022).

of Revenue under the Ministry of Finance, assumes the role of the primary national agency[4]. It is responsible for the receipt, processing, analysis, and dissemination of information related to individuals suspected of engaging in questionable financial transactions. Additionally, FIU-IND plays a pivotal role in sharing its findings with both enforcement agencies and international Financial Intelligence Units.

Interplay between Pmla and Other Laws in India

Amidst the intricate landscape of India's legal framework, the PMLA emerges as a formidable tool against the pervasive threat of money laundering. Yet, its true effectiveness extends beyond its standalone capabilities; it hinges upon its adeptness in seamlessly intertwining with and augmenting other pivotal legal frameworks governing India's financial and corporate realms. This part deals with meticulous examination of the interplay between PMLA and several other significant legal paradigms. These include the regulatory directives issued by the RBI, the mandates of SEBI, and the comprehensive body of company laws that govern India's corporate landscape.

The Convergence and Coordinated Operation of SEBI Regulatory Framework and PMLA Provisions

SEBI with its overarching legal framework,SEBI plays a central role in ensuring the integrity of India's securities market.

Importantly, the Circular dated June 16, 2023[5], assumes significance within this context as it introduced substantial amendments to SEBI's Master Circular—a foundational document that delineates regulatory compliance requirements for registered intermediaries. The primary impetus behind these amendments is to harmonize SEBI's regulations with the revised Prevention of Money-Laundering (Maintenance of Records) Rules, 2005 (PML Rules). These changes are aimed at bolstering the efficacy of anti-money laundering (AML) and counter-financing of terrorism (CFT) measures within the Indian financial system.

One of the key changes in the Circular is how a 'group' is defined. It is brought in line with the definition in the PML Rules. Now, the term 'group' not only includes a parent entity but also all the entities for which a consolidated financial statement is required due to ownership or control for financial reporting purposes. This change means that

4. The Prevention of Money Laundering Act' (Enforcement Directorate, 2013) <https://www.enforcementdirectorate.gov.in/FAQs_on_PMLA.pdf>.
5. SEBI Master Circular, Guidelines on Anti-Money Laundering (AML) Standards and Combating the Financing of Terrorism (CFT) /Obligations of Securities Market Intermediaries under the Prevention of Money Laundering Act, 2002 and Rules framed there under (03 February, 2023), available at- https://nsdl.co.in/downloadables/pdf/2023-0021-Policy-SEBI_Master_Circular_on_Guidelines_on_Anti-Money_Laundering_Standards_and_Combating_the%20_Financing_of_Terrorism.pdf

registered intermediaries are now responsible for implementing policies and procedures to counter money laundering and terrorist financing on a broader, group-wide scale. In terms of verifying the clients, an extra responsibility for registered intermediaries. Therefore, registered intermediaries must verify the identity of anyone representing a juridical entity, individual, or trust and ensure that they have the proper authorization. Additionally. the circular lowered the threshold for identifying beneficial ownership and control to 10%, not just for clients who are trusts but also for clients who aren't individuals or trusts.

Furthermore, the Circular requires all registered intermediaries to register details of non-profit organization clients on the DARPAN portal and maintain these records for five years. It also extended the rules related to 'politically exposed persons' to include the accounts of their family members and close relatives. Lastly, the Circular emphasizes the importance of stock exchanges and registered intermediaries using the latest technology and tools to effectively screen names to comply with sanction requirements. They're also required to identify and assess AML/CFT risks that might arise from new products or delivery methods before launching them.

These amendments represent a significant stride towards aligning SEBI's regulatory framework with the updated PML Rules, and in turn increasing the effectiveness of measures against money laundering (AML) and the financing of terrorism (CFT) in India's financial sector. The revisions, including redefined terms, heightened compliance responsibilities, and the integration of advanced technological tools, underscore the evolving landscape of financial regulations and compliance in our country. As the financial regulations witness continuous evolution, it is incumbent upon all stakeholders to remain vigilant and adaptable in navigating this dynamic terrain, where adherence to regulatory standards and financial integrity remain paramount.

PMLA and RBI- Striking the Regulatory Symphony for Financial Integrity

RBI has been at the forefront of implementing measures to combat money laundering activities. In response to the dynamic nature of financial crime, the RBI has introduced a series of directives and circulars over time, thereby expanding the scope of the PMLA. This strategic approach has been especially crucial, given the susceptibility of money changers engaged in the routine exchange of foreign currency to inadvertently facilitate money laundering. To address this vulnerability, the RBI has formulated a robust set of guidelines, the AML guidelines[6], with the primary aim of stalling the illicit use of foreign currency transactions.

The primary objective of these AML guidelines is to curb the potential exploitation of Authorized Money Changers involved in the purchase and sale of foreign currency notes for

6. RBI Master Circular, KYC Guidelines – Anti Money Laundering Standards - PMLA, 2002 - Obligations of NBFCs (1 July 2011) available at- https://www.rbi.org.in/commonperson/English/Scripts/Notification.aspx?Id=866

illicit money laundering purposes[7]. Within the context of AML, the RBI issues circulars and notifications that serve as instructive tools for the numerous banks operating within India. By virtue of Notification G.S.R. 444(E), issued on July 1, 2005[8], by the Central Government of India, the regulatory framework known as PML Rules, 2005, was instituted.

Under Rule 7(4) of these PML Rules, it becomes mandatory for each banking company, financial institution, and intermediary to adhere to the procedural framework for information submission specified by not only the RBI but also SEBI including the Insurance Regulatory and Development Authority (IRDA). In the year 2015, the Central Government of India established the Central Registry of Securitisation Asset Reconstruction and Security Interest of India (CERSAI) entrusted upon with the responsibility of operating and maintaining a KYC Registry, governed under PML Rules 2005 (Maintenance of Records). This pivotal move was undertaken to enhance the regulatory framework in response to the PMLA[9]. Under the purview of the PMLA, entities classified as 'reporting entities,' which encompass banking companies, financial institutions, intermediaries, and individuals engaged in designated businesses or professions, were mandated to share comprehensive client information with CERSAI.

These reporting entities play a pivotal role in maintaining the integrity of the financial system and ensuring compliance with anti-money laundering measures. Additionally, the Central KYC Registry application, hosted by CERSAI, is accessible not only to entities regulated under the PMLA, 2002 but also to various regulatory bodies, including the RBI, SEBI, IRDA, and the Pension Fund Regulatory and Development Authority (PFRDA). Furthermore, on September 4, 2023, the Ministry of Finance issued a significant notification, presenting a comprehensive set of revisions to the existing Prevention of Money-laundering (Maintenance of Records) Rules, 2005, titled 'Prevention of Money-laundering (Maintenance of Records) Second Amendment Rules, 2023[10].

The recent amendment rules bring about several changes in anti-money laundering regulations. Reporting entities can now designate only management-level officers as Principal Officers. In the case of partnership firms, the beneficial owner for due diligence is the natural person owning over 10% of capital or profits or exercising control over management and policy decisions, reducing the threshold from the previous 15%. Trusts require trustees to disclose their status when establishing an account-based relationship or during transactions exceeding INR 50,000 or involving international money transfers. Additionally, reporting entities must maintain

7. Kumar Askand Pandey, Fight Against Terror & Financial Privacy: Striking the Right Balance, 8 RMLNLUJ (2016) 31.
8. RBI Notification, G.S.R. 444(E), (1 July 2005), available at- https://dea.gov.in/sites/default/files/moneylaunderingrule.pdf
9. Section 2(w), Prevention of Money Laundering Act, 2002.
10. RBI Notification, G.S.R. 652(E)- Prevention of Money-laundering (Maintenance of Records) Second Amendment Rules, 2023, (4 September 2023) available at- https://egazette.gov.in/WriteReadData/2023/248537.pdf

records of client identities and include the "result of any analysis undertaken" during client due diligence or transaction record maintenance. These amendments provides clarity in the realm of money-laundering prevention, heightening the government's unwavering commitment towards the anti-money laundering efforts.

In summary, the interplay between PMLA and the RBI resembles a balanced working together to preserve the financial integrity of India. The RBI, acting as the central conductor of this symphony, has continuously adapted its directives and circulars to harmonize with the ever-evolving nature of financial crimes. These measures have expanded the reach of the PMLA, recognizing the pivotal role of money changers who routinely exchange foreign currencies and their potential vulnerability to unwittingly facilitate money laundering.

To address this vulnerability, the RBI has created robust Anti Money Laundering (AML) guidelines to combat the illegal use of foreign currency transactions. These guidelines, along with the PMLA Rules of 2005 and subsequent updates, serve as the foundation for financial institutions, intermediaries, and designated businesses to follow strict anti-money laundering requirements. Additionally, the establishment of the Central Registry of Securitisation Asset Reconstruction and Security Interest of India (CERSAI) in 2015 enhances these efforts by compelling reporting entities to share crucial client information. This information is not only accessible to entities regulated under the PMLA but also to important regulatory bodies such as the RBI, SEBI, IRDA, and PFRDA, working together to promote transparency and combat money laundering[11].

It resulted in comprehensive revisions on September 4, 2023, through the 'Prevention of Money-laundering (Maintenance of Records) Second Amendment Rules, 2023.' These revisions, like a stellar musical performance, offer greater clarity and enforce stricter anti-money laundering measures, strengthening the nation's dedication to maintaining financial stability.

Interplay of PMLA and other relevant laws

i. Conflict between IBC and PMLA

The Insolvency and Bankruptcy Code of 2016 (IBC) and the PMLA are two specialized laws. The IBC aims at making the bankruptcy process smoother. On the other hand, the PMLA ensures that who gain from illegal activities can't enjoy the money or assets they got from illegal proceeds.

Even though these two laws have their own clear roles, sometimes, during a company's financial trouble and bankruptcy resolution (CIRP), the company or its management can get involved in actions covered by the PMLA. To put a quietus to discordance between the two laws, the Hon'ble Delhi High Court in ***Rajiv Chakraborty vs. The Directorate of Enforcement***[12], clarified the position. In this case, the Resolution Professional of Era Infra Engineering Limited (EEIL) initiated the case, which was admitted to insolvency proceedings

11. Anuroop Omkar and Aditi Jha, The Road that Needs to be Paved for Central - KYC in India (Part-I), 2020 SCC OnLine Blog OpEd 9.
12. *Rajiv Chakrborty v. The Directorate of Enforcement, 2022 SCC OnLine Del 3703.*

as per the IBC, the challenge was against the attachment orders issued by the Directorate of Enforcement (ED). The central issue at hand was the impact of a moratorium, as stipulated in Section 14 of the Insolvency and Bankruptcy Code of 2016 (IBC), on the Enforcement Directorate's authority to execute an attachment under the provisions of PMLA. The verdict in this case established that the PMLA provisions should not be interpreted as subordinate to the moratorium provision outlined in Section 14 of the IBC. Thus, the Court held that the power to attach under the PMLA would not fall within the ken of Section 14(1)(a) of the IBC[13].

This approach ensures that both the statutes are construed in a manner that maximizes the effectiveness of all their provisions. The interpretation of these provisions should be such that they do not directly conflict with each other, and the implementation of one should not undermine the purpose of the other[14].

ii. Tussle between PMLA and Prevention of Corruption Act, 1988

Another intricate intersection of PMLA and Prevention of Corruption Act, 1988 (POCA) is also an important issue that requires deliberation. This part exemplifies the discussion on the subtle tensions and resonances that surface when countering money laundering and simultaneously combating corruption.

Recently, the Apex court discussed the issue between the PMLA and POCA in the case of ***Directorate of Enforcement vs. Padmanabhan Kishore***[15]. The accusation against the accused respondent revolved around his alleged involvement in a conspiracy with other co-accused individuals in the act of offering a bribe to a public servant. The court's verdict established a critical distinction: as long as the money intended to be offered as a bribe remains in the possession of the bribe giver and lacks the necessary corrupt intent, it retains its status as untainted funds. Only when this money, intended as a bribe, is transferred with the requisite corrupt intent does it transform into a bribe. Should it subsequently be misappropriated by the public servant, the offense shifts from bribery to misappropriation.

In such circumstances, when the funds designated as a bribe are to be transferred, the individuals in possession of this money can be legally pursued regarding their possession and acquisition of these funds as "bribe money, considered proceeds of a crime." By giving or transferring this money, the person effectively contributes to and knowingly partakes in an activity associated with the "proceeds of a crime." In the absence of such intent and active participation in the act of offering a bribe, the money does not regain its character as "proceeds of a crime." Consequently, the respondent was found to be *prima facie* involved in activities linked

13. SCC OnLine Blog, "Delhi High Court | PMLA seeks to subserve a larger public policy imperative; Moratorium under S.14 IBC does not affect ED's attachment power under PMLA", (14 November 2022) available at- https://www.scconline.com/blog/post/2022/11/14/delhi-high-court-pmla-seeks-to-subserve-a-larger-public-policy-imperative-moratorium-under-s-14-ibc-does-not-affect-eds-attachment-power-under-pmla/
14. *Deputy Director Directorate of Enforcement Delhi v. Axis Bank and Others, 2019 SCC OnLine Del 7854.*
15. *Directorate of Enforcement v. Padmanabhan Kishore, 2022 SCC OnLine SC 1490.*

to the "proceeds of a crime" as a bribe giver, regarding the possession and acquisition of the funds intended for the bribe.

As a result, the High Court's judgment was overturned, and the proceedings under the PMLA were deemed valid in relation to the accused respondent. The respondent was directed to remain a party to the proceedings connected to the Enforcement Case Information Report (ECIR) registered by the Enforcement Directorate. This underscores the complexity of reconciling the PMLA with the POCA and the significance of maintaining a delicate legal equilibrium in the pursuit of both financial integrity and the eradication of corruption. The evolving legal landscape in India necessitates an ever-vigilant commitment to coherence in addressing these pressing issues.

iii. Regulatory Breaches: RBI, SEBI, and Their Synchrony with PMLA

In addition to the above, regulators such as the RBI, SEBI and the Insurance Regulatory and Development Authority of India (IRDAI) are empowered to deal with issues relating to money laundering activities and lay down guidelines on AML standards. These guidelines, read with the PMLA and PML Rules, form the core of the legal framework for AML laws and enforcement in India.

In the context of money laundering jurisdiction and penalties in India, the PMLA grants authorities extraterritorial reach for crimes with cross-border implications. This extends to cases where proceeds from scheduled offenses committed in India are remitted abroad or when offenses committed abroad would qualify as scheduled offenses in India. The Enforcement Directorate (ED) takes the lead in investigating and prosecuting money laundering, while the Financial Intelligence Unit – India (FIU) serves as the central agency for processing information on suspicious financial transactions. Additionally, regulatory bodies like the SEBI, RBI, and IRDAI enforces AML guidelines within their purviews[16].

Reporting Entities may face fines ranging from INR 10,000 to 100,000 for failures to maintain records or provide information as prescribed under the PMLA. Regulatory bodies like RBI[17] and SEBI[18] can take actions based on their circulars concerning Know Your Customer (KYC) and AML requirements.

To strengthen AML measures, supervisory regulators have issued detailed guidelines covering various aspects, including customer identification, risk management, recordkeeping, and transaction monitoring. India's membership in the Financial Action Task Force (FATF) reinforces the need for comprehensive

16. Upendra Nath Sharma, Kartik Jain, Debottam Chattopadhyay and Ksanjana Chana, Financial Crime in India: Overview, THOMSON REUTERS (1 August 2022), available at- https://uk.practicallaw.thomsonreuters.com/w-009-8768?transitionType=Default&contextData=(sc.Default)&firstPage=true
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legislative and regulatory reforms to combat money laundering and terrorist financing. The PMLA, coupled with supplementary rules and guidelines, provides a robust framework for addressing financial crimes.

Impacts of The 2023 PMLA Amendments on Indian Legal Landscape

The recent amendments to the PMLA in India mark a transformative phase in the fight against money laundering. The revised PMLA casts its net wider, imposing obligations on 'Reporting Entities,' a term encompassing banking companies, financial institutions, intermediaries, and individuals engaged in designated business or professions, ranging from gambling and real estate to managing cash and liquid securities on behalf of others. The flexibility to designate additional persons or activities empowers the government to adapt the legislation to evolving financial risks. In a proactive move, the Central Government issued two notifications on May 3, 2023[19], and May 9, 2023[20], underscoring their commitment to expanding the PMLA's coverage to meet emerging challenges effectively.

The PMLA's recent expansion also incorporates professionals like Chartered Accountants, Company Secretaries, and Cost and Management Accountants when they partake in certain financial transactions on behalf of clients. These transactions span property transactions, asset management, and business operations, but their exact definitions need further clarification to eliminate ambiguity. It's important to note that advocates and lawyers, who handle financial transactions within their legal practice, are exempt from these amendments, acknowledging the sanctity of client-attorney privileged communication.

Furthermore, a subsequent notification extends the PMLA to 'Trust and Company Service Providers' (TCSPs), encompassing formation agents, individuals holding positions within companies, and those offering registered office addresses. This expansion, however, maintains exemptions for qualified professionals like advocates and chartered accountants involved in formation activities. The amendments bring with them stringent due diligence methods, intensified reporting requirements, and heightened monitoring and record-keeping responsibilities for reporting entities. They must employ advanced verification technologies to confirm client and beneficial owner identities, maintain transaction records, and ensure data confidentiality. Enhanced due diligence is mandatory for specific transactions, such as substantial cash deposits or withdrawals.

In the event of suspicious transactions, reporting entities are obliged to report them to the Financial Intelligence Unit – India (FIU-IND), which serves as the central agency for receiving, processing, and disseminating information on suspect financial transactions. It's also mandatory for all reporting entities to register on the FIU-IND's FINNET 2.0 portal and designate responsible personnel

19. Notification No. S.O. 2036(E) released by the Department of Revenue, Ministry of Finance, Government of India dated 03rd May, 2023.
20. Notification No. S.O. 2135(E) released by the Department of Revenue, Ministry of Finance, Government of India dated 09th May, 2023.

for compliance[21]. In conclusion, these PMLA amendments underscore India's commitment to fortifying its financial security and combating money laundering, aligning with international standards and best practices. To ensure the effective implementation of these significant changes, clear and precise guidelines, comprehensive training, and adequate resources must be provided to reporting entities, professionals, and law enforcement agencies. Continuous monitoring and evaluation mechanisms are vital to guarantee compliance and to identify areas that require further refinement. While these amendments represent a substantial stride forward, addressing existing gaps is an ongoing imperative.

Conclusion

- The core of the discussion revolves around the intricate interaction between the PMLA and various other Indian laws, including those overseen by the RBI, the SEBI, and corporate laws. This detailed exploration sheds light on the complexities of aligning these legal frameworks and provides practical insights through real-world case studies.
- These recent amendments of 2023 represent a significant shift in the realm of anti-money laundering regulations, broadening their scope to include a wider range of reporting entities and professionals. These regulatory changes introduce more rigorous due diligence requirements, stricter reporting obligations, and heightened monitoring criteria, underscoring the critical need for effective implementation and continuous assessment. It highlights the vital importance of offering clear regulatory guidance, comprehensive training, and the necessary resources to reporting entities, all in the pursuit of maintaining financial stability and upholding the highest standards of integrity within India's financial system.
- In conclusion, the text emphasizes that the Indian government and enforcement agencies are instrumental in coordinating actions under the PMLA and related laws, with a particular focus on harmonizing diverse legal frameworks. These efforts reflect the commitment to combat financial crimes, uphold regulatory integrity, and safeguard India's financial system, demonstrating the nation's dedication to fortifying its financial security in the ongoing battle against money laundering.

21. K. Anupriya, "Compliance v. Chaos: Recent Amendment in the Prevention of Money Laundering Act Lead to Unexprected Compliance Woes", 31 July 2023, available at- https://suranaandsurana.com/2023/07/31/compliance-vs-chaos-recent-amendments-in-the-prevention-of-money-laundering-act-lead-to-unexpected-compliance-woes/

Balancing PMLA with Personal Data Protection Laws and impact of Crypto on PMLA

CA Samir Paranjpe

Overview

Money laundering is a global issue with significant economic implications and cryptocurrencies have added a new layer of complexity to money laundering. These decentralized digital currencies are attractive to those seeking to hide the source of their funds. As the cryptocurrency market continues to grow, with projections of a $37.9 billion revenue by 2023, money laundering through cryptocurrencies has become a pressing concern for law enforcement agencies.

The integration of KYC (Know Your Customer) regulations is crucial in combating money laundering under the PMLA Act 2002. Financial institutions, banks, and intermediaries are mandated to follow KYC norms and due diligence on transactions they facilitate, maintaining records and reporting to the Financial Intelligence Unit - India (FIU-IND).

The Digital Personal Data Protection (DPDP) Act 2023 in India establishes a framework for personal data processing, giving individuals control over their digital data. It shares similarities with the EU GDPR but includes unique provisions tailored to India's context. The Act came into force on August 11, 2023, after receiving the President of India's assent.

The DPDP Act can help to combat money laundering in several ways like safeguarding personal data, consent requirements, revocation of consent given by the personal, record maintenance and supervision of the regulatory authorities. There are challenges in implementing the DPDP Act which may include the cost burden on industries, the need for technical expertise, lack of public awareness about data rights, and the necessity of balance between privacy and innovation.

Virtual digital assets (VDAs), including cryptocurrencies like Bitcoin and Ethereum, have a significant impact on money laundering due to their nature and the potential for anonymity and cross-border transactions. Money laundering involving VDAs occurs in several stages viz, Placement, Layering, Integration and Privacy coins. The regulatory authorities combat cryptocurrency-based money laundering through various strategies like transaction tracing, appointing technical experts, rewriting global rules by imposing stricter regulations and penalties, use of advanced tools and etc.

On 7 March 2023, the government included VDAs under the ambit of the PMLA. The inclusion of VDAs under the Prevention of Money Laundering Act 2002 (PMLA) in India is a significant step. It requires Virtual Asset Service Providers (VASPs), including crypto exchanges, to verify client identities and report suspicious transactions. This move enhances scrutiny and reporting, making it more challenging for money launderers to exploit cryptocurrencies. However, it also places compliance responsibilities on VASPs to uphold anti-money laundering and know-your-customer (KYC) requirements like financial institutions. However, money laundering through cryptocurrencies is a growing concern globally which may be mitigated by effective regulation, international cooperation, and advanced technological tools.

Money laundering is a pervasive global issue that exerts a profound impact on economies across the world. The scale of this illicit activity is staggering, with estimates suggesting that 2% to 5% of the world's total Gross Domestic Product (GDP), which equates to around $800 billion to $2 trillion in current US dollars, is laundered annually[1]. This enormous sum of laundered funds has far-reaching consequences, including the distortion of financial markets, the financing of criminal enterprises, and the erosion of legitimate economies.

One particularly concerning facet of money laundering is its increasingly sophisticated integration with cryptocurrencies. These digital forms of currency are designed to be decentralised, borderless, and pseudonymous, making them attractive to those seeking to obscure the origins of their funds. As a result, money laundering through cryptocurrencies has become a pressing issue for law enforcement agencies and financial regulators worldwide. The global turnover of cryptocurrencies is poised for substantial growth in the coming years. Market projections indicate that by 2023, the revenue generated by cryptocurrencies is expected to reach $37.9 billion, with an annual growth rate of approximately 14.40%[2]. This exponential growth is driven by a myriad of factors, including increased adoption, financial innovation, and growing investor interest.

Estimating the precise extent of money laundering through cryptocurrencies or VDA (Virtual Digital Assets) remains challenging due to the bogus nature of these transactions. However, available estimates offer a glimpse into the magnitude of the problem. In 2022 alone, it is believed that nearly $23.8 billion worth of cryptocurrency was sent to illicit addresses, indicating the scale of illegal financial activity involving cryptocurrencies[3]. Moreover, in 2021, cybercriminals were suspected of laundering approximately $8.6 billion in cryptocurrencies, indicating the urgent need for robust regulatory measures and international cooperation to combat this evolving global threat to financial security[4].

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Law related to KYC and its importance under PMLA

The Prevention of Money Laundering Act (PMLA) 2002 is a legal framework to fight the menace of money laundering in India. The legislation empowers the government or public authorities to seize assets acquired through unlawful activities connected directly or indirectly to criminal offense. It has three main objectives:

1. To prevent and control money laundering,
2. To confiscate and seize the proceeds of crime, and
3. To address any other matter associated with money laundering in India.

KYC (Know Your Customer) regulations are essential to the PMLA in India. It requires financial institutions, banks, and intermediaries to comply with KYC norms and undertake due diligence on transactions facilitated by them. The rules notified in PMLA impose an obligation on banking companies, financial institutions, intermediaries, and individuals engaged in specified businesses or professions to authenticate client identities, uphold documentation, and provide information to the Financial Intelligence Unit - India (FIU-IND).

Before we delve deeper into the various facets of PMLA, it is essential to understand the history and importance of KYC.

KYC: An Integral Element of PMLA Adherence

KYC norms are guidelines that financial institutions and businesses follow to verify a current or potential customer's identity, suitability, and risks. The aim is to highlight suspicious behavior, such as money laundering and financial terrorism before it materialises.

In India, the history of KYC regulations can be traced back to various financial sector reforms and developments over the years:

- ✓ **Independence era**: Before India gained independence in 1947, there were limited regulatory provisions regarding KYC in the financial sector. The Banking Companies Act, 1949 primarily governed the banking system. After independence, the government of India began to introduce regulatory reforms in the financial sector to promote stability and prevent illegal activities. KYC requirements started to evolve in response to these changes.
- ✓ **Banking Regulations Act, 1949**: This Act provided the framework for banking regulations in India and empowered the Reserve Bank of India (RBI) to regulate banks. However, specific KYC regulations were not well-defined at this stage.
- ✓ **Economic Reforms in the 1990s**: The economic reforms of the 1990s led to the liberalisation of the Indian economy. These reforms brought about changes in the financial sector and necessitated the development of more robust KYC procedures.
- ✓ **RBI's First Comprehensive KYC Guidelines (2002)**: The RBI issued the initial comprehensive guidelines on KYC as part of the PMLA Act in 2002. These guidelines set the groundwork for KYC procedures in Indian banks.

- ✓ **Aadhaar-based KYC**: [4]The Aadhaar system, a unique 12-digit identification number issued by the Indian government, was integrated into the KYC process in 2016, allowing customers to use their Aadhaar number for identity verification.
- ✓ **Central Know Your Customer (CKYC)**: The RBI's introduction of CKYC in 2016 established a centralised KYC registry, enabling customers to complete their KYC process once and use it across all financial institutions. This reduced duplication of efforts and paperwork.
- ✓ **Introduction of e-KYC by RBI, SEBI and IRDAI**: By 2019, e-KYC was introduced by all the financial services regulators for streamlining the KYC process by allowing customers to submit their documents electronically, offering a more cost-effective and convenient alternative to traditional verification methods.
- ✓ **Video KYC**: Many regulators like RBI and IRDAI permit video KYC in 2020, which has further modernised customer identification, allowing institutions to verify customers remotely via video calls, enhancing both convenience and security.

Today, KYC compliance is a crucial aspect of the financial system. It plays a significant role in preventing fraud, money laundering, and terrorist financing. The ongoing development and enforcement of KYC regulations remain a priority for regulatory authorities.

- ✓ KYC procedures require financial institutions and businesses to identify and verify the identity of their customers. This ensures that they know who their customers are, making it harder for criminals to conduct transactions anonymously.
- ✓ KYC allows institutions to assess the risk associated with a customer or transaction. Collecting and analysing customer data can determine whether a customer's behavior is consistent with their stated profile, helping identify suspicious activities.
- ✓ Enhanced Due Diligence is applied to higher-risk customers, such as politically exposed persons (PEPs) or those involved in specific industries such as online gambling, fantasy gaming, virtual currency exchange, jewelry, e-commerce, etc. KYC helps in identifying such customers and subjecting them to more thorough scrutiny.
- ✓ KYC data provides a basis for ongoing transaction monitoring. By comparing a customer's transaction history against their KYC profile, unusual or suspicious activities indicative of potential money laundering can be detected.
- ✓ The knowledge that businesses and financial institutions conduct rigorous KYC checks is a disincentive to money launderers and other criminals. They are less likely to use legitimate channels if they know they will be identified.

Data protection law and PMLA interplay

The Digital Personal Data Protection (DPDP) Act 2023 is India's first comprehensive data protection law to establish a framework for processing personal data in India. The Act applies to data fiduciaries (person who determines the processing of personal data), significant data fiduciaries (class of data

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fiduciaries notified by government). It provides rights for data principals (person to whom the data relates). After receiving the President's assent, the Act came into force on 11 August 2023.

Simply put, the Act will empower individuals (Data Principals) to control their personal digital data and obligate enterprises (Data Fiduciaries) to process personal data legally and for specific purposes only.

It replicates many aspects of the EU GDPR (General Data Protection Regulation). Still, it diverges on several essential points, reflecting both learnings from the operation of the EU GDPR and the need to apply data protection laws from an Indian point of view.

Salient features:

- ✓ It applies to processing digital personal data within India, whether collected online or digitised from offline sources.
- ✓ It extends its jurisdiction on foreign entities and foreign platforms for processing data outside India if intended to offer goods or services within India.
- ✓ Personal data can only be processed for specific lawful purposes, and the individual's consent is required.
- ✓ Exemptions from consent include specified legitimate uses, such as voluntary data sharing by individuals and processing by the State for licenses, permits, benefits, and services.

The DPDP Act is a significant step forward for data protection and showcasing the nation's dedication to advancing toward a secure and trustworthy environment for its citizens and businesses.

The interplay between the Digital Personal Data Protection Act 2023 and the PMLA Act, 2002 is quite interesting. Let us look at some ways in which the DPDP Act could support national law enforcement efforts to combat money laundering:

- — By safeguarding personal data, the DPDP Act plays a pivotal role in disrupting money laundering operations that hinge on unlawful access to data. Criminals often exploit vulnerable data sources to facilitate their illicit financial activities. The DPDP Act's stringent data protection measures make such access more challenging, reducing the avenues available for money launderers.
- — The DPDP Act mandates that online platforms must obtain the explicit and unequivocal consent of Data Principals by providing clear, precise, and unambiguous notices before initiating data processing. This measure serves as a potential deterrent against money laundering activities by preventing fraudsters from using misleading or confusing language to obtain consent and using personal data obtained through illegal means for identity theft, ensuring that data can only be gathered and utilised with the explicit approval of the subject.
- — The DPDP Act empowers individuals with the authority to revoke their consent to any agreement at any given moment. This provision has the potential to limit money laundering activities by enabling individuals to withdraw their consent for data processing if they have concerns that the entity does not have strong data

protection controls or if the industry to which the entity belongs is subject to repeated attacks from hackers.

— The PMLA not only prohibits and penalizes money laundering activities but also requires the maintenance of records relating to transactions and furnish them to the authorities upon request. The DPDP Act could help ensure that these records are accurate and up to date by requiring data fiduciaries to maintain the latest and current personal data records.

— The DPDP Act establishes a Data Protection Board to enforce the law but reserves the central government's regulatory authority. The government can utilise its regulatory authority to facilitate the coordinated implementation of the DPDP Act and PMLA, by aligning the two, making suitable and periodic modifications, and resolving disputes through mediation.

Challenges in implementation

Implementing the Digital Personal Data Protection Act, 2023 in India could pose the following challenges:

— Cost of implementation: While the Act has rightful objectives of citizens' data protection, its effective implementation would entail an additional financial burden on the industry, particularly on India's MSME and start-up sector, which are already grappling with profitability issues.

— Difficulty in achieving technical prowess: The execution of the technical measures necessary to safeguard user data might take considerable time for most organisations. This encompasses ensuring data security, classifying data, handling consent, and establishing data portability and deletion processes. Organisations must deploy new systems and processes, train their existing staff, and hire relevant data professionals.

— Lack of awareness: Most Indians who use technology in their day-to-day lives aren't aware of their rights as per the Act, especially about providing and revoking their consent. This could limit the effectiveness of the Act.

— Catch-22 in regulating technology: The catch-22 is the delicate balance between privacy and innovation. Stricter regulations protect data but may hinder progress, while leniency fosters innovation but risks privacy breaches. Finding the right balance in implementing the Act would be its most crucial matrix of success.

Virtual digital assets and its impact and scope on money laundering

A virtual digital asset (VDA) is a digital representation of an item that has value in a specific environment. It is a medium of exchange or property that can be digitally traded, transferred, or used for payment or investment purposes. Virtual assets include virtual currencies such as Bitcoin, Ethereum, non-fungible tokens (NFTs), and governance tokens, depending on the circumstances and the context in which the assets exist and are used.

Digital assets are a broader category that includes virtual assets and other types of assets. All virtual assets are digital assets, but not all digital assets are virtual assets. For example, a digital certificate/registration of

a real estate property could be considered a digital asset but not a virtual digital asset. In these cases, the digital representation may be used for record-keeping, provenance tracking, or transfer of ownership, but it ultimately represents something tangible in the real world.

In contrast, a VDA is entirely digital and exists only within a digital environment, like a cryptocurrency or NFTs. It has no physical counterpart in the real world.

In the Indian context, the term virtual digital asset is defined under section 2(47A) of the Finance Act, 2022 to include the following:

- Any information or code or number or token (not being Indian currency or foreign currency) that meets certain conditions,
- NFTs or any other token of a similar nature, by whatever name called, and
- Any other digital asset, as the government may specify by notification.

Central governments across the globe are rolling out their version of the VDA called Central Bank Digital Currency (CBDC). However, cryptocurrencies based on centralised public blockchain remain the most popular and frequently used VDA.

The world's first commercial bitcoin transaction occurred in 2010 for buying two pizzas for 10,000 bitcoins, followed by the first cryptocurrency exchange in 2013. Since then, cryptocurrencies have gained significant popularity, especially in India, ranked 2nd in cryptocurrency adoption in 2023[5].

Due to its popularity amongst young Indians, no recourse in case of fraudulent activities and high susceptibility to nefarious activities, the Reserve Bank of India (RBI), in 2018, announced a ban on the sale or purchase of cryptocurrency for its regulated entities. However, in March 2020, the Supreme Court of India passed the verdict, revoking the RBI's ban on cryptocurrency trade. To limit the usage, in the 2022 Union Budget, cryptocurrencies, including NFTs, were categorised as VDAs and income from transfer from such assets was subject to a flat tax rate of 30% with no set-off of losses from different trades. The trading of cryptocurrencies is facilitated by intermediaries called crypto exchanges. These exchanges are digital marketplaces that allow users to buy, sell, and trade cryptocurrencies.

Why there was a greater need to bring enhanced supervision around Virtual Digital Assets?

Cryptocurrencies (the most popular VDAs) are highly speculative and risky. Many retail investors actively participate in crypto trading without understanding the complexities and risks involved. The surge in crypto trading can also be partly attributed to misleading advertisements that promise unrealistic returns within a short period. Unsuspecting and gullible young Indian traders are increasingly falling into the trap of misleading promises of unrealistic gains in the cryptocurrency market.

While cryptocurrency transactions can be viewed publicly, as they are recorded on a public blockchain ledger, the identity of the transacting person is obscured behind

5. https://cointelegraph.com/news/india-tops-chainalysis-2023-global-crypto-adoption-index

the alpha-numeric code under which the transaction is happening. Furthermore, numerous exchanges have a relaxed KYC policy for initiating a crypto-to-crypto transaction (a transaction between two cryptocurrencies), unlike a fiat-to-crypto transaction (a transaction where one currency is fiat, such as INR or USD, and the other is a cryptocurrency), which mandates the customer to be 100% KYC compliant. This means a customer can initiate a cryptocurrency transaction without disclosing their identity, which is impossible in a traditional banking transaction. Also, owing to their advanced decentralised processing power (mining), cryptocurrency transactions get validated within minutes, enabling easy and free cross-border transactions. In an international transfer, it is quite difficult for a local law enforcement agency to freeze an individual's wallet, where cryptocurrencies are stored, due to evolving jurisdiction regulations. Because of all these reasons, cryptocurrencies have become an increasingly popular option for trading illegal goods or services, ransomware, money laundering, and other wrongful activities.

Crypto exchanges were also found to be a party to many wrongful activities, as there were numerous instances in the last two years where the Enforcement Directorate (ED) had issued notices to many prominent crypto exchanges for their alleged involvement in money laundering, forensic exchange violations and other fraudulent activities.

The proliferation of cryptocurrency trading in India, coupled with concerns regarding security, investor protection, and potential misuse for illicit activities, has necessitated the establishment of comprehensive regulations governing the transfer and trading of cryptocurrencies.

On 7 March 2023, the government included VDAs under the ambit of the PMLA. Including VDAs will have significant implications for regulating cryptocurrencies and other VDAs in India, providing a framework for monitoring and addressing malpractices within the sector. The notification made it mandatory for entities facilitating trading in VDAs to verify the identity of clients and the beneficial owners.

VDAs are covered under Prevention of Money Laundering Act 2002 as[6]:

— Exchange between VDA and fiat currencies,

— Exchange between one or more forms of VDAs,

— Transfer of VDAs,

— Safekeeping or administration of VDAs or instruments enabling control over VDAs, and

— Participation in and provision of financial services related to an issuer's offer and sale of a VDA.

Virtual Asset Service Providers (VASPs), the intermediaries that facilitate dealings in VDAs, were included as reporting entities as per PMLA because of which it becomes imperative for such entities to diligently uphold compliance with Chapter IV of the PMLA and the Prevention of Money Laundering

6. https://www.drishtiias.com/daily-updates/daily-news-analysis/regulating-virtual-digital-asset-1

(i.e., Maintenance of Records) Rules, 2005 (PMLR). Chapter IV outlines the obligations of banking companies, financial institutions, and intermediaries to prevent money laundering and terrorist financing. It requires them to:

— Verify and maintain the records of the identity of all their clients.

— Maintain records of the nature and value of transactions

— Maintain the procedure and manner of maintaining and time for furnishing of information and verification.

The FATF also recommends that VASPs be subject to the same stringent anti-money laundering and combating the financing of terrorism and KYC requirements as financial institutions. For example,

— if a VASP fails to verify a client's identity and the client is involved in money laundering, it may be held liable for facilitating the illegal activity.

— if a VASP fails to report a suspicious transaction involving a client, it may be held liable for facilitating the illegal activity. The PMLA requires VASPs to undertake due diligence on transactions they facilitated concerning VDAs and maintain transaction-related records.

As the VASPs are considered a reporting entity under PMLA, they are also required to disclose their account details with banks and financial institutions where they hold accounts for transactions as well as for holding client money. Further, in case of non-compliance by any reporting entity, the director of the FIU-IND may issue a show cause notice to a reporting entity because of failure to comply with the requirements.

Including VDAs and VASPs under PMLA in India is an important step towards regulating the virtual asset market; this move allows the government to observe trading of these assets, bringing enhanced scrutiny and reporting to help prevent money laundering activities involving VDAs.

How a cryptocurrency can be used for money laundering?

Cryptocurrencies can be used for money laundering in several ways:

- ***Placement***: This is the first stage of money laundering, where the illicit funds are introduced into the financial system. Cryptocurrencies can bypass traditional banking channels and move funds across geographical boundaries, making placing illicit funds into the system easier.

- ***Layering***: This involves the strategic movement of funds to obfuscate their origin. Sophisticated crypto tools like mixers and blenders are deployed to conduct a series of transactions, making it exceedingly challenging to trace the source of the funds. This iterative process adds layers of complexity, making it highly arduous to link the funds back to their illicit source.

- ***Integration***: In the final stage, illicit funds are reintegrated into the financial system. Cryptocurrencies play a pivotal role in this phase by facilitating the conversion of illicit funds into cash through crypto exchanges. Subsequently, the laundered cash can seamlessly re-enter the mainstream banking system.

- ***Privacy coins***: These cryptocurrencies offer a higher level of anonymous

blockchain transactions, making the currency even less traceable than "normal" cryptocurrencies. The higher level of anonymity can be achieved by concealing details about user addresses from third parties, such as information relating to the balance and the source of origin of the coins.

In the cat-and-mouse game of combating cryptocurrency-based money laundering, law enforcement agencies have faced the challenge of sophisticated tools and mixers employed by illicit actors to obscure the origin of funds. The second stage of money laundering, known as "layering," involves a complex web of transactions designed to deter investigators. However, law enforcement agencies also use technical expertise to navigate the intricate digital landscape.

One of the most used strategies by law enforcement agencies is transaction tracing on the blockchain public ledger to identify cash-out (conversion of cryptocurrencies to fiat currency in an exchange). Cryptocurrency transactions, by design, are recorded on public ledgers, offering transparency that can be both a blessing and a curse for criminals. While mixers and blending services can introduce complexity, they cannot erase the trail entirely. This is where the tenacity of law enforcement comes into play. They meticulously review blockchain transactions, analysing patterns, tracing fund movements, and wait for the pivotal moment – *the cash-out*. KYC verification is often required when illicit funds are converted into fiat currency or assets at a cryptocurrency exchange. This is the turning point where law enforcement agencies can potentially unmask the individuals behind the illicit transactions. Investigators can piece together the puzzle by obtaining KYC details from the exchange, linking the digital wallet to a real-world identity. This is done by taking helping of specialised forensic professionals who deploy bespoke token tracing techniques.

In essence, combating money laundering is a continuous process, and with technological advancement, it has become increasingly challenging for law enforcement agencies to keep up with the pace. However, the authorities are also evolving to stay one step ahead by deploying advanced tools and systems, hiring technical staff, collaborating with subject matter experts, using artificial intelligence and automation technologies to augment their capabilities and aid in faster detection and prevention of money laundering activities. Authorities are also working to establish international cooperation and rewrite the global rules governing the information economy to prevent money laundering by imposing stricter regulations and penalties.

"As the different streams having their sources in different places all mingle their water in the sea, so, O Lord, the different paths which men take through different tendencies, various though they appear, crooked or straight, all lead to Thee."

— *Swami Vivekananda*

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Registration of Reporting entities on the Financial Intelligence Unit portal - practical nuances and difficulties

CA Vivek Newatia CS Shreya Jain

Overview

The Financial Intelligence Unit-India, a government agency responsible for combating money laundering, terrorist financing, and other financial crimes in the country. PMLA is a crucial legislative framework aimed at combating money laundering and related financial crimes. FIU-India, established under the Ministry of Finance, serves as a pivotal component in the effective implementation of the PMLA.

FIU-India receives and analyzes financial transaction reports and other relevant data from various reporting entities, such as banks and financial institutions. This information is vital for identifying suspicious transactions and potential instances of money laundering. FIU-India acts as the central agency for collecting and processing these reports.

The integration between FIU-India and PMLA is evident in their collaborative efforts. FIU-India plays a pivotal role in providing actionable intelligence to law enforcement agencies and other authorities to support PMLA investigations. It acts as the bridge that connects the financial sector's compliance efforts with the legal framework established by PMLA.

In summary, FIU-India is a key player in safeguarding India's financial system from illicit activities, with a focus on money laundering and terrorism financing. It acts as a central hub for collecting and analyzing financial information, aiding in the prevention and detection of financial crimes.

1. Introduction

The financial intelligence unit is a body set up by the Department of Revenue. The tenet behind set up of such unit is to collect intelligence about offences under the Prevention of Money Laundering Act, 2002 and disseminate the same to relevant authorities to curb such activities.

The authors in this write up deals with the intricacies associated with financial intelligence unit alongwith some important inferences to be drawn from the PMLA.

2. Brief history of Prevention of Money Laundering Act, 2002 and FIUs

The PMLA was enacted after the Vienna convention to curb money laundering activity (analysed below) -

Global scenario

Prevention of Money Laundering Act, 2002 ('PMLA') was brought into force to fight against criminal offences. The PMLA provides for confiscation of property derived from money laundering activities (obtaining money from illegal source and moulding it in a fashion to make it seem like the same is legitimate). The PMLA is effective from 1 July 2005.

The International Monetary Fund, in 1996 stated that the aggregate size of money laundering in the world could have been approximately 2-5% of the world's gross domestic product.

The need for modern anti money laundering strategy was globally accepted in mid- 1980s. Subsequently, financial action task force was set up in 1989 by the G-7 Summit in Paris to generate necessary political will to bring about national legislative and regulatory reforms to combat money laundering.

To combat such activities, countries started developing anti money laundering strategies. It was, however, found that the law enforcement agencies had limited information basis which an analysis could have been conducted. Thus, the need for setting up a national central agency for reporting suspicious financial transactions by entities in financial segment was felt which gave birth to agencies in the nature of financial intelligence units (FIUs) in several countries.

India

India joined forces in the prevention of such activities in 2003, by enacting the PMLA in early 2003. Section 3 of the PMLA defines money laundering as under:

"Whoever, directly or indirectly, attempts to indulge or knowingly assists or knowingly is a party or is actually involved in any process or party or is actually involved in any process or activity connected with the proceeds of crime and projecting it as untainted property shall be guilty of offence of money laundering".

Consequent to the enactment of the PMLA, vide notification no. 5/2005 FIU-IND (a primary national body in charge of collection, processing and dissemination of data to relevant authorities) was set up by the Government of India in the Department of Revenue, Ministry of Revenue, Ministry of Finance vide Office Memorandum dated 18 November 2004.

The functions of the FIU IND include the following –

- Collection of information
- Analysis of information
- Sharing of information
- Act as central repository
- Coordination
- Research and analysis

3. Interaction of PMLA with FIU

As stated above, money laundering is the process by which illegal fund generated by carrying out illegal activities (disguised as legal money) is presented to be legitimate fund from legitimate activities. This is generally done by passing the fund through multiple channels which gives an illusion that the fund in question is legitimate in nature.

Common methods of money laundering

Following are the common methods of money laundering:

a. *Bulk cash smuggling* – This process involves smuggling cash to another jurisdiction and depositing it in a

financial institution, such as an offshore bank wherein such bank has a strict policy with respect to bank secrecy.

b. *Layering* - The concept involves distancing the money from its illegal origins by putting it through numerous transactions and various forms.

c. *Round tripping* – In this case, the entity deposits in a controlled offshore foreign entity. Tax haven entities facilitate in tax evasion. The money is then shipped back as a foreign direct investment, which is again exempt from taxation.

d. *Shell companies and trusts* – these entities disguise the true owners of the illegal money. Due to the existence of the concept of corporate veil, these entities need not disclose their true owner.

e. *Structuring, often known as smurfing* – it is a method wherein, a chunk of cash is broken down to smaller numbers and then the smaller numbers are placed over platforms across the global so that the same cannot be traced.

Intermediaries

Intermediaries shall include –

— Stock-brokers

— Sub-brokers

— Share transfer agents

— Bankers to an issue

— Trustees to trust deed

— Registrars to issue

— Asset management companies

— Depository participants

— Merchant bankers

— Portfolio managers

— Investment advisers

Intermediaries must comply with the PMLA and any amendments made by the Government of India. They must also implement measures to identify and discourage money laundering and terrorist financing. These measures include –

— Adhering to client account opening procedures

— Maintaining records

— Reporting transactions

Intermediaries must record all cash transactions exceeding INR 10 lakhs or its equivalent in foreign currency. They must also record series of transactions whose aggregate value exceeds INR 10 lakhs.

The guidelines require the registered intermediaries to implement measures to identify and discourage money laundering and terrorist financing activities and to adhere to the client account opening procedures, maintenance records and reporting of transactions as prescribed by the act and rules. As part of implementation of anti-money laundering activities, the identification of beneficial owner is of utmost importance. With significant increase in corporate vehicles and trusts, there is a need to identify ultimate beneficial owner who is a natural person.

Beneficial owner

As per Section 2 of PMLA beneficial owner shall mean –

— An individual who ultimately owns or controls a client of a reporting entity or

— The person on whose behalf the transaction is undertaken

— A person who exercises ultimate effective control over a juridical person[1].

Manner of determination of beneficial owner

Rule 9 of PMLA, 2005 provides the manner for determination of a beneficial owner which is as under –

- Where the client is a company – the beneficial owner shall be the natural person(s), who, whether acting alone or together, or through one or more juridical person, has a controlling ownership interest or who exercises control through other means.
- In case of partnership firm – Natural person(s) who, whether acting alone or together, or through one or more juridical person, has a specified ownership of entitlement to the capital or profits of the entity.
- In case of trust - Author of the trust, the trustee, the beneficiaries with specified interest in the trust and any other natural person exercising ultimate effective control over the trust through a chain of control or ownership.
- All entities – where no natural person is identified as a beneficial owner on ownership or control basis of an entity, the senior managing official(s) of the entity is to be identified as a beneficial owner(s)

Additionally, there are other laws wherein beneficial owners have been defined, viz., Companies Act, 2013, RBI, SEBI Circulars.

Offence of Money laundering

A person shall be guilty of the offence of money laundering when, he/she has directly or indirectly attempted to indulge, knowingly assisted, knowingly is a party, or is actually involved in one or more of the following processes or activities connected with proceeds of crime:

— Concealment

— Possession

— Acquisition

— Use

— Projecting as untainted property

— Claiming as untainted property

Investigating authorities

The role of FIU IND comes into play from this point forward. FIU IND is an independent body reporting directly to the Economic Intelligence Council. The body is responsible for acting as a repository for having information about suspicious transactions. The body is responsible for receiving, processing, analysing and disseminating information or matters regarding suspicious transactions. The information so collated by the body is then processed by the adjudicating authority basis which a conclusion is arrived at.

The FIU thus shares a close relationship with financial sector regulators, such as, RBI, NABARD, SEBI, IRDAI, NHB for developing the anti money lending rules and policies.

Proceeds of crime

As per Section 2 of PMLA, proceeds of crime entail any property derived or obtained

1. The Government, *vide* notification dated 7 March 2023, modified the threshold for determining the ownership. The threshold specified for company and trust is now reduced to 10% from the erstwhile 25%.

derived or obtained, directly or indirectly, by any person as a result of criminal activity relating to a scheduled offence or the value of any such property or where such property is taken or held outside the country, then the property equivalent in value held within the country or abroad.

"proceeds of crime" include property not only derived or obtained from the scheduled offence but also any property which may directly or indirectly be derived or obtained as a result of any criminal activity relatable to the scheduled offence.

Reporting entities

Reporting entities have been defined in Section 2(1) (wa) stating that reporting entities means a banking company, financial institution, intermediary or a person carrying on a designated business or profession.

Further, Section 2(1)(sa) defines the term:

"person carrying on designated business or profession" means,

(i) a person carrying on activities for playing games of chance for cash or kind and includes such activities associated with casino,

(ii) Inspector – general of registration appointed under Section 3 of the Registration Act, 1908

(iii) Real estate agent, as may be notified by the Central Government

(iv) Dealer in precious metals, precious stones and other high value goods

(v) Person engaged in safekeeping and administration of cash and liquid securities on behalf of other persons

(vi) *Person carrying on such other activities as the Central Government may, by notification, so designate, from time to time*

Using the power as specified under clause (vi) above, the Government had come up with a notification, published on 3 May 2023, which when read jointly with the section as specified above, now covers **financial transactions** carried out by a practising Chartered Accountant, Cost Accountant or a Company Secretary on behalf of his or her client, in course of his or her profession, in relation to the following activities –

— Buying or selling of immovable properties

— Managing of client's money, securities or other assets

— Management of bank, savings or securities account

— Organisation of contributions for creation, operation or management of companies

— Creation, operation or management of companies, limited liability partnerships or trusts

— Buying and selling of business entities.

Thus, professionals who are engaged in financial transaction and acting on behalf of his client are now covered under the ambit of reporting entities and they, accordingly shall have to report and maintain records, initiate the KYC of the client, as required under PMLA.

Under the provisions of PMLA, there is no exemption provided to reporting entities from intimating such information. However, as per PML Rules, reporting entities are to maintain records of transactions including all cash transactions of more than INR 1 million or its foreign equivalent. Nature of

transactions include all cash transactions involving forged or counterfeit currency notes or bank notes being used as genuine; all cross-border wire transfers of the value of more than INR 500,000; all purchases and sales of immovable property by any person valued at INR 5,000,000 or more; and suspicious transactions, regardless of whether the transactions are effected in cash.

As specified earlier in this article, the financial intelligence unit is set up, in order to combat the financial crime and to prevent money laundering. To ensure relevant data is gathered by the FIU, the reporting entities are required to register on FIU-IND portal and to submit periodic reports.

Types of report under FIU IND

FIU IND is responsible for collecting the following information –

— Suspicious Trading Reports

— Cash Transaction Reports

— Cross Border Wire Transfer Reports

— NPO Transaction Reports

— Counterfeit Currency Reports

FIU IND is, therefore, a repository of all the information and has no investigative power but are empowered to impose penalties.

The Director of the FIU, pursuant to an inquiry into the obligations of a Reporting Entity, may impose on such Entity, its designated director on the board or any of its employees a monetary penalty of up to INR 100,000 for each failure.

Non-compliance with the relevant requirements, i.e,, AML requirement, i.e. customer identification, client due diligence, customer acceptance, and tracking and reporting of certain types of transactions under the PMLA, is subject to penalty provisions.

4. Key amendments

Virtual Digital Assets Service Providers and its relationship with FIU IND

Vide notification dated 4 July 2023, registration of VDA (meaning of VDA shall be construed in lines with the provisions of Income Tax Act, 1961) with FIU IND also became mandatory. The Central Government vide notification dated 7 March 2023, notified the following activities which shall also be considered under the ambit of reporting entities –

— Exchange of virtual digital asset and flat currencies;

— Exchange between one or more form of virtual digital assets;

— Transfer of virtual digital asset

— Safekeeping or administration of virtual digital assets or instruments enabling control over virtual digital assets and

— Participation in and provision of financial services related to an issuer's offer and sale of virtual digital asset.

The VDA service provider shall also have to establish a process for customer due diligence, record keeping, internal control procedure, training of employees, filing of suspicious transaction reports.

5. Registration with FIU IND

The reporting entity is required to register with FIU IND is to access the 2.0 portal (a system more adept with the latest technology and machine learning ability) instead of the erstwhile portal. Consequently, the user shall identify its organization as Business Entity or Individual RE before proceeding for the registration process.

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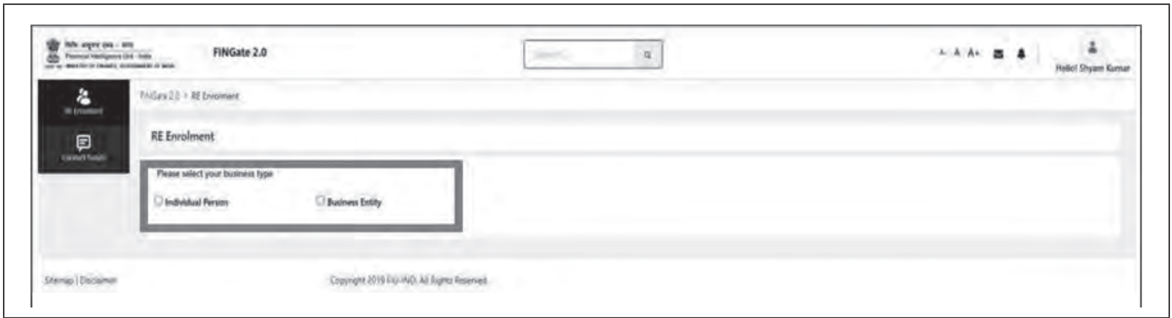

Reporting Entity (RE) registration as Business Entity

Validate RE details and update mandatory RE identifiers

1. The 'Business RE Enrolment' form will open.
2. The Primary User shall validate the RE details and modify the same, if applicable.
3. The Primary user will enter the relevant RE identifier and upload the respective attachments. The acceptable identifiers for Entity RE are provided in the table below:

Issuer/regulator	Entity Identifier	Supporting Document
MCA (Ministry of Corporate Affairs)	1. CIN (Company Identification Number)	Certificate of Incorporation
	2. LLPIN (Limited Liability Partnership Identification Number)	
	3. FCRN (Foreign Company Registration Number)	
	4. FLLPIN (Foreign Limited Liability Partnership Identification Number)	
GSTN (Goods and Services Tax Network)	GSTIN (Goods and Services Tax Identification Number)	Registration Certificate
CBDT (Central Board of Direct Taxes)	PAN (Permanent Account Number)	PAN Card

4. Business license certificate shall also be required
5. After filling the necessary details, the following page shall pop up

6. Principal/Nodal Officer Registration

The RBI issued an ombudsman scheme for NBFCs wherein it was stated that all NBFCs should appoint Nodal Officer/Principal Officer to address the grievances.

PMLA read with the Rules require REs to appoint –

— A principal officer, who is responsible for providing the requisite information to the FIU; and

— a designated director, who ensures compliance with the obligations of the Reporting Entities as provided under the PMLA and PML Rules.

A principal officer is an officer designated by the RE for the purpose of Section 12 of PMLA and a designated director is a person designated by the RE responsible for ensuring overall compliance with the obligations imposed under PMLA which include –

— The Managing Director or Whole Time Director in case the RE is a company

— The Managing Partner in case the RE is a partnership firm

— The proprietor in case of proprietorship concern

— The managing trustee if the RE is a trust

— a person or individual who controls and manages the affairs of the reporting entity if the reporting entity is an unincorporated association or a body of individuals, and

— such other person or class of persons as may be notified by the Government

Overall, the Principal Nodal Officer plays a pivotal role in maintaining the reputation and regulatory compliance of a financial institution by addressing customer grievances effectively and transparently.

Registration of PO

Accessing the PO enrolment link for validating and updating PO details

1. The PO will receive an email containing detailed instructions, a link to register on the FINGate 2.0 portal and the contact details of UCC.
2. Upon clicking the link, the user will be directed to the password generation page.
3. The user shall generate first time password as detailed in Section 2 of this document.
4. Post password generation, the user will login to FINGate portal.

Validate and update personal details

1. The 'PO Enrolment' form will open.
2. The Principal Officer shall validate the auto-populated 'user enrolment' details and modify the same, if applicable.
3. The Principal Officer will enter the identification details (Government ID). The acceptable individual identifier for PO is mentioned below:

    a) Passport (attachment to be uploaded)

    b) PAN Card (attachment to be uploaded)

7. Due date for filing reports to FIU-IND

The due dates for filing of the reports are as follows:

— *CTR* – cash transaction reporting whose value is more than INR 10 Lakhs or transactions which are related with each other whose value is less than INR 10 lakhs and a series of transactions have taken place within a month shall have to be reported within 15th of the succeeding month.

— *NTR* – all transactions involving receipts by non-profit organizations of value more than INR 10 Lakh or, its equivalent in foreign currency have to file NTR Reporting on the 15th day of the succeeding month.

— *STR* – Suspicious transaction report should be furnished within 7 days of arriving at the conclusion that the specified transaction is suspicious in nature whether cash or non-cash, or a series of transactions integrally connected. Further, the Principal Officer should record his reasons for such treatment.

8. Conclusion

The role of FIU IND is sacrosanct to the Indian financial system. The FIU further ventures into collaboration with national and international ecosystem such as Egomont Group and FATF to curb the financial crime. However, following are the complexities involved which needs attention –

— *Complex registration forms* – as can be seen from above, FIU registration forms are extensive and require detailed information about the entity, its ownership structure, and its AML/CTF policies and procedures. Gathering and providing accurate data can be time-consuming and challenging.

— *Document verification:* Reporting entities are typically required to submit various documents as part of the registration process. These documents may include copies of licenses, ownership records, policies, and procedures. Ensuring that these documents meet the FIU's specific requirements can be a complex task.

— *AML/CTF Compliance Documentation*: Reporting entities having customer

interface shall have to demonstrate its compliance with AML/CTF regulations. This may involve providing evidence of risk assessments, customer due diligence (CDD) procedures, suspicious transaction reporting (STR) processes, and ongoing training programs. Preparing and organizing these documents can be a significant effort.

— *AML/CTF Training*: Ensuring that employees are adequately trained in AML/CTF compliance is essential. Organizations may need to invest in training programs and resources to meet the FIU's requirements.

— *IT Integration*: Integrating the entity's IT systems with the FIU portal for the electronic submission of reports can be challenging. Ensuring data security and the proper transmission of sensitive information are crucial concerns.

— *Continuous Monitoring*: Reporting entities are often required to monitor transactions for suspicious activities continuously. Developing and maintaining a monitoring system can be intensive.

— *Updating Information*: Reporting entities must keep their information up to date on the FIU portal. Any changes in ownership, policies, or other relevant details must be promptly reported, which can be an ongoing administrative burden.

— *Penalties for Non-Compliance*: Failure to register or comply with AML/CTF regulations can result in significant penalties and legal consequences which adds to the pressure on reporting entities to ensure full compliance.

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"If you project hatred and jealousy, they will rebound on you with compound interest. No power can avert them; when once you have put them in motion, you will have to bear them. Remembering this will prevent you from doing wicked things."

— *Swami Vivekananda*

"Intellect takes us along in the battle of life to a certain limit, but at the crucial moment it fails us. Faith transcends reason. It is when the horizon is the darkest and human reason is beaten down to the ground that faith shines brightest and comes to our rescue."

— *Mahatma Gandhi*

DIRECT TAXES
Supreme Court

Keshav B. Bhujle
Advocate

1 ***Shree Nilkanth Developers vs. Principal CIT; [2023] 457 ITR 464 (SC): Dated 09/08/2023:***

Settlement of case — Application for settlement — Department objecting stating there was no full disclosure — During the course of settlement proceedings assessee offering higher sum — Settlement Commission accepting — High court setting aside the order of Settlement Commission — Supreme Court remanded the matter to Settlement Commission for reconsideration and redetermination of undisclosed income — Subsequent reassessment and demand to be in abeyance and subject to settlement: S. 245D of ITA 1961: A. Ys. 2011-12 to 2013-14

The appellant assessee is a partnership firm constituted with effect from May 1, 2009 and is in the business of real estate. The Department conducted a survey at the project site of the assessee firm, impounded incriminating material and recorded the statement of one of the partners. The assessee filed an application seeking settlement of its case before the Settlement Commission in respect of A. Ys. 2011-12, 2012-13 and 2013-14 estimating the additional income at Rs. 34 lakhs, and the additional tax and interest thereon. The Settlement Commission allowed the case to proceed further. In response to the application filed by the assessee, the Department sent its report under rule 9 of the Income-tax Settlement Commission (Procedure) Rules, 1997 objecting to the offer of ₹ 34 lakhs as additional income and contending that there was no full disclosure of the material particulars. The Department sought dismissal of the settlement application. The Settlement Commission considered the contentions of the respective parties at length and ultimately the assessee offered ₹ 56 lakhs as additional income. Accepting this as additional income, over and above the declared income of ₹ 34 lakhs, the Settlement Commission passed its order.

The Department preferred a writ petition whereupon the High Court concluded that this was not a case which was acceptable for settlement at all and set aside the order of the Settlement Commission as flawed.

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

"i) Initially only ₹ 34 lakhs was offered as the disclosed income spread over a period of three assessment years. But, pursuant to the conduct of the survey and recovery of incriminating documents during the course of settlement proceedings, ultimately, the assessee offered ₹ 56 lakhs as additional

income for the purpose of taxation. The income of ₹ 56 lakhs was over and above that initially disclosed, which was only ₹ 34 lakhs. In the circumstances, there was no real determination of the undisclosed income.

ii) However, there is a real object and purpose of setting up the Settlement Commission as an assessee is given an opportunity to disclose the undisclosed income in order to seek benefit in the form of immunity from penalty and prosecution. Therefore, when the High Court set aside the order of the Settlement Commission, the matter had to be remanded to the Settlement Commission for reconsideration and redetermination of the undisclosed income, after giving an opportunity to both sides. Consequentially, the orders of the High Court and the Settlement Commission were to be set aside and the matter remanded to the Settlement Commission (substituted by the Interim Board for Settlement).

iii) In view of the remand, the subsequent reassessment and demand made by the Department against the assessee shall be kept in abeyance and subject to the order to be made by the Interim Board for Settlement."

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2 ***Kotak Mahindra Bank Ltd. vs. CIT; [2023] 458 ITR 113 (SC): Dated 25/09/2023:***

Settlement of cases — Immunity from penalty and prosecution — Factors to be considered — "full and true disclosure" — Scope of expression — May include income discovered by AO; Discretion of Settlement Commission — Scope of judicial review — Sufficiency of material based on which Commission grants immunity beyond judicial review; Assessee, a public limited company carrying on business of banking, placing material before Commission as to manner in which income derived and offering additional income to tax — Finding of Commission that non-disclosure was on account of Reserve Bank of India guidelines which required different standard of disclosure — Finding that assessee co-operated in process of settlement and that prima facie, made full and true disclosure of income not disclosed before AO — Findings showing application of mind by Commission to whether there was wilful concealment of income by assessee — Commission exercising discretion to proceed with application for settlement and granting immunity from penalty and prosecution having regard to bona fide conduct of assessee — Order of Commission calling for no interference: Ss. 245C, 245D and 245H of ITA 1961: A. Ys. 1994-95 to 1999-2000

The appellant-assessee is a public limited company carrying on the business of banking and is assessed to tax in Bangalore where its registered office is located. Apart from the business of banking, the appellant also carries out leasing business on receiving approval from the Reserve Bank of India (hereinafter "RBI" for short) vide circular dated February 19, 1994. Thus, the appellant derives its income, inter alia, from banking activities as well as from leasing transactions.

This appeal was filed by the assessee assailing the judgment dated July 6, 2012, passed by the High Court of Karnataka at Bangalore, in Writ Appeal No. 2458 of 2010 whereby the judgment of the learned single judge dated May 20, 2010, passed in Writ Petition No. 12239 of 2008, remanding the matter to the Settlement Commission to determine afresh, the question as to immunity from levy of

penalty and prosecution, was affirmed and the aforesaid writ appeal filed by the appellant herein, was dismissed.

The Supreme Court allowed the appeal and held as under:

"i) U/s. 245H(1) of the Income-tax Act, 1961, if the Settlement Commission is satisfied that any assessee who makes the application for settlement u/s. 245C has co-operated with the Settlement Commission in the proceedings before it and has made a full and true disclosure of its income and the manner in which such income has been derived, it may grant immunity from prosecution or from the imposition of penalty, either wholly or in part with respect to the case covered by the settlement. The necessary ingredients for granting immunity from prosecution would be: (a) the assessee should have co-operated with the Settlement Commission in the proceedings before it; and (b) the assessee should have made a full and true disclosure of its income and the manner in which such income has been derived, to the satisfaction of the Commission. Therefore, what is of essence is that the assessee ought to have: (a) made full and true disclosure before the Commission, and (b) co-operated with the Commission in the proceedings before it. Upon being satisfied as to these ingredients, the Commission may grant immunity from prosecution or the imposition of penalty, either wholly or in part with respect to the case covered by the settlement. While section 245C provides that the disclosures as to income "not disclosed before the Assessing Officer" must accompany the application filed before the Settlement Commission, section 245H provides that if the assessee has co-operated with the Settlement Commission and has made "full and true disclosure of his income", the Settlement Commission may grant immunity from prosecution and penalty.

ii) Even if the preconditions prescribed u/s. 245C is to be read into section 245H, it cannot be said that in every case, the material "disclosed" by the assessee before the Commission must be something apart from what was discovered by the Assessing Officer. What is of relevance is that the assessee has offered to tax, income, in addition to the income recorded in the return of income. Section 245C read with section 245H only contemplates full and true disclosure of income to be made before the Settlement Commission, regardless of the disclosures or discoveries made before or by the Assessing Officer. The order passed by the Assessing Officer based on any discovery made, is not the final word, for it is appealable. However, the assessee may accept the liability, in whole or in part, as determined in the assessment order. In such a case, the assessee may approach the Settlement Commission making "full and true disclosure" of his income and the manner in which such income has been derived. Such a disclosure may also include the income discovered by the Assessing Officer.

iii) To say that in every case, the material "disclosed" by the assessee before the Commission must be something apart from what was "discovered" by the Assessing Officer, seems to be an artificial requirement. In every case, there may not even be additional income to offer, apart from what has been discovered by the Assessing Officer. The object of Chapter XIX-A is

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to settle cases and to reduce disputes, and not to prolong litigation. Therefore, instead of preferring an appeal against the assessment order, the assessee may, by making a "full and true disclosure" of income, approach the Settlement Commission and offer to tax income other than that disclosed in the return of income. The power vested with the Settlement Commission u/s. 245H is a discretionary power to be exercised if the Settlement Commission is satisfied that an applicant has complied with the preconditions specified therein.

iv) It is trite that any judicial, quasi-judicial or administrative authority must while exercising discretion, direct itself properly in law and consider all the facts and material that it is bound to consider while excluding from consideration irrelevant aspects of the matter. While exercising power u/s. 245H, read with section 245C of the Act the relevant facts and material which ought to be considered by the Commission are: the report which is to be submitted by the Commissioner, u/s. 245D(1) of the Act; the disclosures made by the applicant before the Commission as to income, the source of such income; and any other relevant evidence submitted by the assessee or the Department.

v) The sufficiency of the material and particulars placed before the Commission, based on which the Commission proceeded to grant immunity from prosecution and penalty as contemplated u/s. 245H of the Act, are beyond the scope of judicial review, except on the ground that the order contravenes provisions of the Act or has caused prejudice to the opposite party. Interference may also be open on the grounds of fraud, bias or malice.

vi) Having regard to the legislative intent, frequent interference with the orders or proceedings of the Settlement Commission should be avoided. The High Court should not scrutinise an order or proceeding of a Settlement Commission as an appellate court. Unsettling reasoned orders of the Settlement Commission may erode the confidence of bona fide assessees, thereby leading to a multiplicity of litigation where settlement is possible. This larger picture has to be borne in mind.

vii) The assessee, a public limited company carrying on the business of banking, had placed material and particulars before the Commission as to the manner in which income pertaining to certain activities was derived and sought to offer such additional income to tax. Based on such disclosures and noting that the assessee had co-operated with the Commission in the process of settlement, the Commission proceeded to grant immunity from prosecution and penalty as contemplated u/s. 245H of the Act. The Settlement Commission noted that the assessee had realised while adhering to the Reserve Bank of India guidelines of accounting of lease income that there was an error in not disclosing the full lease rental receipts according to Income-tax law, and offered additional income under various heads, which were not considered by the Assessing Officer. Considering the nature and circumstances and the complexities of the investigation involved, the Commission was of the view that the application was to

be proceeded with u/s. 245D(1) of the Act and that prima facie, a full and true disclosure of income not disclosed before the Assessing Officer had been made by the assessee. These findings of the Settlement Commission demonstrated that it had applied its mind to the aspect of whether there was wilful concealment of income by the assessee.

viii) Having noted that non-disclosure was on account of Reserve Bank of India guidelines, which required a different standard of disclosure, the Commission decided to grant immunity to the assessee from prosecution and penalty. The Commission's order further revealed that the assessee had offered additional income and disclosed particulars of income pertaining to the following transactions: two aspects of the assessee's leasing activity, namely, undeclared lease rent liable to Income-tax; additional income on account of disallowance of depreciation on assets claimed to be leased; treatment of bonus payments to employees; treatment of share issue expenses; and treatment of depreciation on permanent assets and securities. The Commission's order made multiple references to the report of the Commissioner, as required u/s. 245D(1). Therefore, the single judge of the High Court was not right in holding that the reasoning of the Settlement Commission was vague, unsound and contrary to established principles and the Division Bench was also not justified in affirming the view of the single judge. The Commission adequately applied its mind to the circumstances of the case, as well as to the relevant law and accordingly exercised its discretion to proceed with the application for settlement and grant immunity to the assessee from penalty and prosecution.

ix) The order of the Commission did not suffer from such infirmity as would warrant interference by the High Court. The High Court ought not to have sat in appeal as to the sufficiency of the material and particulars placed before the Commission, based on which the Commission proceeded to grant immunity from prosecution and penalty as contemplated u/s. 245H of the Act. The Commission rightly exercised its discretion u/s. 245H having regard to the bona fide conduct of the assessee of offering additional income to tax, apart from the income disclosed in the return of income.

x) In the light of the aforesaid discussion, we are of the view that the order of the Settlement Commission dated March 4, 2008, was based on a correct appreciation of the law, in the light of the facts of the case and the High Court ought not to have interfered with the same. Therefore, the judgment dated July 6, 2012, passed by the High Court of Karnataka at Bangalore in Writ Appeal No. 2458 of 2010 whereby the judgment of the learned single judge dated May 20, 2010, passed in Writ Petition No. 12239 of 2008, remanding the matter to the Settlement Commission to determine afresh, the question as to immunity from levy of penalty and prosecution was affirmed, is hereby set aside. Consequently, the order of the learned single judge is also set aside. The order of the Settlement Commission dated March 4, 2008, is restored. The appeal is allowed."

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DIRECT TAXES
High Court

Jitendra Singh
Advocate

Radha Halbe
Advocate

Harsh Shah
Advocate

1 ***PCIT vs. Schaeffler India Ltd. [TAXAP 679 of 2023, dated 10 October 2023, Gujarat High Court]***

Expenditure on scientific research - Section 35(2AB) of the Income Tax Act, 1961 – disallowance of claim on the ground that prescribed authority has not issued Form 3CL before the end of assessment proceedings unjustified

Facts

The assessee filed its original return of income for AY 2016-17 on 30.11.2016 declaring total income at ₹ 35,24,17,390/-. Subsequently revised return of income was filed, declaring total income at ₹ 37,70,49,380/-. The AO passed scrutiny assessment order under Section 143(3) determining total income at ₹ 39,96,46,714/- by making certain addition and disallowances. Subsequently, the Principal Commissioner of Income-tax (PCIT) issued a show cause notice under section 263 of the Act by observing that the assessee had claimed deduction under Section 35(2AB) of the Act of ₹ 20,12,21,103/- without submitting Form 3CL issued by the prescribed authority i.e., DSIR, New Delhi before the due date of filing of return of income. Accordingly, the PCIT passed an order under section 263 of the Act by holding that the assessment order passed under section 143(3) of the Act was erroneous in so far as it was prejudicial to the interest of revenue and directed the AO to pass fresh assessment order in accordance with law.

Being aggrieved, the assessee filed an appeal before the Income-tax Appellate Tribunal (ITAT) challenging the revision order passed under section 263 of the Act by the PCIT. After considering the contention of the assessee, the ITAT quashed the order passed under section 263 of the Act holding that the assessment order passed under section 143(3) of the Act is neither erroneous nor prejudicial to the interest of revenue. Being aggrieved by the ITAT Order, the revenue filed an appeal with the Hon'ble Gujarat High Court under section 260A of the Act.

Decisions of the Hon'ble High Court

Hon'ble High Court was pleased to dismissed the appeal of the department by observing that the assessee had filed various documents at the time of the original assessment proceedings such as, copy of recognition of in-house R&D facility dated 25.08.2014, approval of in-house R&D facility dated 07.10.2015 in Form 3CM, computation of deduction under section 35(2AB) of the Act and certificate of the auditor certifying the expenditure (Form

3CLA), to show that it is an approved in-house research and development facility for carrying out the research activity. The Hon'ble Court, further, held that assessee had filed Form No. 3CM certifying that research and development facility had been approved by prescribed authority, merely because said authority had failed to send intimation to department in Form No. 3CL would not be reason enough to deprive assessee's claim of deduction under section 35(2AB) of the Act.

2 *Sinogas Management Pte. Ltd. vs. DCIT [[2023] 155 taxmann.com 379 (Delhi)][18-10-2023]*

Procedure for assessment – Section 144C of the Act – final assessment order passed in pursuance to the order passed under section 263 of the Act without passing the draft assessment order under section 144C(1) of the Act – final assessment order is bad in law. [section 263 of the Act]

Facts

The Assessee before the Hon'ble Delhi High Court was a company incorporated and resident in Singapore and engaged in the business of operating of ships. The Assessee had filed Nil return of income for AY 2017-18. During the assessment proceedings, the Assessee had claimed benefit of Article 8 of the India-Singapore Double Taxation Avoidance Agreement (DTAA) and had claimed that its income from the charter agreement with Hindustan Petroleum Corporation Limited was taxable only in Singapore. The AO finalized the assessment order allowing the benefit of Article 8 of DTAA and the return of income filed by the Assessee was accepted without any changes to the total income declared.

Subsequently, the CIT issued a notice under Section 263 proposing to revise the assessment order on the grounds that the AO had failed to appreciate the relevant documents and laws in proper perspective. Consequently, the assessment order was revised wherein benefit of Article 8 of DTAA was denied to the Assessee.

The assessee being aggrieved challenged the above order before the Hon'ble Delhi High Court on the grounds that a final assessment order was passed, along with a demand notice, without passing a draft assessment order as mandated under the provisions of section 144C of the Act.

Decision of the Hon'ble High Court

Hon'ble High Court was pleased to allow the writ petition filed by the assessee by observing that omission to pass a draft assessment order in terms of provisions of section 144C(1) in the case of an eligible assessee is not merely a procedural oversight, but a substantive lapse, which renders subsequent order devoid of jurisdiction. In the present case, the AO in pursuance to revisional order under section 263, passed impugned assessment order without issuing the draft assessment order, as envisioned by section 144C(1) of the Act. Thus, the action of the AO had resulted in unjustly depriving the Assessee of a choice of a forum, i.e., DRP, that the Act rightfully grants. Hence, impugned assessment order, demand notice and penalty notice were to be quashed and set aside.

3 *Gunwant Singh Saluja vs. State of Jharkhand [2023] 155 taxmann.com 429 (Jharkhand)*

Offences and prosecutions - section 276CC of the Income Tax Act, 1961 - Failure to furnish return of income - amount in question had already been set at rest in view of different orders passed by Appellate Authority as well as Tribunal - no penalty or assessment against assessee in view of subsequent orders passed by competent authority - criminal proceedings against the assessee is to be quashed

Facts

A search under Section 132 of the Act was undertaken in Mongia Group of cases by the Investigating Wing, Jharkhand. During the course of search operation, various incriminating documents relating to the Assessee were found and seized. Accordingly, notices under Section 153A of the Act for filing of returns of income were issued to the Assessee. However, the assessee had not filed his returns in response to the notice issued under section 153A of the Act. The AO issued a show-cause notice under Section 276CC of the Income Tax Act for initiation of prosecution proceeding for non-filing of return of income in time. In response to the same, the assessee filed a letter and explained that as the office of the Director General of Central Excise Intelligence, Jamshedpur had not given him the copy of the documents seized during the course of search and seizure operation in his business premises, he was unable to furnish the return. However, the Director General of Central Excise, Intelligence, Jamshedpur said that the authorized representative of M/s Mongia Steel Ltd. had already collected the original and photocopy of the documents seized. Thus, there was willful omission on the part of the assessee in filing returns of his income and, as such, accorded sanction under Section 279 of the Income Tax Act for launching prosecution under Section 276CC of the Act for not filing returns of income without giving any reasonable cause and non compliance of the notices of the AO. On the basis of the aforesaid allegations, Complaint Case was filed in the Court of the Special Judge.

The assessee being aggrieved filed a Writ Petition before the Hon'ble Jharkhand High Court under section 482 of Criminal Procedure Code for quashing the entire criminal proceedings arising out of the Complaint.

Decision of Hon'ble High Court

Hon'ble High Court was pleased to allow the Writ petition by observing that the offence under Section 276CC of IT Act deals with willful failure to comply with the obligation under Sections 139(1) of IT Act. Thus, where the penalty proceedings under section 271(1)(c) are dropped, it suggests that there is no concealment of income since, the fact that though the return of income was not filed, the omission was not willful. The quashing of prosecution under Section 276CC is automatic and the petitioner cannot be made to suffer and face the rigorous of criminal trial when the same cannot be sustained in the eyes of law. The entire prosecution on the basis that there is no concealment of income becomes devoid of jurisdiction.

4 *Pr. CIT vs. Tata Medical Centre Trust [ITA No.: 202/2023 order dated September 26, 2023, Calcutta High Court]*

Revision of order prejudicial to the revenue – section 263 of the Income Tax Act, 1961 – Revisional order passed manually without Document Identification No. (DIN) - intimation for DIN received later - Held to be invalid and deemed to have never been issued.

Facts

In the present case order under section 263 was passed without mentioning the DIN in the said Order. However, along with the said order a separate communication letter was annexed wherein the DIN was intimated. However, no reason was specified in the said intimation letter as to why DIN was not cited in the Order. The assessee challenged the same before the Appellate Tribunal. Hon'ble Appellate Tribunal after consideration, held that the order under section 263 was bad in law as DIN was not cited and reason for non-citing of DIN was not provided and hence, the same was not in compliance of Circular No. 19/2019 issued by CBDT.

The department being aggrieved by the above order preferred an appeal before the Hon'ble Calcutta High Court under section 260A of the Act.

Decision of Hon'ble High Court

The Hon'ble High Court was pleased to dismiss the departments appeal by observing that the Central Board of Direct Taxes Circular No. 19/2019 [F.NO. 225/95/2019-ITA. II] mandated generation and mentioning of DIN in all the communications issued by the income tax authorities. The said circular provided for certain exceptional circumstances wherein non-citing of DIN was permissible, subject to the condition that the communication may be issued manually but only after recording reasons in writing in the file and with prior written approval of the Chief Commissioner/Director General of income-tax. The communication issued under aforesaid circumstances shall state the fact that the communication is issued manually without a DIN and the date of obtaining of the written approval of the Chief Commissioner/ Director General of Income-tax for issue of manual communication. Hence, the order passed under section 263 of the Act was not in confirmation with the CBDT Circular and hence, bad in law.

> "This human body is the greatest body in the universe, and a human being the greatest being. Man is higher than all animals, than all angels; none is greater than man. Even the Devas (gods) will have to come down again and attain to salvation through a human body. Man alone attains to perfection, not even the Devas."
>
> — *Swami Vivekananda*

DIRECT TAXES
Tribunal

CA Viraj Mehta CA Kinjal Bhuta

1 ***ACIT vs. Manish Sumatilal Shah [ITA No. 382/SRT/2023 dt. 04/10/2023] (AY: 2017-18)***

Section 54F – Exemption from capital gains on investment in residential house – Exemption permissible on investment in multiple residential units

Facts

Assessee has shown long term capital gain of Rs. 7.19 crores and claimed deduction of entire amount under Section 54F of the Act. During assessment, the Ld. A.O. noted that the assessee purchased four flats in a building. The Ld. AO passed an assessed order denying the exemption on the basis that the said provision do not allow exemption if the Assessee owns more than one residential property other than the new asset, on the date of transfer of original asset. Before the Ld. CIT(A) it was submitted that it was a need of family to acquire larger residential house. The adjoining four flats were converted into one residential house by architectural changes only with one entrance and kitchen. The Ld. CIT(A) admitted the additional evidence, accepted the claim and allowed the appeal. Being aggrieved the Revenue filed an appeal before the Hon'ble ITAT.

Held

Assessee submitted that all four flats are a single residential house since the same were merged together, having one entrance and single kitchen. To substantiate floor plan, photographs, certificate of Chairman of the Society and Certificate of Architect were submitted. Hon'ble ITAT relied upon the decision of The Hon'ble Delhi HC in ***CIT vs. Gita Duggal (2013) (357 ITR 153)***, with Revenue's SLP dismissed by the Hon'ble SC vide decision reported in (2014) (52 Taxmann.com 246), The Hon'ble Karnataka HC decision in the case of ***Arun K Thiagarajan vs. CIT (2020) (117 Taxmann.com 270)***, wherein it has been held that expression 'a residential house' includes within its ambit plural numbers and the Hon'ble Andhra Pradesh HC decision in the case of ***Syed Ali (2013) (352 ITR 418),*** wherein claim of exemption under section 54 was allowed in the context of investment in several independent units. Assessee has demonstrated that though four different units were purchased, it was one residential house. It was also held that the phrase 'a residential house' in the provisions of section 54F has been substituted with 'one residential house' vide Finance Act, 2015 (with effect from AY 2015-16). Considering the facts and legal pronouncements, department appeal was dismissed.

2 *The ACIT v. Hasmukhbhai Ravjibhai Ahir [ITA No.298/SRT/2023 dt. 16.10.2023] (AY 2017- 18)*

Section 68 – Unexplained Cash Credit – Loan availed by the Assessee – All evidences submitted – No addition can be made

Facts

Assessee has obtained loan of Rs.1 crore from an individual Assessee in assessment had submitted the PAN number of the lender, Bank statement of the lender, confirmation from the legal heir since the lender had expired and other required documents. Ld AO issued summons u/s 131 to the son of the deceased lender but he never appeared or validated the confirmation. On said account, the Ld AO made an addition under section 68. On further appeal, the Ld CIT(A) deleted the addition made by the Ld AO. Being aggrieved, department is in appeal.

Held

Hon'ble ITAT observed that the lender had disbursed the amount to the Assessee upon receipt of money from sale of land. Hence, allegation that the lender acted as a conduit and has no creditworthiness does not hold good. Return of income of the lender was also furnished wherein he has reported an income of ₹ 3,14,44,900/-. Loan was in subsequent year repaid in three instalments as evident from the bank statement. Thus, the Hon'ble ITAT held that the above evidence substantiates the identity, genuineness of transaction and credit worthiness of the lender. The Hon'ble ITAT relied on the decision of the Hon'ble Gujarat High Court in the case of ***CIT vs. Patel Ramniklal Hirji (2014) (41 Taxmann.com 493***). Accordingly, the Hon'ble ITAT upheld the decision of the Ld CIT(A) and dismissed the appeal filed by the Revenue.

3 *The Sagbara Dediapada Vibhag Aadivasi Mahila Vikash Bachat & Dhiran Sahkari Mandali Ltd. Pandorimata Society v. ITO [ITA No.472/SRT/2023 dt. 12/10/2023] (AY 2017-18)*

Section 69A – Unexplained money – Cash deposited in the bank account during Demonetization period – All evidences submitted – Addition cannot be sustained

Facts

Assessee is a co-operative society consisting of Tribal/Village women. Assessee deposited cash of ₹ 41,31,910/- in its two bank accounts during the demonetization period. Assessee explained the source of cash deposited during the year including that of demonetization period, being in the nature of contribution collected/received from its members. Ld AO concluded the order treating the amount deposited during demonetization period as unexplained money u/s 69A on account that assessee has not explained the source of cash deposition other than making statement regarding the same being in the nature of savings collected from its members and has not submitted confirmation from any members. NFAC confirmed the action of the Ld AO. Being aggrieved with the same, appeal is filed before Hon. ITAT.

Held

Hon'ble ITAT observed that the Assessee has submitted – (a) Copy of PAN Card (b) Copy of Bank account (c) Copy of Bank statement

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(d) Certificate of Incorporation (e) Audit Report (f) List of Members and (g) Written submission to explain the source of cash deposited during the year. The Ld AO has not made addition in respect of cash deposited during the year other than demonetization period. Thus, the Ld AO has considered a part of the cash deposit as undisputable and another part of cash deposit as disputable, which is not acceptable. Ld AO has not brought any cogent evidence on record to say that the contribution to the tune of ₹ 41,31,910 is disputable. The Ld AO has not refuted or discredited these evidences and documents but brushed aside these evidences without even a word on why they are not acceptable. Basis the same, the Hon'ble ITAT allowed the appeal of the Assessee and deleted the addition.

4 ***Navrang Basant CHS vs. ITO [ITA No. 1353/Mum/2023 dt. 11/10/2023 (Mum)(Trib.) (AY 2017 – 2018)***

Section 80P(2)(d) – Interest Income on Deposits – Parked in Co-operative Banks –100% deduction in respect of interest earned/received from Co-operative Banks – Deduction allowed

Facts

The assessee earned interest income of ₹ 15,89,385/- on deposits that are maintained in the Co-operative Banks. The same has been claimed as a deduction under section 80P(2)(d) of the Act. During the assessment proceedings, it was submitted that the interest has been received from investments made with various Co-operative Banks. Ld. AO denied the deduction u/s 80P(2)(d). CIT(A) dismissed the appeal and therefore appeal is filed before ITAT.

Held

Assessee is a cooperative society and not a cooperative bank therefore the provision section 80P(4) does not apply to assessee and therefore assessee is eligible for deduction u/s 80P(2) of the Act. Assessee has invested in Saraswat Cooperative bank, Shamrao Vithal cooperative bank and Maharashtra District cooperative bank limited. There is no doubt that assessee is not a cooperative bank. Section 80P(4) denies deduction to cooperative banks only. Said view is upheld by the Honourable Supreme Court in case of ***Kerala State Co-Operative Agricultural & Rural Development Bank Ltd. vs. Assessing Officer [2023] 154 taxmann.com 305 (SC) [14-09-2023]***. In view of Apex Court decision, Ld. AO was directed to allow deduction to assessee cooperative housing society deduction on interest income.

5 ***Late Shri Motilal Hastimaji Bothra through legal heir Smt. Bhanwari Devi vs. ITO [ITA No. 2316/Mum/2023 dt. 16/10/2023 (Mum) (Trib.) (AY 2010-11)***

Section 159 –Assessment order and CIT(A) passed in the name of deceased assessee – Both orders were passed ex-parte – legal heir was not brought on records- assessment framed in the name of deceased assessee was quashed

Facts

The case of the assessee was re-opened based on receipt of information from investigation wing about some dealers engaged in providing accommodation entries. The assessee had died on 06.08.2015 and most of the notices u/s. 142(1) of the Act were issued after his death. Multiple notices were sent to the

asseessee, however none of those were replied and therefore the AO passed an ex-parte order confirming entire purchases as non-genuine vide order dated 24/02/2016 in name of deceased assesee. In the statement of facts filed before the CIT(A), the legal heir submitted the death certificate alongwith medical records. The CIT(A) also passed an ex-parte order in the name of the deceased assessee as notices were not complied with. Subsequently, an appeal was filed before the Hon'ble ITAT for want of sufficient opportunity and the matter was remitted back to the file of CIT(A) with a direction to decide the case on merits and provide reasonable opportunity to the assessee. The order passed by the Hon'ble ITAT was in the name of the legal heir of the assessee. The CIT(A) again passed an ex-parte order in the name of the deceased assessee. Being aggrieved by the same, the appeal was filed before the Hon'ble ITAT.

Held

Before Hon'ble ITAT, none appeared on behalf of the assessee. In the grounds of appeal raised before the Hon'ble ITAT, the assessee had mentioned that no notice of hearing was received by the legal heir of the assessee due to the deactivation of the PAN of the assessee. The grounds further state that the CIT(A) has erred in not serving notices on the address of the legal heir, even though the address was mentioned on the order of the Hon'ble ITAT when the matter was remitted to him earlier.

The Hon'ble ITAT observed in the statement of facts filed before CIT(A), that the legal heir had specifically submitted that the assessee had succumbed to cancer on 06.08.2015. The Hon'ble ITAT also observed that the assessee had died much before the assessment order was passed and all the assessment notices except one were issued after the death of the assessee. The DR argued that no intimation was received by the AO from the legal heirs regarding the demise of the assesee. The Hon'ble ITAT rejected this argument of the DR by relying on the decision of Hon'ble Delhi HC wherein it was held that there are no statutory provisions to cast duty on the legal representatives to intimate the factum of death to the income tax department. The Hon'ble ITAT held that the legal heir was not brought on the record and no notice was issued in the name of the legal heir, therefore the assessment order framed in the name of the deceased assessee is non-est in law and hence quashed. Since the assessment order itself was held to be quashed, no further discussion was made on the other grounds or on the merits of the case.

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6 ***Prabhakar Nirbhawne vs. ITO [ITA No. 1010/Pun/2023 dt. 09/10/2023 (Pune)(Trib.) (AY 2012-13)***

Section 250: CIT(A) dismissed the appeal for non-prosecution – assessee argued that the e-mail id was of his son – notices remained unnoticed - Matter set and opportunity granted

Facts

The assessment order was passed u/s. 143(3) r.w.s. 147 of the Act. An appeal was preferred before CIT(A) who passed an ex parte order. The CIT(A) dismissed the appeal as no information or documents were received from the assessee. The appeal was dismissed for non-prosecution. Against this order of NFAC, the assessee is under an appeal.

Held

Before Hon'ble ITAT, the assessee argued that he was not aware of the notices issued by the CIT(A) as the registered e-mail id on the income tax portal was that of his son and therefore the same was not noticed. The assessee prayed for granting another opportunity. The Hon'ble ITAT allowed the assessee's appeal and held that it would be just and fair set aside the matter to the file of CIT(A) with a direction to decide the case afresh on merits after giving reasonable opportunity to the assessee. The Hon'ble ITAT also directed that assessee shall be at liberty to lead any fresh evidence in support of his case in the fresh proceedings.

7 ***M/s Polygel Industries Pvt. Ltd. vs. PCIT [ITA No. 1971/Mum/2023 dt. 11/10/2023 (Mum)(Trib.) (AY 2018-19)***

Section 263 – Revision of Assessment – Profit of Standalone Financials and not Consolidated Financials to be considered for Book Profit calculation u/s 115JB – Order not erroneous and Prejudicial to the interest of the Revenue

Facts

Assessment u/s 143(3) was framed for AY 18-19. Thereafter, PCIT passed order u/s 263 wherein ₹ 1,80,91,596/- was considered as book profit which was as per the Consolidated Financial Statements instead of profit as per standalone Financial Statements. The figure of Book Profits has been taken by the department from the copy of the Profit and Loss Account uploaded in the system by the assessee which was standalone financials. Therefore, the contention of the assessee was not found acceptable and was thereby held that assessment order dated 11.02.2021 was erroneous in so far as it was prejudicial to the interest of the revenue. Being aggrieved with the same, appeal is filed before Hon. ITAT.

Held

Ld. Pr.CIT has observed that the profit declared by the assessee in its standalone financial statements was ₹ 68,53,323/- whereas the profit declared in the consolidated financial statements was ₹ 1,80,91,596/-. Assessee has declared its book profit in its standalone Profit and Loss Account which was offered for taxation under Income-tax Act for the purpose of computation of income under normal provisions as well as to determine the book profits u/s. 115JB of the Act. As per the requirement under Companies Act, assessee has to submit the consolidated financial statements of the assessee company where assessee has stepdown subsidiaries and associate companies. The stepdown subsidiaries and other associate companies are independent assessees in the eyes of law and they have declared their financial statements and profits independently and filed the relevant return of income. It was thereby concluded that the observation of the Ld. Pr.CIT to reassess the declared profit by the subsidiaries and other associates in the hands of the assessee was not proper and hence order u/s 263 was set aside.

8

Shree Samastha Gujarathi Samaj v. The CIT (Exemption), Pune (ITA No. 627/Pun/2019 dt. 01.09.2023) (Pune ITAT) (AY 14-15)

Section 263 – Revision of Assessment – Scope of Revision when assessment was under the banner of 'Limited Scrutiny' – Held that Revisionary Jurisdiction Can't Exceed Scope of "Limited Scrutiny"

Facts

Assessee filed its (ITR) declaring Nil income. Limited scrutiny was primarily done to verify the correctness of the deduction claimed under the head 'Income From Other Sources.' During the limited scrutiny, Ld. AO examined the deduction of expenses claimed under Section 57 of the Income Tax Act. The assessment was conducted within the boundary of the limited scrutiny notice, which did not include the examination of other aspects of income chargeable under Section 56 of the Act. CIT(Exemption) exercised revisionary jurisdiction under Section 263 of the Act, contending that the assessment order was both erroneous and prejudicial to the interests of the Revenue on account that there was failure of the Ld. AO to examine certain income items falling under Section 56 of the Act.

Held

ITAT held that the jurisdiction of the Ld. AO was restrictive to examine all such transaction vis-à-vis expenditure relating to claim for deductions u/s 57 of the Act, therefore examination of an item outside the provisions of section 57 of the Act was extra-territorial to the Ld. AO unless authorised by necessary prior approval. The issue of examination of transaction of income falling u/s 56 of the Act remained outside the scope of assessment proceeding. Had the potential escapement came to knowledge of Ld. AO, then the culmination of proceedings without first converting the same into complete scrutiny would have rendered the assessment erroneous and not otherwise. During the revisionary exercise, the potential escapement of deemed rent, interest on refund and incorrect allowance of depreciation etc., come to the notice of the Ld. CIT (E). However, at this stage the revisionary authority cannot substitute his view sitting into the chair of Ld. AO for not extending the scope of limited scrutiny into complete scrutiny and hold the order of assessment erroneous. If this is permitted now, then it shall amount to travelling beyond the scope of limited scrutiny which is forbidden by law. Hence, relying on various decisions, revisionary proceedings was held as invalid as it failed satisfy the first and foremost of twin condition laid in s/s (1) of section 263 of the Act.

9

M/s. Thamira Green Farm P. Ltd vs. Addl. CIT [ITA No. 1845/ Chny/2018 dt. 22/09/2023 (Chny) (Trib.) (AY:2008-09)

Section 269SS- 271D – Assessee company accepted cash loan from its directors – amount utilized to purchase land for business purposes in remote area – penalty levied was deleted citing that there was reasonable cause on account of business exigencies – transaction between director and company does not fall within the scope of 269SS

Facts

The asssessee company had received a loan from its director in cash in excess of

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₹ 20,000/- otherwise than an account payee's cheque in contravention to Sec. 269SS. The assessee submitted that the loan was availed for business purposes for purchasing land in a remote area and the sellers of the land were insisting on cash payments. The assessee also did not open a bank account in that area as the land was purchased from multiple sellers and opening an account would make the sellers aware of the transactions happening in the said area resulting in an increase in prices. Cash payments were done due to this business exigency. The AO rejected the arguments on the grounds that it is not a reasonable cause. The AO also noted that the withdrawals were made from the savings account of the director and not the current account and thereby confirmed penalty u/s. 271D. The CIT(A) upheld the decision of the AO. Against this order of CIT(A), the assessee is an appeal before Hon'ble ITAT.

Held

Before Hon'ble ITAT, the assessee argued that the transaction between the appellant and the director was a routine current account. It was also argued that the director has directly paid the consideration for the purchase of the land to the sellers and hence outside the scope of section 269SS as the alleged loan has been taken through journal entries only and there was no actual receipt of cash. It was contended that the amount received as a loan from the director cannot be considered either a deposit or loan in terms of Section 58A of the Companies (Acceptance of Deposits) Rules, 1975 r.w.s. 642 of the Companies Act 1956. It was held by the Hon'ble Bench, that there was a reasonable cause for the assessee to accept a cash loan in contravention of Section 269SS of the Act for two reasons. Firstly, the entire amount was utilized for purchasing capital asset for business purposes and secondly, the transaction was disclosed by both the assessee and the director in their books. It was also held that the assessee had *bona fide* reasons to make cash payments and accept a cash loan from the director by going through the transactions and the place where the land was purchased. Further, the director has also explained the source for the loan given and therefore the transactions between the director and the company cannot be considered as loans or deposits within the meaning of Section 269SS of the Act. Thus, the penalty levied u/s. 271D was deleted.

"Think of the lotus of the heart, with petals downwards, and running through it, the Sushumna; take in the breath, and while throwing the breath out imagine that the lotus is turned with the petals upwards, and inside that lotus is an effulgent light. Meditate on that."

— *Swami Vivekananda*

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INTERNATIONAL TAXATION

Case Law Update

Dr. CA Sunil Moti Lala
Advocate

A. Supreme Court

1 ***Principal Commissioner of Income-tax-10 vs. Krishak Bharti Cooperative Ltd. [2023] 154 taxmann.com 318 (SC) [15-09-2023]***

Where assessee, a cooperative society registered in India, received dividend income from its JV which was registered as company under Omani laws and the assessee had established a branch office in the form of a company in Oman which was treated as PE to invest in JV, it was held that assessee was aiding to promote economic development within Oman and thus achieved the objective of Article 8 (bis) of the Omani Tax laws. Thus, though Article 8(bis) exempted dividend tax received by assessee from its PE in Oman by virtue of Article 25 of the DTAA, assessee was entitled to claim credit in India for tax payable on the said dividend in Oman notwithstanding that the said tax was not paid due to the exemption granted under the Omani Tax laws.

Facts

i. The assessee was a multi-State Co-operative Society registered in India, under the administrative control of the 'Department of Fertilizers, Ministry of Agriculture and Co-operation, Government of India'.

ii. In the course of its business of manufacturing fertilizers, the assessee entered into a joint venture with Oman Oil Company to form the Oman Fertilizer Company SAOC (for short 'OMIFCO' or 'the JV'), a registered company in Oman under the Omani laws. The assessee had a 25% share in the JV.

iii. The assessee also had a branch office in Oman which was independently registered as company under the Omani laws having permanent establishment status in Oman. The branch office maintained its own books of account and submitted returns of income under the Omani income tax laws.

iv. The dividend income received by the assessee in Oman was simultaneously brought to the charge of tax in the assessment as per the Indian tax laws. However, under the Omani tax laws, exemption was granted to the dividend income by virtue of the amendments made in the Omani tax laws w.e.f. the year 2000. The AO allowed credit for the said tax, which would have been

payable in Oman, but for the exemption granted.

v. Thereafter, the PCIT passed order u/s 263 of the Act and held that the reliance placed by the AO on Article 25(4) of the India-Oman DTAA was erroneous and that no tax credit was due to the assessee under section 90 of the Act as no tax had been paid by the assessee.

vi. The Hon'ble Tribunal held that the order passed by the PCIT u/s 263 of the Act was without jurisdiction and was not sustainable in law.

vii. The Hon'ble Delhi High Court upheld the order of the Hon'ble Tribunal.

viii. Aggrieved, the Revenue approached the Hon'ble Apex Court.

Decision

i. The Hon'ble Apex Court noted the provisions of Article 7 and 25 of the India–Oman DTAA as well as the provisions of Article 8 (bis) in the Omani tax law (which specifically exempts from tax – dividends received on equity shares).

ii. It specifically noted that Article 25(2) of the DTAA provides that where a resident of India derives income, which in accordance with this agreement, may be taxed in the Sultanate of Oman, India shall allow as a deduction from the tax on the income of that resident an amount equal to the income tax paid in the Sultanate of Oman, whether directly or by deduction, and that Article 25(4) further clarifies that the tax payable in a Contracting State mentioned in clause 2 and clause 3 of the said Article shall be deemed to include the tax which would have been payable but for the tax incentive granted under the laws of the Contracting State (Oman) and which are designed to promote development.

iii. It noted the provisions of Article 11 relied upon by the revenue which provides that dividends paid by a company which is a resident of a Contracting State (Oman) to a resident of the other Contracting State (India) may be taxed in that other Contracting State unless the resident of India carries on business in Oman through a PE situated in Oman and the holding in respect of which dividend is paid is effectively connected with such PE as provided in Article 11(4) – which was not so in the instant case as according to the Revenue, the assessee did not have a PE and assuming it had, the PE was doing only preparatory work etc. Further, the Revenue argued that the dividend received by the assessee was taxable in India and was not exempt because the same was not designed as tax incentive in Oman to promote development in that country.

iv. The Hon'ble SC observed that the term 'incentive' is neither defined in the Omani Tax Laws nor in the Income-tax Act, 1961 and that consequently, the JV had addressed a letter in November 2000 to Oman Oil Company seeking clarification regarding the purpose of Article 8 (bis) of the Omani Tax Laws. The clarification letter dated 11-12-2000 addressed by the Secretary General for Taxation, Sultanate of Oman, Ministry of Finance, Muscat to Oman Oil Company

SAOC was found to be significant, (and is extracted below):

"Under Article 8 of the Company Income-tax Law of Oman, dividend forms part of the gross income chargeable to tax. The tax law of Oman provides income tax exemption to companies undertaking certain identified economic activities considered essential for the country's economic development with a view to encouraging investments in such sectors.

Before the recent amendments to the Profit Tax Law on Commercial and Industrial Establishments, Article 5 of this law provided for exemption of dividend income in the hands of the recipients if such dividends were received out of the profits on which Omani income tax was paid by distributing companies. It meant that Omani income tax was payable by the recipients on any dividend income received out of the exempt profits from tax exempt companies. As a result, investors in tax exempt companies that undertake those activities considered essential for the country's economic development suffered a tax cost on their return on investments the tax treatment under the above-mentioned Article 5 had the negative impact on investments in tax exempt project.

The company Income-tax Law of 1981 was, therefore, recently amended by Royal Decree No. 68/2000 by the insertion of a new Article 8 (bis) which is effective as from the tax year 2000. As per the newly introduced Article 8 (bis) of the Company Income-tax Law, dividend distributed by all companies, including the tax-exempt companies would be exempt from payment of income tax in the hands of the recipients. In this manner, the Government of Oman would achieve its aim objective of promoting economic development within Oman by attracting investments.

We presume from our recent discussions with you that the Indian investors in the above Project would be setting up Permanent Establishment in Oman and that their equity investments in the Project would be effectively connected with such Permanent Establishments.

On the above presumption, we confirm that tax would be payable on dividend income earned by the Permanent Establishments of the Indian Investors, as it would form part of their gross income under Article 8, if not for the tax exemption provided under Article 8 (bis).

As the introduction of Article 8 (bis) is to promote economic development in Oman, the Indian Investors should be able to obtain relief in India ITA Nos. 6785 & 6786/Del/2015 (Ayrs. 2010-11 & 2011-12) ***Krishak Bharati Co-Operative Limited vs. ACIT*** *under Article 25 (4) of the Agreement for Avoidance of Double Taxation in India. All other matters covered in our letter No. FT/13/92 dated 6th August 2000 remained unchanged."*

v. The Hon'ble Apex Court held that it was clear from the above letter of the Omani Finance Ministry that the dividend distributed by all companies, including the tax-exempt companies would be exempt from payment of income tax in the hands of the recipients. By extending the facility of exemption, the Government of Oman intend to achieve its object of promoting development

within Oman by attracting investments. Since the assessee had invested in the project by setting up a permanent establishment in Oman, as the JV was registered as a separate company under the Omani laws, it was aiding to promote economic development within Oman and achieve the object of Article 8 (bis). The Omani Finance Ministry had concluded by saying that tax would be payable on dividend income earned by the permanent establishments of the Indian Investors, as it would form part of their gross income under Article 8, if not for the tax exemption provided under Article 8(bis).

vi. It was further held that a plain reading of Article 8 and Article 8 (bis) of the Omani Tax laws would manifest that under Article 8, dividend is taxable, whereas Article 8(bis) exempts dividend received by a company from its ownership of shares, portions, or shareholding in the share capital in any other company. Thus, Article 8(bis) exempts dividend tax received by the assessee from its PE in Oman (and by virtue of Article 25, the assessee is entitled to the same tax treatment in India as it received in Oman).

vii. Insofar as the argument concerning that the assessee was not having PE in Oman, the Hon'ble Apex Court observed that it was significant to note that from the year 2002 to 2006, a common order was made under Article 26(2) of the Income-tax Law of Oman holding that Kribhco Muscat was a PE supported by the assessee and was in receipt of dividend income from Omifco which was however, exempt from tax in accordance with Article 8 (bis) (1) of the Company Income-tax Law and that the said tax exemption on dividend was granted with the objective of promoting economic development within Oman by attracting investments. The Hon'ble Apex court thus concluded that it was apparent that the assessee's establishment in Oman had been treated as PE from the very inception up to the year 2011 and that there was no reason as to why all of a sudden, the assessee's establishment in Oman would not be treated as PE when for about 10 years it was so treated, and tax exemption (credit) was granted based upon the provisions contained in Article 25 read with Article 8 (bis) of the Omani Tax Laws.

viii. As regards the Revenue's argument that the letter dated 11-12-2000 issued by the Secretary General of Taxation, Ministry of Finance, Sultanate of Oman had no statutory force as per Omani Tax Laws and that the same could not be relied upon to claim exemption, the Hon'ble SC held that the above letter was only a clarificatory communication interpreting the provisions contained in Article 8 and Article 8 (bis) of the Omani Tax Laws and that the said letter itself had not introduced any new provision in the Omani Tax Laws.

ix. The Hon'ble SC thus dismissed the Revenue's appeal by concluding that the Revenue had not been able to demonstrate as to why the provisions contained in Article 25 of DTAA and Article 8 (bis) of the Omani Tax Laws would not be applicable in the instant case.

B. High Court

2 ***Principal Commissioner of Income-tax-7 vs. Polyplex Corporation Ltd. [2023] 152 taxmann.com 479 (Delhi) [18-07-2023]***

Held that in view of the concept of tax sparing embedded in India-Thailand DTAA to incentivize investment for economic development, I Co. would be eligible for tax credit qua tax payable on income by the way of dividend received from its subsidiary in Thailand notwithstanding that the said tax was not paid due to exemption granted under the Thai law

Facts

i. In its ROI, the assessee, an Indian Co. had claimed tax credit amounting to ₹ 1.60 crores in respect of tax, which it would have to ordinarily pay in Thailand on dividend received from its Thai subsidiary, but for the statutory regime in Thailand, which exempted levy of tax in that country.

ii. AO denied the tax credit sought in the ROI (on the ground that no tax had actually been paid by the assessee in Thailand on the dividend income earned there.)

iii. The CIT(A) upheld the stand of the AO.

iv. The Tribunal having regard to the tax sparing concept, which is embedded in several DTAAs, including the subject Indo-Thai DTAA, held that the assessee was entitled to tax credit at the rate of 10%, on the dividend income received from the Thai subsidiary.

v. The Revenue filed an appeal before the Hon'ble Delhi High Court.

Decision

i. The Hon'ble HC observed that it was quite evident that the controversy veered around the interpretation of Article 23 of the Indo-Thai DTAA. It noted that Paragraph 2 of Article 23 allows tax credit against tax payable in India under the Indian Income Tax Act, qua "Thai tax payable" under the laws of Thailand, and in accordance with the provisions of Indo-Thai DTAA, whether directly or by deduction, by a resident of India concerning profits or income arising in Thailand, which is subjected to tax both in India and in Thailand. It further noted that Paragraph 2 specifies the caveat that tax credit cannot exceed the amount of tax payable under the Indian Income Tax Act (as computed before allowing any such credit), which is appropriate to the profits of income, arising in Thailand.

ii. It observed that Paragraph 3 of Article 23 of the Indo-Thai DTAA which defines the term "Thai Tax Payable" provides that it shall deem to include any amount which will have to be payable as Thai tax for any year, but for exemption or reduction of tax, for that year or any part thereof, under the provisions of the Investment Promotion Act, or of the Thai Revenue Code, which are designed to promote economic development in Thailand, or which may be introduced hereafter, for modification or in addition to the existing law, for promoting economic development in Thailand. That Paragraph 3 of Article 23, thus, by employing a device of deeming fiction, includes in the expression "Thai Tax Payable" as adverted to paragraph 2 of

the very same Article, that tax which would have been otherwise payable, but for an exemption or reduction of tax granted for that year or any part thereof, under the two statutory enactments referred to therein. It held that Para 3 also alludes to the fact that the said statutes are designed to promote economic development in Thailand and that clearly, the provision was configured to incentivize investments in Thailand, by granting tax credit for that amount which, otherwise, would have been payable as tax to the Thai state, but was not paid due to exemption or reduction granted under the said enactments.

iii. It further noted that Paragraph 6 of Article 23 provides a clue as to the rate at which tax credit can be accorded by, inter alia, providing that it would be that rate of tax which would have been applicable, if income exempted from tax in accordance with the provisions of Indo-Thai DTAA, had not been so exempted. It held that ordinarily the term "tax payable" would mean tax, which is owed or due, although not paid. However, the meaning of the expression has to be found in the treaty executed between two Contracting States. The treaties/ DTAAs often (as in the instant appeals) define the term "tax payable". The intent of the Contracting States has to be, thus, ascertained from the term, as contained in the DTAA, and not what would ordinarily be the meaning of a given expression or term. Therefore, the meaning of the expression "Thai tax payable" or "Indian tax payable" has to be found in the definition embedded in the DTAA/treaty.

iv. It further observed that tax sparing as a concept exists and the same was also discernible from the commentary of Klaus Vogel on Double Taxation Conventions.

v. The Hon'ble HC thus concluded that the assessee was entitled to claim tax credit on dividend income received from its Thai subsidiary, in respect of "Thai Tax Payable", which it would have to pay @ 10%, but for the exemption accorded to it under the provisions of Section 34 of the Investment Promotion Act.

vi. Accordingly, the Hon'ble HC dismissed the Revenue's appeals.

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3 ***Commissioner of Income-tax-4 vs. GE India Business Services Pvt Ltd. [2023] 152 taxmann.com 517 (Delhi) [18-07-2023]***

Held that where in period under consideration, an extraordinary event had taken place in the case of a company by way of amalgamation, such company could not be considered as a valid comparable.

Held that where in the period under consideration, a company which had acquired another company could not be considered as a valid comparable.

Held that where a company was engaged in the business of rendering software development services as per requirement of users, said company could not be comparable to assessee company providing non-development software services, which involved purchase of software for provisioning services.

ML-79

C. Tribunal

4 ***SanDisk International Ltd. vs. Assistant Commissioner of Income Tax [2023] [TS-540-ITAT-2023(Bang)] [25-08-2023]***

Held that SanDisk Ireland's Indian AE did not constitute an Agency PE as the contracts were concluded by the independent distributors

Facts

i. The assessee, a company incorporated in Ireland had entered into a market research and support services agreement with its AE i.e., San Disk India Device Design Centre Private Limited ('SanDisk India'), whereby SanDisk India would assist the assessee in promoting its products by, inter alia, conducting market research, gathering data, and performing other support services.

ii. A survey was conducted in the premises of SanDisk India which allegedly revealed that the nature of activities performed by SanDisk India were beyond what was prescribed under the aforesaid agreement. This led to a formation of belief by the Assessing Officer of the assessee that income chargeable to tax had escaped assessment for the year under consideration. A notice u/s 148 of the Act was issued consequent to which the assessee filed a Nil return of income.

iii. The AO relying on the statements of the employees of SanDisk India recorded in the course of the survey held that the activities of SanDisk India created an 'Agency permanent establishment' and thus the appropriate portion of the business profits were liable to be taxed in India. Accordingly, adopting the global gross profit rate of 4.19% and after reducing admissible expenditure, a sum of ₹ 27.26 crores were brought to tax in the draft assessment order.

iv. The DRP upheld the AO's order consequent to which the assessee filed an appeal before the Hon'ble Tribunal.

Decision

i. The Hon'ble Tribunal noted the definition of 'business connection' provided in the Explanation 2 of section 9 of the Act and observed that the definition of permanent establishment under Article 6 of the India-Ireland Treaty was similar. It further noted that the agreement between SanDisk India and the assessee prohibited the former entity from negotiating, concluding, signing, executing or in any other manner, accepting sales or other contracts in the name of or on behalf of the latter entity. SanDisk India did not or more particularly, could not engage in securing, negotiating, or concluding contracts on behalf of the assessee. It was also evident from the agreement and the statements recorded from the employee of SanDisk India that the orders were secured by the independent distributors and not by SanDisk India. Therefore, clauses (a) and (c) of *Explanation* 2 to sec 9 were not attracted. Also, as the AO had recorded that SanDisk India did not procure goods, nor delivered them, nor collected the payments, clause (b) of Explanation 2 was also not applicable.

ii. On perusal of all the above statements of the employees, the Hon'ble Tribunal

held that, it was clear that sales of the assessee in India were effected through its distributors. The sales and marketing team of SanDisk India engaged in educating the customers about SanDisk products. Once the customer was interested in a product, the distributors of the assessee were notified who would then negotiate the price and place the purchase orders with the assessee. Therefore, it was not forthcoming from the statements recorded that SanDisk was totally responsible for concluding contracts on behalf of the assessee. The AO had not brought on record any other material to support his case. Therefore, reliance on the statements of employees of SanDisk India were not conclusive of existence of permanent establishment of the assessee in India.

iii. It further relied on the decision in the case of ***Net App B.V vs. DCIT (2017) 78 taxmann.com 97 (Del)*** wherein under similar facts and circumstances, the Tribunal held that the Indian company engaged in providing marketing support services with no authority to conclude contracts, did not constitute a permanent establishment of the foreign entity.

iv. As regards the judgement of the Hon'ble Karnataka High Court in ***Jebon Corporation Ltd. vs. CIT [(2012) 10 taxmann.com 119 (Kar)*** relied upon by the Revenue, the Hon'ble Tribunal held that the said decision was not applicable in the present case as it had not dealt with the concept of agency PE. Further, this decision had also been distinguished by the Mumbai Bench of the Tribunal in ***Swiss re-insurance company ltd. vs. DDIT [ITA No. 1667/Mum/2014]*** for similar reasons.

v. In view of the above, the addition made by the Assessing Officer was deleted by the Hon'ble Tribunal.

vi. Further, the Hon'ble Tribunal also clarified that the explanation 2 to section 9(1)(i) of the Act which was amended vide Finance Act, 2018 (to include within the definition of business connection an agent who habitually plays the principal role leading to conclusion of contracts by that non-resident) was only w.e.f. 01-04-2019. It further noted that similar amendments were also proposed to DTAA through MLI, which was not effective for the years under consideration and concluded that even otherwise, it is settled principle that amendment to Act cannot be directly imported to the treaty, unless treaty itself is modified though protocol or MLI.

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"Neither seek nor avoid,take what comes"

— *Swami Vivekananda*

INDIRECT TAXES

GST – Recent Judgments and Advance Rulings

CA Naresh Sheth CA Jinesh Shah

A. WRIT PETITIONS

1 *Indian Herbal Store Pvt. Ltd. vs. Union of India – Delhi High Court [W.P. (C) 9908/2021 and CM No. 34717/2021]*

Facts and Issues involved

Petitioner filed four refund applications for the period 01.10.2018 to 30.09.2019 in respect of unutilized ITC for export of goods. The said refund applications were rejected on the grounds that petitioner had not co-related FIRC with the exports made and export turnover computed was not compliant with Rule 89(4)(C) of CGST Rules. Aggrieved by the rejection, petitioner filed the appeal. Petitioner succeeded in respect of non-correlation of FIRC with exports. However, Appellate Authority upheld the refund rejection on the ground that export turnover is not compliant with Rule 89(4)(C) of CGST Rules.

Petitioner's submissions

Rule 89(4)(C) of CGST Rules is ultra vires the provisions of section 54 of CGST Act, section 2(5) of IGST Act and section 16 of IGST Act.

Rule 89(4)(C) of CGST Rules falls foul of Article 14 of the Constitution of India and therefore, is liable to be struck down.

Sub-rule (4)(C) of Rule 89 of the said Rules, which was substituted by the Central Goods and Services Tax Act (Third Amendment) Rules, 2020 with effect from 23.03.2020, has no application for refund in respect of exports made prior to the said date.

Discussions by and observations of High Court

The condition that the export turnover would mean the value, which is 1.5 times the value of the similar goods domestically supplied by the same, or similarly placed supplier, was added as a condition for computing the turnover of zero-rated supplies vide CGST (Amendment) Rules, 2020. The said amendment came into effect from 23.03.2020. Post the amendment of Clause (C) of Rule 89(4) of the Rules, the turnover of the zero-rated supplies would mean the value of the zero-rated supplies actually made during the relevant period without payment of tax under bond or undertaking, or the value which is 1.5 times of similarly placed goods domestically supplied by the supplier or a similarly placed supplier, whichever is less.

ML-82

Thus, if the value of the zero-rated supplies exceeded 1.5 times the value of similar goods domestically supplied, the export turnover would necessarily be kept at that value.

The right for refund of the accumulated ITC stands crystallized on the date when the subject goods are exported. This is also reflected in Section 54 of the CGST Act. In terms of Section 54(1) of the CGST Act, the application for refund is required to be made "before the expiry of two years from the relevant date in such form and manner as may be prescribed". In terms of Sub-clause (a) of Clause (2) of the Explanation to Section 54(1) of the CGST Act, the limitation for applying for refund in respect of the export of goods and/or services is reckoned from the date when the goods and/services are exported.

The expression 'turnover' used in the context of exports of goods, in its ordinary sense means the gross value of exports on a historical basis. In ***Secy., Ministry of Chemicals & Fertilizers, Govt. of India vs. Cipla Ltd., (2003) 7 SCC,*** Hon'ble Supreme Court observed as under:

"5.7. "Turnover" in its ordinary sense connotes amount of business usually expressed in terms of gross revenue transacted during a specified period (vide Collins Dictionary). Broadly speaking, it represents the value of the goods or services sold or supplied during a period of time. The amount of money turned over or drawn in a business during a certain period, is another shade of meaning."

It is obvious that the expression 'turnover' has to be read in reference to the period to which it relates. It must necessarily read to mean the period during which the turnover is affected, that is, the date when the supplies are made. ITC relatable to the turnover of a period must be ascertained in terms of the rules as in force during the said period.

Appellate authority erred in applying amended Rule 89(4)(C) of the Rules for computing the export turnover in respect of refund claimed by the petitioner.

Rule 89(4)(C) of the Rules has been struck down by the Karnataka High Court in W.P.(C) No.13185/2020 captioned ***M/s. Tonbo Imaging India Pvt. Ltd. vs. Union of India and Ors***., decided on 16.02.2023. Thus, as on date, the amended provisions are non-existent. It is well settled that if a statute or a statutory position is struck down as ultra vires the Constitution of India, it relates back to the date on which it was promulgated as is reiterated by the Supreme Court in the recent decision in ***Central Bureau of Investigation vs. R.R Kishore : (2016) 13 SCC 240.***

The concerned officer shall forthwith process the petitioner's claim for refund of the accumulated ITC along with applicable interest, in respect of the exports, for the period of 01.10.2018 to 30.09.2019 pursuant to the refund applications filed by the petitioner.

Decision of High Court

Impugned refund rejection orders and appellate authority's orders are set aside.

2 *Delhi Metro Rail Corporation Ltd. vs. Additional Commissioner - Delhi High Court - W.P.(C) 6793/2023*

Facts and Issues involved

Petitioner (DMRC) was engaged by Surat Municipal Corporation for preparation of a

project report for the purpose of development of Metro Rail Project for the City of Surat, Gujarat. In terms of its engagement, the petitioner rendered services for the preparation of Detailed Project Report for the aforementioned project and raised an invoice on 11.08.2017 which included GST at the rate of 18% in its invoice value.

Surat Municipal Corporation did not pay the GST amount as charged in the invoice. To avoid any penalty in respect of the same, petitioner discharged the liability in GSTR-3B for the month of August 2017.

Thereafter, the petitioner was informed by the Surat Municipal Corporation that in terms Notification No. 12/2017 – Central Tax (Rate) dated 28.06.2017 issued by CBIC, the services billed by petitioner in above-mentioned invoice were not chargeable to GST.

Therefore, petitioner filed a refund application on 02.05.2022 which was rejected by the GST Authorities on the ground that the refund was filed after the period of limitation, as specified in Section 54 of CGST Act i.e., 2 years, had expired.

Petitioner's submission

Petitioner claimed that retaining the amount paid under a mistake would amount to collection of tax without the authority of law and thus, violates Article 265 of the Constitution of India.

Petitioner relied on decision of the Hon'ble Supreme Court in ***State of Madhya Pradesh & Anr. vs. Bhailal Bhai (AIR 1964 SC 1006)*** in support of its contention that payment made under a mistake of law is required to be refunded.

Petitioner also relied on decision of the Hon'ble High Court in case of ***M/s Cosmol Energy Private Limited vs. State of Gujarat*** wherein it was held that Section 54 of the CGST Act is applicable only for claiming refund of any tax paid under the provisions of the CGST Act and that any amount collected by the Revenue without authority of law is not considered as tax collected by them and, therefore, Section 54 is not applicable.

Discussions by and observations of High Court

Article 265 of the Constitution of India proscribes any levy or collection of tax except by authority of law. It was observed that GST is not payable by the petitioner in respect of the service of preparation of the Project Report. Therefore, amount paid by the petitioner on an erroneous belief that payment for services rendered by it were chargeable to tax, cannot be retained by the GST Authorities.

The period of limitation for applying for a refund as prescribed under Section 54 of the CGST Act, would not apply where GST is not chargeable, and it is established that the amount has been paid by the petitioner under a mistake of law.

Decision of High Court

Hon'ble High Court set aside the order rejecting the refund and directed the GST Authorities to process petitioner's claim for refund.

ML-84

B. APPELLATE AUTHORITY FOR ADVANCE RULING

1 *Varachha Co-Op Bank Ltd - Gujarat AAAR[GUJ/GAAAR/Appeal/2023/05]*

Facts and Issues involved

Appellant are constructing a new administrative building and incurring costs on various goods and services.

Appellant had sought advance ruling on the question whether they will be eligible for ITC in respect of following:

i) Central Air Conditioning Plant (Classified & Grouped under 'Plant & Machinery')

ii) New Locker Cabinet (Classified & Grouped under 'Locker Cabinets)

iii) Lift (Classified & Grouped under 'Plant & Machinery')

iv) Electrical Fittings, such as Cables, Switches, NCB and other Electrical Consumables Materials (Classified & Grouped under Separate Block namely 'Electrical Fittings)

v) Roof Solar (Classified & Grouped under 'Plant & Machinery)

vi) Generator (Classified & Grouped under 'Plant & Machinery')

vii) Fire Safety Extinguishers (Classified & Grouped under Plant & Machinery')

viii) Architect Service Fees (Charged to Profit & Loss Account)

ix) Interior Designing Fees (Charged to Profit & Loss Account)

Gujarat Advance ruling authority vide its order No. GUJ/GAAR/R/37/2021 dated 30.07.2021, gave its ruling as under:

i. Input Tax Credit is admissible on New Locker Cabinet and Generator

ii. Input Tax Credit is blocked under Section 17(5)(c) CGST Act for Central Air Conditioning Plant, Lift, Electrical Fittings, Fire Safety Extinguishers, Solar Roof Plant.

iii. Input Tax Credit is blocked under Section 17 (5) (d) CGST Act for Architect Service and Interior Decorator Fees.

Being aggrieved with above ruling in respect of (ii) & (iii) supra, the appellant has filed the present appeal stating that GAAR has erred in interpreting section 17(5) of the CGST Act, 2017 and denied the ITC that is eligible.

Appellant's submissions

Appellant's reasons and justification in respect of each item on which ITC was claimed is as under:

Central Air Conditioning System

The supply of Central Air Conditioning System under 'supply & erection' contract does not involve the system getting attached to the property and the work carried out by the supplier is only to make the plant ready for a 'wobble free operation'. Thus, the activity undertaken by the supplier cannot be considered as an 'Immovable Property' by applying the permanency test.

Lift

Lift will be accounted under the head of 'Plant & Machinery' in the books of accounts. The

lift is attached to a concrete base to prevent wobbling of the lift, to secure maximum operational efficiency and also for safety. The lift can be dismantled and sold without being destroyed and hence cannot be considered as an 'Immovable property'.

Electrical Fittings

The appellant is not availing ITC on Electrical Fittings used in civil construction as it is blocked under section 17(5). However, for rest of the 'Electrical Fittings' there is no specific barring provisions.

Roof Solar Plant

Solar equipment can be classified as 'Plant and Machinery' and will be using the electricity generated captively for supplying taxable service. The 'Roof Solar Pant' will be attached to earth for operational efficiency and safety. The solar plant can be dismantled and sold without being destroyed and hence cannot be considered as an 'Immovable property'.

Fire Safety Extinguishers

As per the Gujarat Fire Prevention and Life Safety Measures Act, 2013, the appellant is duty bound to install lire safety instruments/ system at their premises. Fire Safety Extinguishers can be classified as 'Plant and Machinery which is attached to earth but is movable in nature. Further, ITC restriction is only in so far as inputs/input services 'for construction of an immovable property' is concerned and does not apply to capital goods.

Architect Service and Interior Designing Fees

The said expenses is not capitalized and is charged to 'Profit & Loss Account' and hence ITC is admissible. Hence, same is not blocked u/s 17(5) of CGST Act.

Discussions by and observations of AAAR

Section 17(5)(c) and (d) of the CGST Act blocks input tax credit in respect of construction of an immovable property.

Term 'Immovable property' is not defined under GST. However, its defined under section 3(26) of the General Clauses Act, 1897 to mean something which is attached to the earth, or permanently fastened to anything attached to the earth, or forming part of the land and not agreed to be severed before supply or under a contract of supply.

Authority observed as under in respect of each such item:

Central Air Conditioning System

In case of Central Air Conditioning System, all the components of the system are grouped together in one central room and conditioned air is distributed from the central room to the required places through extensive duct work. The whole system can be divided into three parts. i) Plant room, which includes compressor, condenser, and motor ii) Air handling unit (AHU room) iii) Air distribution system (Ducting). The Central Air Conditioning Plant becomes a part of the building once it is installed and thereby an immovable property. Hon'ble Supreme Court in the case of ***Globus Stores P. Ltd., [2011 (267) ELT 435 (S.C.)***] held that air-conditioning plant is an immovable property. Hence, installation of same is covered under works contract services and blocked u/s 17(5)(c) of CGST Act.

Lift

On examining the agreement entered with M/s. Schindler India Private Ltd for supply and installation of Lift/Elevator , it fulfills the description of the works contract service as defined under CGST Act. Further Honorable

Bombay High Court in case of ***M/s. Otis Elevator Company (India)[2003 (151) ELT 499***] held that lift/elevator is an integral part of immovable property. Hence, lift is an immovable property and ceases to be a plant and machinery and ITC is blocked u/s 17(5)(c) of CGST Act.

Electrical Fittings

The electrical fittings are mostly concealed or fitted on to the building through pipes as it serves the dual purpose of safety and aesthetics. The supply of electrical fittings involves its installation also. Further on installation of the electrical fittings it becomes part of the building and thereby an immovable property The supply therefore falls under the category of Works Contract Service' as defined under the CGST Act and hence ITC is blocked u/s 17(5) of CGST Act.

Roof Solar Plant

The solar plant is for captive consumption as the energy generated is to be used for providing taxable services. The entire structure of solar plant is supported by nuts and bolts with zero welding. As the solar plant is affixed to foundation via nuts and bolts, the solar plant can flexibly move in 4 different angles is not an immovable property but a plant and machinery. Therefore, ITC is not blocked u/s 17(5) of CGST Act and appellant is eligible to avail the ITC in respect of solar plant.

Fire Safety Extinguishers

Section 19 of Gujarat Fire Prevention and Life Safety Measures Act, 2013 mandates that the occupancy certificate can be issued only after Fire extinguishers are installed in the building. Thus, it can be inferred that Fire Safety Extinguishers are permanently attached to the building and are in place during the entire lifetime of the building. The Fire Safety Extinguishers once fitted, no longer remains movable goods as they get assimilated in a permanent structure i.e. the administrative building of the appellant. Hence, lift is an immovable property and ceases to be a plant and machinery and ITC is blocked u/s 17(5)(c) of CGST Act.

Architect Service and Interior Designing Fees

Services of an Architect and Interior Designer availed is with regard to construction of an immovable property. The appellant has not capitalized the expenses but charged the same to Profit and Loss Account. Accounting Standards 10 prescribe the accounting treatment for property, plant and equipment and provides that professional fees should be capitalized along with the cost of property, plant and equipment. In present case, architect service fees and interior designer fees should be capitalized in terms of the accounting standards. Hence, such expenses are to be capitalized to immovable property same is blocked under Section 17(5)(d) of CGST Act.

Ruling of AAAR

AAAR upheld the ruling passed by Gujarat advance ruling authority except ITC was allowed in respect of roof solar plant.

C. AUTHORITY FOR ADVANCE RULING

1 ***Orient Cements Limited – Telangana AAR [TSAAR Order No. 20/2023]***

Facts and Issues involved

Applicant is engaged in the business of manufacture of Ordinary Portland Cement ('OPC") & Pozzolana Portland Cement (PPC).

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In order to achieve sales and marketing objectives, the applicant has launched various target/performance-based discount schemes/ white goods scheme for their dealers.

For example - In case any dealer from Telangana purchases 500 MT of OPC from the applicant, a discount worth ₹ 9/- per bag is credited to his account. Higher the cement quantity purchased by the dealer, higher will be the discount earned by dealer resulting in higher eligibility of gold coins. At the end of the quarter, applicant purchases gold coins worth the total discount credited to the account of the dealer and distribute the said gold coins to the dealer as per the agreed terms of the promotional scheme. The invoice for the said gold coins is raised in the name of the applicant and accordingly, ITC of the GST paid on the gold coins is claimed. Also the Gold coins distributed to dealers have the words "Birla at Premium Cement" embossed/ embedded on the gold coins. The cost of gold coins is already taken into account by the applicant while finalizing the price at which cement is sold to the dealers.

Applicant has sought an advance ruling as to whether gold coins and white goods distributed to the dealers upon they achieving the stipulated lifting of the material/ purchase target during the scheme period would be regarded as:

1. "Goods disposed of by way of gift" and ITC on the same would be restricted as provided under Section 17(5)(h) of CGST Act, 2017?
2. "Permanent transfer or disposal of business assets where ITC has been availed on such assets" and would be treated as a supply even if made without consideration under Sr. No. 1 of the Schedule-I to the CGST Act, 2017?
3. Supply under Section 7 of the CGST Act, 2017?

Applicant’s submissions

As per Section 16(1) of CGST Act, ITC is available on goods or services used or intended to be used in course or furtherance of business.

Gold coins and white goods are distributed by applicant to the dealers based on the quantity lifted by the dealers and the amount of discount the said dealer is eligible for. This ensures that the dealers are motivated to purchase higher quantity of cement in order to be eligible for the discount and in turn gold coins and white goods.

The gold coins and white goods are provided to the dealers in furtherance of business so as to promote and enhance the sales of the company. Thus, ITC should be allowed of the GST paid on procurement of gold coins and white goods which are given to dealers as part of the promotional schemes.

As per Section 17(5)(h) of CGST Act, ITC is not available in respect of goods which are given as gifts and free samples. A 'gift' is a gratuity and an act of generosity and does not require a consideration; if there a consideration for the transaction, it is not a gift.

Love, affection, spiritual benefit and many other factors may enter into the intention of the donor to make a gift but these filial considerations cannot be called or held to be legal considerations as understood by law.

Applicant relied on following jurisprudence to support its above contentions:

- ***Decision of Honorable SC in the case of Sonia Bhatia vs. State of UP [1981 (3) TMI 250- Supreme Court);***

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- ***Decision of Honorable SC in the case of Shakuntala & Ors. vs. The State of Haryana reported in 1979 3 (SCC) 22*6; and**
- ***Decision of Australian High Court in the case of Commissioner of Taxation (CTH) vs. McPhail [1968] 41 ALJR 346.***

Applicant and the dealer enter into a dealership agreement which would establish that, in light of the terms and conditions which the dealer accept, a contractual obligation is created between the applicant and the dealer which would enable either party to a take recourse to a civil suit or action for specific performance of contract on failure to adhere to the terms and conditions.

Gold coins and white goods distributed as part of the promotion schemes cannot be regarded as 'permanent transfer or disposal of business asset where ITC has been availed on such assets' as , the legislature has intentionally used the term "business asset" and therefore it is evident that the intention of the legislature was to restrict the scope of said entry to the business asset which is an item of balance sheet.

Further, Gold coins and white goods distributed to dealers as part of the promotional scheme cannot be regarded as supply u/s 7 of CGST Act as there is no consideration received by the applicant from the dealers for the gold coins and white goods distributed to them.

Discussions by and observations of AAR

Section 7 of the GST Act covers transactions such as "transfer", "barter" and "exchange" of goods or services or both under the expression "supply" if agreed to be made for a consideration by a person in the course or furtherance of business.

Clause (b) of sub-section (31) of Section 2 states that "consideration" in relation to the supply of goods or services or both includes the monetary value of any act in respect of, in response to, or for the inducement of the supply of goods or services or both.

Thus, the monetary value of an act done in response to inducement of goods or services is a consideration. Black's Law Dictionary defines inducement as the act or process of enticing or persuading another person to take a certain course of action'.

Seen in light of the above fundamental statutory position, the transaction in the case of the applicant is one of supply of goods to his dealers in exchange for consideration. The consideration is the monetary value of the "act" of attaining a level of business indicated in the incentive scheme by the applicant. Applicant is inducing his dealers / stockiest to attain a particular level of business as a consideration for the goods to be supplied by him. Thus, the applicant is making supply of white goods and gold in return for the dealers or stockiest attaining a threshold of sales indicated in the scheme. The value of the goods supply is determined under Section 15 of the GST Act read with Rule 30 of the CGST Rules.

Decision of AAR

The transaction is taxable as supply of goods and therefore, applicant is eligible for ITC.

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2 *NCC Urban One Apartment Owners Mutually Aided Co-Op Society Limited (NCCLIOMACS) – TELANGANA AAR [TSAAR Order No. 18/2023]*

Facts and Issues involved

Applicant is a non-profit entity, registered under Telangana Mutually Aided Co-op Society Act and consists of only residential flats.

Applicant collects monthly maintenance charges from its members to meet the society's maintenance costs. These charges include common area electricity charges.

As per Notification No. 12/2017 – C.T. dated 28.06.2017, wherein exemption was granted for contributions made by the members of RWA up to INR 5,000 per month per member. The limit of INR 5,000 was amended up to INR 7,500 vide Notification No.2/18 dated 25.01.2018. Supply of electricity is exempted under GST as per the Notification 02/2017 (Central Tax) dated 28.06.2017.

Applicant has sought an advance ruling on following questions:

1. Common area electricity charges are collected from the members on actual basis. The rate of contribution from each of the members is decided on the basis of the actual flat area of each of the members. There is no additional loading of any nature on the actual charges. As electricity is an exempted supply, whether common area electricity charges exempt from GST?

2. At times, the applicant collects advance maintenance charges from its members. Whether GST amount collected in advance to be deposited with the government at the time of collection or is the amount to be deposited in the respective months?

3. Few of the existing towers have a system of Hi tension Residential electricity supply wherein there is only a single meter from the electricity department for the whole tower. The individual consumption of each of the flats is measured by means of a sub-meter. Amounts are collected from each of the members, and the total consumption cost is deposited with the Electricity department.

   The electricity charges collected from members is totally paid to the electricity department. Applicant acts as a facilitator only, and there is no margin.

   Since electricity is an exempt supply, are these electricity charges, being collected and totally paid to the electricity department, exempt from GST?

4. Should the RWA collect GST on the total contribution in cases where the monthly contribution exceeds Rs. 7500/- or should GST be charged only on the contribution in excess of Rs. 7500/- per month?

Discussions by and observations of AAR

In relation to questions 1 and 3

Notification No. 02/2017 dated 28.06.2017 exempts electrical energy and water from levy of GST. Further, there are no conditions specified for this exemption and therefore, supply of water and electricity is exempt.

Further, the applicant is a mutually aided cooperative society which collects electricity

charges from its members and paying the same to the Electricity Department without collecting any additional amounts.

Rule 33 of the CGST Rules excludes the expenditure or costs incurred by a supplier as a pure agent of the recipient of the supply subject to the conditions prescribed in the rule. Applicant, being a mutually aided cooperative society, will be a pure agent in the light of the above Rule 33 of the CGST rules. Therefore, the cost of electrical energy supplied by the applicant to its members shall not be taxable in the hands of the applicant.

In relation to question 2

Section 13(2) of the CGST Act enumerates that the time of supply of services shall be the earliest of the date of issue of invoice or the date of receipt of payment. Section 31(2) states that a registered person supplying taxable services shall issue an invoice either before or after the provision of service. A combined reading of both would make it clear that as an invoice can be issued even prior to provision of a service, the time of supply of service will be the date of receipt of advance.

Specific exemption has been provided in case of supply of goods i.e., when 'supplier of goods' receives advance payment, he is not required to pay GST at the time of the receipt of advance payment, however, under this situation, the time of supply would arise only at the time of issuance of the invoice and the tax liability needs to be discharged only at that time.

In relation to question 4

Serial No. 77 of Notification No. 12/2017 as amended *vide* Notification No. 02/2018 dated 25.01.2018 provides that service by an unincorporated body or a non-profit entity to its own members is exempt up to an amount of ₹ 7,500 per member for sourcing goods or services from a third person for the common use of its members in a housing society or a residential complex.

Even if the annual turnover of the RWA is greater than ₹ 20 lakhs but the monthly maintenance charged per person is less than ₹ 7,500, then such RWA need not pay tax on the amounts so collected.

Therefore, such amounts would be taxable only if the total amount collected by the RWA equals or exceeds ₹ 7,500 per month per member.

Ruling of AAR

1 & 3) Recovery of common area electricity charges from members is not leviable to GST.

2) Liability to pay GST arises on receipt of advance from members.

4) Contribution from members is taxable only if the total amount collected by the RWA equals or exceeds ₹ 7,500 per month per member.

"We think and our bodies do not follow. Our actions do not harmonise with our thoughts."

— *Swami Vivekananda*

INDIRECT TAXES

Service Tax – Case Law Update

CA Rajiv Luthia CA Keval Shah

1 ***Commissioner of Central Tax vs. Singtel Global India Pvt. Ltd. 2023-TIOL-1155-HC-DEL-ST***

Backgrounds and facts of the case

- The Respondent, SGIPL (SINGTEL GLOBAL INDIA PVT. LTD.) is a company based in India, engaged in providing global telecommunication and ancillary support services, part of its services even being exported outside India. It entered into an agreement dated 14 July 2011 with SingTel, which is a licensed telecommunications service provider in Singapore. The aforesaid agreement envisaged SGIPL providing necessary infrastructure in India so as to enable SingTel to facilitate seamless global telecommunication services to its customers based in Singapore and other foreign territories.

- SGIPL claimed refund for the period July 2015 to June 2017 of the unutlised Input Service Credit in providing export of telecommunication services to Singapore Telecommunication Limited located in Singapore in view of Rule 5 of the CENVAT Credit Rules, 2004 read with the Place of Provision of Services Rules, 2012.

- The Revenue contended that SGIPL was an "intermediary" and merely procures services from other service providers in India *viz.*, Airtel, Vodafone, Tata, Reliance etc. and supplies the same to SingTel without any alteration and thus it does not provide any services on their "own account" and thus fall within the definition of "intermediary" services on conjoint reading of Rule 6A(1)(d) of the Services Tax Rules read with Rule 9(C) of the POPS Rules. Thus, they are not entitled to refund of unutilised CENVAT credit.

Appellants' Submissions

- The standing counsel for the appellants vehemently urged that in terms of Rule 9 of the POPS Rules, the place of provision of services is stipulated to be the location of the service provider and on a combined reading of the said provision along with Rule 2(f) of the POPS Rules which defines the expression 'intermediary services', would show that the provisions for 'intermediary services' cannot be

considered as export of service particularly when it is considered that SGIPL is merely arranging or facilitating the main service of telecommunication services from the Indian telecom operators to SingTel in its original form and not providing the main service of telecommunication services on their own account, thereby charging handling fee and getting charges reimbursed on actual basis from SingTel.

- It was further canvassed that reliance on the decision Verizon Communications India Ltd. (*supra*) was misplaced since the SLP filed by the Revenue against the said decision has been admitted for hearing by the Hon'ble Supreme Court. It was also pointing out that Verizon India has in fact admitted their liability under Sabka Vishwas (Legacy Dispute Resolution) Scheme, 2019 and is no longer a party to the pending SLP proceedings. It was urged that the substantial question of law that arises for consideration in the present appeals is also sub-judice for consideration before the Apex Court in a batch of SLPs filed by the Revenue as well other concerned parties.

Respondents' Submissions

- SGIPL contends that the place of provision of services would be considered as per the location of the recipient of services by virtue of Rule 3 of the ST Rules, which is outside India, and that it is not an 'intermediary'.
- The learned CESTAT *vide* the impugned common order dated 07 December 2022 interpreted the terms and conditions of the agreement dated 14 July 2011 executed between SGIPL and SingTel and in light of relevant statutory rules as well as the decision of this Court in the case of ***Verizon Communications India Ltd. vs. Assistant Commissioner of ST, Delhi-III 2018 (8) GSTL 32 (Del.) = 2017-TIOL-1863-HC-DEL-ST*** besides the decision of the CESTAT itself in ***M/s. Black Rock Service India Private Ltd. vs. Commissioner of CGST Service Tax Appeal No. 61877/2018 decided on 08 August 2022*** held that there was no scope for doubt that the services provided by SGIPL do not qualify as 'intermediary services' and the services are provided by it out of its own account to SingTel. Accordingly, SGIPL has been held entitled to claim refund totalling ₹ 13,32,91,031/- for the period July, 2015 to June, 2017 towards CENVAT credit.

Decision of the Hon'ble Delhi High Court

- The Court expediently took note of the relevant statutory provisions and referred to Rule 6(A) of the ST Rules along with Rule 3 of the Place of Provision of Service Rules, 2012.
- As per Rule 6(A), the provision of service shall be treated as export of service when the place of provision of service is outside India. As per Rule 3 of the POPS Rules, the place of provision of a service shall be the location of the recipient of service. However, vide Rule 9(c) of POPS Rules, the place of provision for "Intermediary services" would be the location of the service provider.
- A careful perusal of Rule 2(f) shows that an entity or person to qualify as

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an "intermediary" must be shown to work as a broker, an agent or any other person, by whatever name called, who arranges or facilitates a provision of a service to be called the main service or a supply of goods, between two or more persons, but does not include a person who provides the main service or supplies the goods on his own account.

- The communication dated 16 March 2012 referred to above, also clarifies that an intermediary service is involved with two supplies at any one time namely:

  (i) the supply between principal and the third party;

  (ii) the supply of his own service (agency service) to his principal, for which a fee or commission is usually charged.

- The HC perused the agreement dated 14th July, 2011 executed between the parties between SingTel and SGIPL; we find no legal infirmity or irrational approach adopted by the learned CESTAT when it comes to conclude that SGIPL is not providing 'intermediary services'. The plea that SGIPL is not providing any services on its own account is misplaced.

- It is manifest that there is no contract between SingTel and service providers in India like Airtel, Vodafone, Reliance etc., and the agreement between SGIPL and SingTel is on principal-to-principal basis. Indeed, SGIPL has entered into separate contracts with the telecom operators in India but on its own account and not as in the nature of a broker or agent for SingTel. The above-referred communication dated 16 March 2012 also supports such a disposition.

- The agreement envisages that SGIPL has to provide, at its own expenses, all necessary infrastructure in order to provide the services to SingTel and its customers. It further envisages that SGIPL shall raise invoices upon SingTel in US dollars for the services rendered on a monthly basis and on such transfer prices as may be agreed upon from time to time.

- Clause 19 of the Agreement specifically stipulates that the relationship of the parties to the Agreement shall always and only be that of independent contractors and nothing in the Agreement shall create or be deemed to create a partnership or the relationship of principal and agent or employer and employee between the parties. Incidentally, the appellant has not even alleged that the aforesaid agreement is a camouflage, fraudulent or designed to get over the service tax dragnet.

- Without further ado and applying the same analogy to these matters, we find that the submissions advanced by the learned Standing counsel for the appellant overlooks the fact that the recipient of services is based outside India.

- In view of the aforesaid discussion, we find that the present appeals are bereft of any merit. Accordingly, the same are dismissed.

2

Commissioner, Customs Central excise and Service Tax, Patna vs. M/S Shapoorji Pallonji and company Pvt. Ltd. & ors. And union of India & ors. vs. M/s Shapoorji Pallonji and company Pvt. Ltd. 2023-(10) – TMI-748 – Supreme Court

Backgrounds and facts of the case

- 2 Civil Appeals are presented before the Hon'ble Apex Court the facts are as under:-

Civil Appeal –I :

(i) IIT Patna appointed NBCC as project management consultant to oversee the construction of academic complex. Vide letter dated 20th December, 2012 awarded construction contract to SPCL. The contract expressly provided that the rates did not include service tax and that SPCL would be reimbursed for this tax by IIT Patna upon provision of receipts.

(ii) SPCL obtained registration under Service tax and discharged its obligations for the period March 2013 to April 2015. The amounts of service tax was included in the monthly running bills and reimbursed by IIT Patna.

(iii) Audit Department raised an audit objection to the effect that service providers engaged in construction activities for educational institutions meeting the criteria of a "government, local authority, or governmental authority" according to clause 12(c) of the Exemption Notification were not obligated to remit service tax. Consequently, because IIT Patna was classified as a governmental authority, the payment of service tax by them was not in accordance with the exemption notification and was directed to undertake action.

(iv) Apprehensive of the initiation of recovery proceedings for the service tax already paid, SPCL approached the Patna High Court for relief.

(v) Vide the impugned judgment, the Patna High Court allowed the writ petition of SPCL and held that IIT Patna would indeed be covered within the definition of a "governmental authority" under clause2(s). It was, accordingly, ruled that the construction activity undertaken by SPCL is exempt from payment of service tax in terms of the Exemption Notification read with the Clarification Notification, followed by a direction that the service tax collected by the Revenue shall be refunded to SPCL or IIT Patna, as the case may be.

Civil Appeal –II :

(i) SPCL was awarded works contract by NIT Rourkela to carry construction project at its campus. The Work Order stated that the contract price included all taxes except service tax which was reimbursable as applicable.

(ii) SPCL sought clarifications from the Service tax Commissionerate on the applicability of service tax on such transaction but meanwhile discharged all the service tax and raised bills to NIT Rourkela for reimbursement. NIT refused stating that the works contract is exempt from payment of service tax.

(iii) Aggrieved by the same, SPCL approached the Orissa HC for relief.

The Orissa HC directed the Court to dispose the refund application within two months.

Appellants' Submissions

- The Amendment to the Exemption Notification carried out vide the Clarification Notification aimed to broaden its applicability beyond statutory bodies, extending its benefits to government-established entities as well. The Clarification Notification further clarified this expansion by encompassing government-established bodies within the definition of "governmental authorities". However, it is important to note that the requirement of 90% or more government equity or control still applies to both types of governmental bodies, whether they are statutory or non-statutory.

- It is firmly established that punctuation marks alone should not dictate the interpretation of a statute, especially when meaning of the statute is clear without them. The general principle is that punctuation marks carry less weight in the interpretation of statutes, especially when dealing with subordinate legislation. To support this argument, reference was made to the decisions of this Court in ***Barun Kumar & Ors. vs. State of Jharkhand & Ors. (2022) SCC OnLine SC 1093, Bihar State Electricity Board vs. Pulak Enterprises & Ors. (2009) 5 SCC 641, and ONGC Ltd vs. Afcons Gunanusa JV (2022) SCC OnLine SC 1122.***

- The impugned judgment of the Patna High Court carries the risk of unconditionally broadening the coverage and scope of the exemption to include various public bodies, such as Telecom Regulatory Authority of India, Airports Authority of India, and public sector banks. These entities could potentially claim exemptions under different clauses of the Exemption Notification, covering various services provided by a "governmental authority".

- IIT Patna and NIT Rourkela are institutions incorporated under central statutes, i.e., the Indian Institute of Technology Act, 1961 ("the 1961 Act", hereafter) and the National Institutes of Technology Act, 2007 ("the 2007 Act", hereafter), respectively, and they do not carry out any duties or responsibilities akin to Schedule XII of the Constitution; the two educational institutions, therefore, do not fall under the classification of "governmental authority" nor are exempted under the negative list.

- Classification of IIT Patna as a "governmental authority" has no bearing on the applicability of service tax to the transaction between SPCL and NBCC. The crux of the argument lies in the specific nature of this case: SPCL has delivered its services to NBCC, not directly to IIT Patna. IIT Patna has engaged NBCC as a Project Management Consultant, making SPCL the service provider and NBCC the service recipient in this particular transaction. Consequently, it cannot be contended that SPCL provided services directly to IIT Patna. NBCC lacks the status of a "government, local authority, or governmental authority" under the Exemption Notification, and it has not asserted such a claim. Therefore, the activities and transactions between SPCL

and NBCC are subject to service tax and do not qualify for exemption under the Exemption Notification.

Respondents' Submissions

- Learned counsel representing SPCL, supported the impugned judgment and order of the Patna High Court and contended that while construction services are classified as taxable under section 65 of the 1994 Act, the Exemption Notification provides an exemption for services rendered to the Government, local authorities, or governmental authorities.
- IIT Patna, as an institution of national importance, was established by the Parliament under Article 248 of the Constitution, through the 1961 Act. Similarly, NIT Rourkela was established under the 2007 Act. Consequently, IIT Patna and NIT Rourkela should be considered governmental authorities in accordance with clause 2(s)(i) of the Exemption Notification, read in conjunction with the Clarification Notification.
- In reply to the submission of the appellants that the classification of IIT Patna as a "governmental authority" would not have any bearing on the applicability of service tax to the transaction between SPCL and NBCC as service provider and service recipient respectively, learned counsel drew support from clause 29(h) of the Exemption Notification which exempts services provided by sub-contractors by way of works contract to another contractor providing works contract services which are already exempted under the Exemption Notification.
- IIT Patna qualifies as a "governmental authority" under the Exemption Notification as amended by the Clarification Notification. It was further submitted that the provisions contained in sub-clause (i) and sub-clause (ii) of clause 2(s) are independent disjunctive provisions and the expression "90% or more participation by way of equity or control" is related to sub-clause (ii) alone, meaning thereby that an authority established by Government should have 90% or more participation in order to be exempted from service tax. The authority set up by an Act of Parliament or State Legislature is not subject to this condition.

Decision of the Hon'ble Supreme Court

- It is necessary to ascertain the objective behind the Clarification Notification which amended the Exemption Notification and re-defined "governmental authority". A bare perusal of the Exemption Notification reveals that the exemption therein was only extended to those entities, viz. board or authority or body, which fulfilled the three requisite conditions, i.e.: (a) having been established with 90% or more participation by way of equity or control by Government, (b) set up by an Act of the Parliament or a State Legislature, and (c) carrying out any function entrusted to a municipality under Article 243W of the Constitution.
- It is evident that the scope of the exemption was severely restricted to only a few entities. We presume that unworkability of the scheme for grant of exemption because of the restricted definition of "governmental authority"

was the trigger therefor and hence, the scope of the exemption was expanded to cover a larger section of entities answering the definition of "governmental authority". An amendment by way of the Clarification Notification was, therefore, introduced which expanded the definition of "governmental authority" and widened the exemption base for service tax to be provided even to an authority or a board or any other body, set up by an Act of Parliament or a State Legislature without the condition of having been established with 90% or more participation by way of equity or control by Government to carry out any function entrusted to a municipality under Article 243W of the Constitution.

- As per the appellants, to qualify as a "governmental authority" under clause 2(s)(i), such authority, board or body must not only be a statutory authority set up by an Act of Parliament or a State Legislature but must also have 90% or more participation of the Government by way of equity or control to carry out any like function that a municipality under Article 243W of the Constitution is entrusted to discharge.

- The word "or" as well as the word "and" is a conjunction; and it is well known that a conjunction is used to join words, phrases, or clauses. On how the conjunctions "or" and "and" are to be read, guidance could be drawn from authoritative texts and judicial decisions. As per Justice GP Singh's Principles of Statutory Interpretation, the word "or" is normally disjunctive while the word "and" is normally conjunctive. In English law, the position is clear as crystal, as explained by Lord Scrutton in ***Green vs. Premier Glynrhonwy Slate Co. (1928) 1 K.B. 561,*** page 569, that one does not read "or" as "and" in a statute unless one is obliged, because "or" does not generally mean "and" and "and" does not generally mean "or".

- In our opinion, the word "or" employed in clause 2(s) manifests the legislative intent of prescribing an alternative. Going by the golden rule of interpretation that words should be read in their ordinary, natural, and grammatical meaning, the word "or" in clause 2(s) clearly appears to us to have been used to reflect the ordinary and normal sense, that is to denote an alternative, giving a choice; and, we cannot assign it a different meaning unless it leads to vagueness or makes clause 2(s) absolutely unworkable.

- In the present case, the use of a semicolon is not a trivial matter but a deliberate inclusion with a clear intention to differentiate it from sub-clause (ii). This essentially supports the only possible construction that the use of a comma after sub-clause (ii) relates it with the long line provided after that and, by no stretch of imagination, the application of the long line can be extended to sub-clause (i), the scope of which ends with the semicolon. We are, therefore, of the opinion that the long line of clause 2(s) governs only sub-clause (ii) and not sub-clause (i) because of the simple reason that the introduction of semicolon after sub-clause (i), followed by the word "or", has established it as an independent category, thereby making it distinct from sub-clause (ii). If the author wanted

both these parts to be read together, there is no plausible reason as to why it did not use the word "and" and without the punctuation semicolon. While the Clarification Notification introduced an amended version of clause 2(s), the whole canvas was open for the author to define "governmental authority" whichever way it wished; however, "governmental authority" was re-defined with a purpose to make the clause workable in contra-distinction to the earlier definition. Therefore, we cannot overstep and interpret "or" as "and" so as to allow the alternative outlined in clause 2(s) to vanish.

- In the present case, the use of a semicolon is not a trivial matter but a deliberate inclusion with a clear intention to differentiate it from sub-clause (ii). Further, it can be observed upon a plain and literal reading of clause 2(s) that while there is a semicolon after sub-clause (i), sub-clause (ii) closes with a comma. This essentially supports the only possible construction that the use of a comma after sub-clause (ii) relates it with the long line provided after that and, by no stretch of imagination, the application of the long line can be extended to sub-clause (i), the scope of which ends with the semicolon. We are, therefore, of the opinion that the long line of clause 2(s) governs only sub-clause (ii) and not sub-clause (i) because of the simple reason that the introduction of semicolon after sub-clause (i), followed by the word "or", has established it as an independent category, thereby making it distinct from sub-clause (ii). If the author wanted both these parts to be read together, there is no plausible reason as to why it did not use the word "and" and without the punctuation semicolon. While the Clarification Notification introduced an amended version of clause 2(s), the whole canvas was open for the author to define "governmental authority" whichever way it wished; however, "governmental authority" was re-defined with a purpose to make the clause workable in contra-distinction to the earlier definition. Therefore, we cannot overstep and interpret "or" as "and" so as to allow the alternative outlined in clause 2(s) to vanish.

- In view of the above, the appeals of the revenue are dismissed.

"The Upanishads point out that the goal of man is neither misery nor happiness, but we have to be master of that out of which these are manufactured. We must be masters of the situation at its very root, as it were."

— *Swami Vivekananda*

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CORPORATE LAWS
Case Law Update

CS Makarand Joshi

Companies Act – Case 1

Adjudication order dated 1st October 2023 in the matter of N.S.J.L. NIDHI LIMITED, ROC Pune

Facts of the case

- N.S.J.L. NIDHI LIMITED (hereinafter called as the company) has its registered office under the jurisdiction of ROC Pune.
- The ROC conducted inspection of the records of the company under Section 206 of the Companies Act, 2013 (the Act) and noticed that the company has filed PAS-3 forms wherein the list of allottees attached to the e-form was not signed by the signatory to the form PAS-3.
- Considering this as a violation of section 39(4) read with rule 12 of Companies (Prospectus and Allotment of Securities) Rules 2014, ROC sent the show cause notice to the company.

Company's contentions

- the Form PAS-3 was already digitally signed by the signatory Mr' Rohit Hhainburdekar, where the said declaration from the signatory that, the list is complete' correct and legible as per the records of the company', was already mentioned.
- Therefore, before filing the form PAS-3 director has verified and signed digitally by giving consent for all the contents attachments of the said form.
- Further, after reading of instructions kit provided with the said form, the mandatory requirement of certification of attachment is not mentioned, however, attachment in the prescribed format mandatorily is mentioned.
- The company has diligently observed the applicable provisions of the Companies Act, 2013 and rules thereto with respect to further allotment of equity shares made by the company; The minutes of each meeting were duly circulated and were signed.
- While filing the return of allotment in E-form PAS-3, we had no other option but to attach PDF copy of the list of allottees converted from software-generated excel file to, ensure the legibility and comprehensibility of the list of allottees.
- we had made multiple attempts to submit a signed copy with each PAS-3. However, the legibility of the list was compromised due to compression and due to size constraints, we were compelled to attach PDF copy of the

list of allottees converted from software-generated excel file.

- We wish to state with utmost sincerity that there was no mala-fide intention on the part of the management for the aforementioned arrangement;
- In light of the above, it is prudent to note that the certified list of allottees could not be attached to the corresponding E-forms PAS-3 due to size and legibility issues, although the list of allottees were complete and correct as per the records of the company.

ROC's contentions

- the company has filed the PAS-3 forms wherein the list of allottees is not certified by the signatory of the PAS-3 Forms. This is a violation of section 39(4) read with rule 12 of Companies (prospectus and allotment of securities) rules, 2014.
- The provisions of Section 39(4) r/w. Rule 12 of the Companies (Prospectus and Allotment of Securities) Rules, 2014 as amended clearly state that there shall be attached to the form PAS-3, a list of allottees stating their names, address, occupation and number of securities allotted to each of the allottees and the list shall be certified by the signatory of the Form PAS-3 as being complete and correct as per the records of the company.
- The Company is relying on the certification of the form whereas the requirement is to certify the list attached in the form too.

Penalty

- In exercise of the powers conferred on the undersigned *vide* Notification dated 24th March, 2015 and having considered the facts and circumstances of the case mentioned herein above, I do hereby impose the penalty on the company and its officers in default as per the table below for violation of section 39(4) of the Act for each default as referred.

Penalty imposed on Company/directors	Maximum Penalty as per Act [Section 39(5)]	Total Instances of default	Total Penalty imposed
N.S.J.L. Nidhi Limited	₹ 1,00,000/-	16 times	₹ 16,00,000/-
Director 1	₹ 1,00,000/-	16 times	₹ 16,00,000/-
Director 2	₹ 1,00,000/-	16 times	₹ 16,00,000/-
Director 3	₹ 1,00,000/-	16 times	₹ 16,00,000/-

SEBI – Case 1

Securities and Exchange Board of India's Adjudication Order in the Matter of Piramal Pharma Ltd

Facts of The Case

1. Securities Exchange Board of India ('SEBI') had conducted an examination with respect to the non-disclosure of certain material information by Piramal

Enterprises Limited ('PEL'). SEBI was informed that there was one unit of PEL in Digwal, Telangana which had faced closure and penalty by the Telangana State Pollution Control Board ('TSPCB') vide order dtd. November 29, 2018. NGT had sustained a penalty of ₹ 8.32 crores on the PEL vide its Order dated November 13, 2019. Later, the said unit was granted permission to restart production.

2. PEL further submitted that pursuant to a scheme or arrangement in 2022 demerger of the pharma business was undertaken by PEL. As per clause four of the scheme of arrangement of 2022 all the liabilities relating to the pharma business viz. the demerged undertaking, as on the Appointed Date i.e., April 01, 2022, shall become the liabilities of the Resulting Company i.e., Piramal Pharma Ltd ['PPL/Noticee']. This means that Noticee was a resultant company pursuant to the scheme of demerger of Piramal Enterprises Ltd. (PEL).

3. PPL was incorporated on March 4, 2020, and was a material subsidiary of PEL for the financial year 2020-2021 and 2021-2022. Further, PEL submitted that the digwal plant was transferred to the books of the Noticee as part of the sale and transfer of the pharmaceutical business of the PEL by way of restructuring of the pharmaceutical business and Digwal continued to be part of Noticee.

4. SEBI alleged that PPL did not disclose information related to the imposition of a penalty of ₹ 8.32 Crores by the NGT vide order dated November 13, 2019, on account of environmental pollution to the stock exchange.

5. Further SEBI alleged that Noticee did not disclose the material event of the shutting down of a plant situated at Digwal, Telangana in 2019 on account of environmental pollution vide an order of Telangana State Pollution Control Board dated November 29, 2018.

6. SEBI also alleged that Noticee had made incorrect Business Responsibility Reports (BRR) regarding the imposition of penalties and shutting down of plant in Annual Reports for FY 2018-19 and FY 2019-20.

7. In view of the same SEBI alleged Noticee to be in violation of the provision of SEBI (LODR) Regulations, 2015 ('LODR Regulations') and SEBI circulars issued in this regard.

Charges Levied

1. Noticee was alleged to have violated the provisions of:

   a. Regulation 4(1)(d), 30(3) and 30(4) read with Clause 8 of Para B of Part A of Schedule III of LODR Regulations in respect of non-disclosure of the material event of imposition of penalty by NGT.

   b. Regulation 4(1)(d), 30(3) and 30(4) read with Clauses 2 and 8 of Para B of Part A of Schedule III of LODR Regulations in respect of non-disclosure of material event of shutting down of plant situated at Digwal, Telangana.

   c. Regulation 34(2)(f) read with Regulation 4(1)(c) of LODR Regulations and SEBI Circular CIR/CFD/CMD/10/2015 dated November 04, 2015, in respect of incorrect disclosures in the Annual report for FY 2018-2019 and 2019-2020.

Contentions by The Noticees

1. Noticee's Non-disclosure about NCT penalty and closure of Digwal unit by TSPCB

- Noticee contended that PPL could not have made the disclosure as it did not exist at the relevant time. Further, the TSPCB and NGT Orders (dated November 29, 2018, and November 13, 2019, respectively) were issued prior to the incorporation of PPL. Further, it was highlighted to SEBI that PPL got listed on October 19, 2022. Hence, the allegation of non-disclosure cannot be legally sustained and cannot be considered as misrepresentation.

- Noticee further stated that misrepresentation requires an active misstatement or partial and fragmentary statements of facts, where the withholding of a relevant tact renders the stated fact false. However, this is not the case here, as the TSPCB and NGT Orders were not issued against the PPL and did not affect it.

- Furthermore, Noticee contended that the digwal plant was operational before the PPL's incorporation, and any penalty owed to TSPCB had already been paid substantively by PEL and the remainder by PPL prior to it becoming a 'listed entity'. Therefore, since the information was already disclosed in the publicly available Information Memorandum (IM), there was no obligation for PPL to disclose the temporary closure and reopening of the digwal Plant or the imposed penalty at the time of its public listing. These events occurred before the Plant was transferred to PPL's books and before PPL even existed.

- Noticee contended that the only relevant disclosure, if at all, during PPL's public listing was the pending payment of the penalty to TSPCB and by disclosing the pending dispute with TSPCB and the penalty imposed by the NGT Order in the publically available IM, PPL complied with the LODR Regulations.

- Thus, there was no liability of disclosure arising due to TSPCB and NGT Orders as on the Appointed Date and which could be said to have been transferred to PPL by virtue of the Composite scheme of arrangement.

2. Noticee's Failure to file correct Annual Report or BRR

- Noticee contended that Regulation 4 of LODR Regulations speaks of 'Principles governing disclosures and obligations. As per these principles, PPL had a duty to disclose facts correctly and not suppress material facts.

- In this regard, PPL had not issued disclosures in relation to the TSPCB and NGT Orders because it was not and could not have been a material fact for the PPL. Further, it cannot be expected from the PPL to make disclosures of events, which transpired in 2019, in the Business Responsibility Report of 2023. Therefore, 'Principles governing disclosures and obligations' have not been violated. Furthermore, Noticee contended that PPL has disclosed the same in the recent Business Responsibility Report dated July 06, 2023, without prejudice basis as an abundant caution.

- Also, as per regulation 34(2) of the LODR Regulations, the obligation to disclose a Business Responsibility

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Report applies only to the top one thousand listed entities.

- Since the PPL was incorporated on March 04, 2020, and listed on October 19, 2022 (in the Financial Year 2022-2023), it cannot be alleged that the PPL failed to file the correct Annual Reports or a Business Responsibility Report.

Submissions by The Adjudicating Officer

1. Noticee's Non-disclosure about NCT penalty and closure of Digwal unit by TSPCB

- SEBI noted that events of shutting down of digwal plant by TSPCB and the imposition of a penalty of ₹ 8.32 Crore by the NCT took place on November 29, 2018, and November 13, 2019, respectively. Further SEBI AO noted that the said orders were passed against the company, PEL and nowhere mentioned the name of the Noticee. SEBI also noted that Digwal plant was operational before the incorporation of the Noticee, and the penalty owed to TSPCB had already been paid substantively by PEL and the remainder was paid by the Noticee before it became the 'listed entity. SEBI AO also considered the submission that Noticee was not incorporated at the time of aforesaid material events.

- Further AO noted that any compliance required to be made under LODR Regulations, must be made by the "listed entity". The Noticee not being a listed company at the time of event could not have made the disclosures under LODR Regulations.

- Since at the relevant time, the pharmaceutical business vested with PEL, SEBI AO believed the responsibility to make disclosure with respect to the previously mentioned events was with PEL.

- With respect to the clause of the Scheme of Arrangement that the transferee company inherits the assets and liabilities of the transferor company, SEBI AO stated that it must be seen whether the Noticee could perform its duty of disclosures at the relevant time. The liability is passed on to the PPL pursuant to the scheme of arrangement, however, as regards the liability for making the disclosure under the provision of the LODR is concerned, SEBI AO noted that the Noticee was not a listed company at the relevant time. Noticee was only listed on Oct.19, 2022. Hence Noticee cannot be held liable for events which took place before its incorporation and being listed.

2. Noticee's Failure to file the correct Annual Report or BRR

- SEBI AO noted that Noticee was incorporated on March 04, 2020, as a subsidiary of PEL to conduct the pharmaceutical business of the Piramal Group. However, by virtue of the Scheme of Arrangement of 2022, the pharmaceutical business was completely demerged from the company i.e., Piramal Enterprises Ltd. The Noticee was subsequently listed on the stock exchange on October 19, 2022. SEBI AO noted that BRR applies only to top one thousand listed entities and in present matter the Noticee was incorporated on March 04, 2020 and listed on October 19, 2022 hence cannot be said that LODR regulations were violated as the Noticee not being a listed company at the time of event could not have made the disclosures under LODR Regulations.

Penalty

1. No liability/ monetary penalty was fastened on Noticee in this matter.

IBC – Case 1

In the matter of *Tapadia Polyesters Private Limited (Appellant) vs. Sales Tax Officer Professional Tax Officer & Anr. (Respondent)* at National Company Law Appellate Tribunal (NCLAT) dated 22 August 2023.

Facts of the case

- To recover the dues of the Sales Tax Department (Respondent) of the State of Maharashtra, an attachment order was already passed on 28 May 2015 wherein the assets of the Linkson International Limited (Corporate Debtor/ CD) were attached. As on the date of the said attachment order, there was no restriction on attachment.
- The attachment order continued; however, the asset could not be sold by the Respondent.
- A petition was filed by Punjab National Bank (Financial Creditor) u/ s 7 of Insolvency and Bankruptcy Code, 2016 (IBC) against the CD. The said petition was admitted on 6 October 2017 by the National Company Law Tribunal (NCLT) and the Corporate Insolvency Resolution Process (CIRP) was initiated against the CD.
- The time gap between the attachment order and the initiation of CIRP was of two years. Hence, the order of attachment had attained finality as the same was not challenged by CD or by the Interim Resolution Professional at the relevant time.
- Thereafter, vide order dated 20 July 2018 in terms of provisions of section 33 of IBC liquidation was imitated.
- An I.A was filed before NCLT by the Mr. Manish Kumar Baldeva – liquidator of the CD (Liquidator) seeking for release of attached properties so as to enable the liquidator to continue the auction/private sale of the assets in terms of provisions of IBC.
- Post commencement of liquidation on 20 July 2018, the Sales Tax Officer filed a claim to the extent of ₹ 101.87 Crore which was admitted by the Liquidator.
- In the liquidation proceeding, the liquidator proceeded to issue auction notice on 1 August 2021 and Tapadia Polyesters Private Limited was declared the Successful Bidder on 25 September 2021.
- Properties of the CD were attached by the respondent vide its attachment orders. As on the date of the said attachment order there was no restriction on attachment. CIRP was initiated against the CD on 6 October 2017, the time gap between the attachment order and initiation of CIRP is two years. Hence, the Order of attachment had attained finality as the same was not challenged by CD or by the IRP at the relevant time.
- NCLT hence concluded that the assets shall not form part of the Liquidation estate and the treatment accorded to the respondent would be that of secured creditor under Section 53(1)(e)(ii) of IBC and in the above backdrop rejected the I.A. vide order dated 10 Feburary, 2023.

- Two appeals were filed at National Company Law Appellate Tribunal (NCLAT) one by the Liquidator challenging the Order dated 10 February, 2023 and another one by Successful Bidder/the appellant.

Arguments of the Appellant

- It was contended that the respondent cannot be held to be a Secured Creditor and the properties attached by the department is part of the liquidation asset hence the NCLT ought to have lifted the attachment to proceed further with the liquidation process. The liquidator also relied on the judgment of the tribunal in the department of State Tax, through the ***Dy. Commissioner of State Tax vs. Zicom Saas Private Limited & Anr.***
- That attachment which was made of the properties u/s 35 of Maharashtra Value Added Tax Act was never challenged by the appellant and although the right of appeal was given u/s 35(6) but they have never exercised the right, the said order of attachment became final.
- NCLT had rightly relied on Judgment of the Hon'ble Supreme Court in ***M/s Embassy Property Development Private Limited. vs. State of Karnataka & Ors.*** holding that the issue of attachment having become final cannot be brought before the NCLT u/s 60(5) of the IBC.
- It was further contended that the properties were mortgaged to the Punjab National Bank (PNB) and the charge of the PNB was registered with the Ministry of Corporate Affairs and at best the Sales Tax Officer will have a Second Charge.
- It was submitted that even if it was assumed that the respondent was a secured creditor, they have not exercised their right u/s 52 of the IBC to proceed with the assets. The assets become part of Liquidation Assets. Further, referred to Regulation 21A of Liquidation Process Regulations, 2016 it was submitted that assets being part of the liquidation assets, Liquidator has rightly declared the appellant as Successful Bidder.

Arguments of the Respondent

- The assets of the CD were attached on 28 May 2015 and at that point of time there was no pendency of any proceedings and further the same was not challenged either by CD and or by the Liquidator.
- The attachment notices and the attachment itself were done much prior to the initiation of the present liquidation proceedings approximately 2 years ago. The attachment notice dated 28 May 2015 was issued by the respondent State Department under the Maharashtra Land Revenue Code.
- The CD committed fraud upon the respondent department and the outstanding dues are to the tune of ₹ 91,40,00,000/- at the time of issuance of the first notice of the demand under the Maharashtra Land Revenue Code 1966 dated 6 May 2015.
- It was claimed that they had followed the due procedure of law and procedures before attaching the properties of the CD and the same had not been challenged.
- They had also submitted and filed the claim on time.

- The Liquidator had no power and or any authority to file the present application so as to decide the outstanding dues of the CD payable to the respondent to the tune the claim submitted by them.
- IBC does not specifically prohibit the statutory authority to recover its due from the CD from the property already attached by such authority the power and duty of the liquidator u/s 35 of the IBC does not anywhere give any power to extinguish the dues of their statutory department i.e. STD/respondent.
- That it was pertinent to note that none of the assessment notice, demand notice and attachment had been challenged by the CD and or Liquidator. The respondent stated that the IBC cannot be used as a tool to evade taxes.

Held

- Hon'ble Supreme Court in ***M/s Embassy Property Developments Pvt. Ltd. vs. State of Karnataka*** held that there cannot be any dispute to the proposition that orders passed by the Statutory Authorities which have become final against the Corporate Debtor cannot be questioned and the said order can be questioned under the relevant statute only. Present was not a case where the Liquidator has questioned the attachment order. The attachment Order has become final and the attachment continued till date. The question is of the consequence of the attachment on the assets of the property. The judgment in M/s Embassy Property Developments (supra) has no application in the facts of the present case
- Reliance was placed on section 52 of the IBC and Regulation 21A of Liquidation Process Regulations by the successful bidder and the argument that even if it is assumed that the respondent was a secured creditor, it has not exercised its right u/s 52 of IBC, the assets will be part of the Liquidation Estate as per the statutory provisions has substance.
- Further, the charge was registered of the PNB as the first charge holder. The judgment of this Tribunal in ***Department of State Tax vs. Zicom Saas Pvt. Ltd. & Anr*** as has been relied on by the Liquidator, the provisions of Section 37 of Maharashtra Value Added Tax Act, 2002 which was the provision applicable in the present case have been considered and the Judgment of the Hon'ble Supreme Court in ***State Tax Officer vs. Rainbow Papers Ltd*** was also taken note and relied on. The above supports the submission of the liquidator that the Respondent Department cannot be treated as a secured creditor of the Corporate Debtor.
- Even when there is the attachment of the assets, the respondent cannot be the owner of the assets and the assets continue to be owned by the Corporate Debtor and will be part of the Liquidation Estate.
- The NCLT committed an error in rejecting the I.A. filed by the Liquidator relying on the Judgment of the Hon'ble Supreme Court in "M/s. Embassy Property Development Pvt. Ltd." which judgment had no application in the facts of the present case. Thus, the Order of the NCLT in the appeal cannot be sustained. Order dated 10 April, 2023 was set aside so as to take further steps in the liquidation. The appeal was allowed accordingly.

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OTHER LAWS
FEMA – Update and Analysis

CA Hardik Mehta CA Tanvi Vora

In this article, we have discussed the rules and regulations related to Accounts in India by Non-residents under Foreign Exchange Management Act, 1999.

Opening, holding and maintaining accounts in India by a person resident outside India is regulated in terms of sub-section (3) of section 6 of the Foreign Exchange Management Act, 1999 (FEMA) read with Foreign Exchange Management (Deposit) Regulations, 2016 issued vide Notification No. FEMA 5(R)/2016-RB dated April 1, 2016. Master Direction - Deposits and Accounts FED Master Direction No. 14/2015-16 dated 1st January 2016 and FAQs on Accounts in India by Non-residents (updated as on February 12, 2020) further provides guidance on the same.

An AD bank is permitted to open in India the following types of accounts for persons resident outside India:

i) Non-Resident (External) Account Scheme (NRE account) for a non-resident Indian (NRI);

ii) Foreign Currency (Non-Resident) Account Banks Scheme, (FCNR(B) account) for a non-resident Indian (NRI);

iii) Non-Resident (Ordinary) Account Scheme, (NRO account) for any person resident outside India;

iv) Special Non-Resident Rupee Account (SNRR account) for any person resident outside India having a business interest in India

v) Escrow Account for resident or non-resident acquirers

Further, a company or a body corporate, a proprietary concern or a firm in India may accept deposits from a NRI or PIO on non-repatriation basis only. Other conditions that apply to such deposits include:

- Deposit should be for a maximum maturity period of 3 years
- Deposit can be received from NRO account only
- Rate of interest should not exceed he ceiling rate prescribed under the Companies (Acceptance of Deposit) Rules, 2014/NBFC guidelines/ directions issued by RBI
- Deposit not utilized for relending (other than NBFC) or for undertaking agricultural/plantation activities or real estate business
- The amount of deposits accepted shall not be allowed to be repatriated outside India.

A company or a body corporate is not permitted to accept any fresh deposits *on repatriation* basis from a NRI or PIO. However, it is only permitted to renew the deposits which had already been accepted under erstwhile Notification.

We have provided below a tabulated analysis of the provisions relating to the 3 most commonly opened accounts in India by Non-residents:

Particulars	NRE Account	FCNR (B) Account	NRO Account
Who can open an account	NRIs[1] and PIOs[2] (Individual/entities of Pakistan and Bangladesh requires prior RBI approval)		Any person resident outside India for putting through *bonafide* transactions in rupees. Individuals/entities of Pakistan nationality/origin and entities of Bangladesh origin require prior RBI approval A Citizen of Bangladesh/ Pakistan belonging to minority communities in those countries i.e. Hindus, Sikhs, Buddhists, Jains, Parsis and Christians residing in India and who has been granted LTV or whose application for LTV is under consideration, can open only one NRO account with an AD bank
Currency	Indian Rupees	Any permitted currency i.e. a foreign currency which is freely convertible	Indian Rupees

1. A 'Non-resident Indian' (NRI) is a person resident outside India who is a citizen of India.
2. 'Person of Indian Origin (PIO)' is a person resident outside India who is a citizen of any country other than Bangladesh or Pakistan or such other country as may be specified by the Central Government, satisfying the following conditions: [PIO will include an OCI cardholder]
   a) Who was a citizen of India by virtue of the Constitution of India or the Citizenship Act, 1955 (57 of 1955); or
   b) Who belonged to a territory that became part of India after the 15th day of August, 1947; or
   c) Who is a child or a grandchild or a great grandchild of a citizen of India or of a person referred to in clause (a) or (b); or
   d) Who is a spouse of foreign origin of a citizen of India or spouse of foreign origin of a person referred to in clause (a) or (b) or (c)

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Particulars	NRE Account	FCNR (B) Account	NRO Account
Type of Account	Savings, Current, Recurring, Fixed Deposit	Term Deposit only	Savings, Current, Recurring, Fixed Deposit
Period for fixed deposits permitted	From one to three years, However, banks are allowed to accept NRE deposits for a longer period i.e. above three years from their Asset-Liability point of view	For terms not less than 1 year and not more than 5 years	As applicable to resident accounts.
Permissible Credits	i. Inward remittance from outside India ii. Proceeds of foreign currency/ bank notes tendered by account holder during his temporary visit to India iii. Interest accruing on the account iv. Transfer from other NRE/ FCNR(B) accounts v. Maturity or sale proceeds of investments (if such investments were made from this account or through inward remittance). vi. Current income in India like rent, dividend, pension, interest etc. are permissible subject to payment of taxes in India As a benchmark, credits to NRE / FCNR(B) account should be repatriable in nature.		i. Inward remittances from outside India ii. Legitimate dues in India iii. Transfers from other NRO accounts iv. Rupee gift/loan made by a resident to a NRI/PIO relative within the limits prescribed under LRS may be credited to the latter's NRO account.
Permissible Debits	i. Local disbursements ii. Remittance outside India iii. Transfer to NRE/ FCNR (B) accounts of the account holder or any other person eligible to maintain such account		i. Local payments in rupees ii. Transfers to other NRO accounts iii. Remittance of current income abroad

Particulars	NRE Account	FCNR (B) Account	NRO Account
	iv. Permissible investments in India in shares/ securities/ commercial paper of an Indian company or for purchase of immovable property		iv. Settlement of charges on International Credit Cards v. Repatriation under USD 1 million scheme available only to NRIs and PIOs vi. Funds can be transferred to NRE account within this USD 1 million facility.
Repatriablity	Repatriable		Not repatriable except for all current income. USD 1 million scheme is to NRIs/ PIOs only for remittance up to USD 1 (one) million per financial year (April-March).
Permitted Joint Holding	May be held jointly in the names of two or more NRIs/PIOs. NRIs/PIOs can hold jointly with a resident relative on 'former or survivor' basis. The resident relative can operate the account as a PoA holder during the life time of the NRI/PIO account holder.		May be held jointly in the names of two or more NRIs/PIOs. May be held jointly with residents on 'former or survivor' basis.
Taxability	Interest income on balances in the NRE Account is exempt from income tax		Taxable
Loans in India	AD can sanction loans in India to the account holder/third parties without any limit, subject to the usual margin requirements. The loan amount cannot be used for relending, carrying on agricultural/ plantation activities or investment in real estate. In case of loan to account holder the loan can be used for personal purposes or for carrying on business activities or for making direct investment in India on non-repatriation or for acquiring flat/house in India for his own residential use.		Loans against the deposits can be granted in India to the account holder or third party subject to usual norms and margin requirement. The loan amount cannot be used for relending, carrying on agricultural/plantation activities or investment in real estate. The term "loan" shall include all types of fund based/non-fund based facilities.

Particulars	NRE Account	FCNR (B) Account	NRO Account
	In case of loan to third parties, loans can be given to resident individuals/firms/companies in India against the collateral of fixed deposits held in NRE account. The loan should be utilised for personal purposes or for carrying on business activities. Also, there should be no direct or indirect foreign exchange consideration for the non-resident depositor agreeing to pledge his deposits to enable the resident individual/firm/company to obtain such facilities. These loans cannot be repatriated outside India and can be used in India only for the purposes specified in the regulations. The facility for premature withdrawal of deposits will not be available where loans against such deposits are availed of. The term "loan" shall include all types of fund based/non-fund based facilities.		
Loans outside India	AD may allow their branches/correspondents outside India to grant loans to or in favour of non-resident depositor or to third parties at the request of depositor for bona fide purpose against the security of funds held in the NRE/FCNR (B) accounts in India. The term "loan" shall include all types of fund based/non-fund based facilities		Not permitted
Rate of Interest	As per guidelines issued by the Department of Regulation		
Operations by Power of Attorney in favour of a resident	Operations in the account in terms of PoA is restricted to withdrawals for permissible local payments or remittance to the account holder himself through normal banking channels.		Operations in the account in terms of PoA is restricted to withdrawals for permissible local payments in rupees, remittance of current income to the account

Particulars	NRE Account	FCNR (B) Account	NRO Account
	The PoA holder cannot repatriate outside India funds held in the account under any circumstances other than to the account holder himself, nor to make payment by way of gift to a resident on behalf of the account holder nor to transfer funds from the account to another NRE or FCNR(B) account		holder outside India or remittance to the account holder himself through normal banking channels. While making remittances, the limits and conditions of repatriability will apply. The PoA holder cannot repatriate outside India funds held in the account under any circumstances other than to the account holder himself, nor to make payment by way of gift to a resident on behalf of the account holder nor to transfer funds from the account to another NRO account
Change in residential status from Non-resident to resident	NRE accounts should be designated as resident accounts or the funds in NRE may be transferred to the RFC accounts, at the option of the account holder, immediately upon the return of the account holder to India for taking up employment or on change in the residential status. No change needed in case of short visit.	On change in residential status, FCNR (B) deposits may be allowed to continue till maturity at the contracted rate of interest, if so desired by the account holder. AD should convert the FCNR(B) deposits on maturity into resident rupee deposit accounts or RFC account (if the depositor is eligible to open RFC account), at the option of the account holder.	**NR to R →** NRO accounts may be designated as resident accounts on the return of the account holder to India for any purpose indicating his intention to stay in India for an uncertain period. **R to NR →** When a resident Indian becomes a person resident outside India, his existing resident account should be designated as NRO account.

A NRO account can colloquially be equated to a normal resident account in India in terms of its usage and restrictive repatriability while the NRE and FCNR(B) are more freely repatriable.

An NRO (current/savings) account can be opened by a foreign national of non-Indian origin visiting India, with funds remitted from outside India through banking channel or by sale of foreign exchange brought by him to India. The balance in the NRO account may be paid to the account holder at the time of his departure from India provided the account has been maintained for a period not exceeding six months and the account has not been credited with any local funds, other than interest accrued thereon.

Furthermore, the following two types of accounts are also permitted to be opened by persons resident in India for specific purposes as explained:

i) SNRR Account

Any PROI having a business interest in India may open, hold and maintain with an AD in India, a Special Non-Resident Rupee Account (SNRR account) for the purpose of putting through bona fide transactions in rupees. SNRR accounts shall not earn any interest.

For the purpose of SNRR account, business interest, apart from generic business interest, shall include INR transactions relating to investments permitted under FEM (NDI Rules), 2019 and FEM (DI Regulations) 2019, import and export of goods and services, trade credit and ECB and Business related transactions outside International Financial Service Centre (IFSC) by IFSC units.

AD bank may maintain separate SNRR account for each category of transactions or a single SNRR Account as per their discretion.

The tenure of the SNRR account should be concurrent to the tenure of the contract/period of operation/the business of the account holder and in no case should exceed seven years in case of generic business transactions. FAQs on SNRR account have been provided by RBI which can be accessed at https://www.rbi.org.in/scripts/FS_FAQs.aspx?Id=138&fn=5

ii) Escrow Account

Resident or non-resident acquirers may open, hold and maintain Escrow Account with ADs in India as permitted under Notification No. FEMA 5(R)/2016-RB. The account can be opened for acquisition/transfer of capital instruments/convertible notes in accordance with Foreign Exchange Management (Non-Debt Instrument) Rules, 2019.

The accounts shall be non-interest bearing. No fund/non-fund based facility would be permitted against the balances in the account.

We have further discussed below the options available for persons resident outside in India to remit funds outside India under Foreign Exchange Management (Remittance of Assets) Regulations, 2016 [Notification No. FEMA 13(R)/2016-RB dated April 1, 2016]. As explained, balances in NRE and FCNR(B) account are freely repatriable outside India. For other balances and accounts which are not repatriable in nature, the RBI has provided the following options:

i) Remittances by individuals not being NRIs/PIOs

ADs may allow remittance of assets by a foreign national where:

- the person has retired from employment in India; (upto USD 1 million per financial year)
- the person has inherited from a person referred to in section 6(5) of the Act; (upto USD 1 million per financial year)
- the person is a non-resident widow/widower and has inherited assets from

her/his deceased spouse who was an Indian national resident in India. (upto USD 1 million per financial year)

- the remittance is in respect of balances held in a bank account by a foreign student who has completed his/her studies; (balance represents proceeds of remittances received from abroad through normal banking channels or out of stipend/scholarship received from the Government or any organization in India)

  However, these facilities are not available for citizens of Nepal or Bhutan or a PIO.

ii) Remittances by NRIs/PIOs

Popularly known as USD 1 Million scheme / facility.

ADs may allow NRIs/ PIOs to remit up to USD one million, per financial year:

- out of balances in their NRO accounts/ sale proceeds of assets/assets acquired in India by way of inheritance/legacy;
- in respect of assets acquired under a deed of settlement made by either of his/her parents or a relative as defined in Companies Act, 2013. The settlement should take effect on the death of the settler;
- in case settlement is done without retaining any life interest in the property i.e. during the lifetime of the owner/ parent, it would be as remittance of balance in the NRO account;

The NRO or PIO should make such remittances out of balances held in the account arising from his/her legitimate receivables in India and not by borrowing from any other person or a transfer from any other NRO account.

iii) Repatriation of sale proceeds of immovable property

The NRO or PIO should make such remittances out of balances held in the account arising from his/her legitimate receivables in India and not by borrowing from any other person or a transfer from any other NRO account.

- the immovable property was acquired by the seller in accordance with the provisions of the foreign exchange law in force at the time of acquisition;
- the amount for acquisition of the immovable property was paid in foreign exchange received through banking channels or out of funds held in FCNR(B) account or NRE account;
- in the case of residential property, the repatriation of sale proceeds is restricted to maximum two such properties.

"All this bringing of the mind into a higher state of vibration is included in one word in Yoga — Samadhi."

— *Swami Vivekananda*

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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 **October 1, 2023 to October 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 October 4, 2023 are as under:

Type of Membership	No. of Members
Life Member	06
Ordinary Member	07
Student Member	11
Total	**24**

II. PAST PROGRAMMES

Sr. No.	*Date*	*Topics*	*Speakers*
BENGALURU STUDY GROUP			
1.	06.10.2023	Unlocking Value & Wealth: Navigating India's AIFs with Insights into Tax and Regulatory Considerations	CA Vishnu Bagri

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Sr. No.	*Date*	*Topics*	*Speakers*
DIRECT TAXES			
1.	25.10.2023	Recent Important Decisions Under Direct Tax	Radha Halbe, *Advocate*
INDIRECT TAXES			
1.	05.10.2023	Issues in Media & Entertainment Industry - Part 2	*Group Leader:* CA Parth Shah *Chairman*: CA Rajat Talati
INTERNATIONAL TAXATION			
1.	The International Taxation Committee had planned a seminar on "Cultivating Expertise: The advance FEMA Summit" at Walchand Hirachand Hall, IMC, Churchgate. The session-wise detail of the program is as under: *(Jointly with Bombay Chartered Accountants' Society)*		
a.	14.10.2023	Keynote Address	Shri Aditya Gaiha, *Chief General Manager-in-Charge*
b.		Panel Discussion	Shri K. K. Bhagat, *Deputy General Manager* Shri Shiv Shankar, *Deputy General Manager* Shri Sanju Thomas Punnoose, *General Manager* Shri Prashant Kumar Dayal, *General Manager* Shri Malayatil Satyapal Unni, *Deputy General Manager* *Moderator:* CA Rashmin Sanghvi

Sr. No.	*Date*	*Topics*	*Speakers*
c.		Investigation by Enforcement Directorate under FEMA – Practical Aspects	CA Paresh P. Shah
d.		Powers of ED under PMLA and Appeal to PMLA Tribunal	L. S. Shetty, *Advocate*
2.	17.10.2023	Practical Considerations – Form 3CEB	CA Namrata Dedhia
PUNE STUDY GROUP			
1.	14.10.2023	Critical Analysis of "Application of Income of Charitable Trusts	CA Sharad Shah
STUDENT COMMITTEE			
1.	The Student Committee had planned a seminar on "Exploring Corporate Law: Opportunities, Practice Areas, And Success Strategies". The session-wise detail of the program is as under:		
a.	06.10.2023	Fundamentals of Fund Practice	CA Jay Gandhi
b.	07.10.2023	Contours of Capital Markets & Securities Law Practice	Sanjay Ashar, *Advocate*
C.	09.10.2023	Exploring the Realm of Competition & Anti-Trust Law Practice	Rudresh Singh, *Advocate*
d.	10.10.2023	Changing roles of corporate lawyers – how to be future ready	Mohit Saraf, *Advocate*
e.		M&A Practice Simplified	Sharad Abhyankar, *Advocate*
f.	12.10.2023	Demystifying Project Finance and Infrastructure	Megha Agarwal, *Advocate*
g.		Role of In-house Counsel	CS Priyam Dhamankar

Sr. No.	*Date*	*Topics*	*Speakers*
h.	13.10.2023	Banking and Finance Legal Practice – Key Consideration	Nikunj Maheshwari, *Advocate*
i.	20.10.2023	Highlights of General Corporate Legal Practice	Prem Rajani, *Advocate*
STUDY CIRCLE & STUDY GROUP			
1.	16.10.2023	Panel Discussion on the Implications of Fake Invoicing under GST and Income Tax *(Jointly with Direct Taxes Committee & Taxmann)*	*Panellists:* K. Vaitheeswaran, *Advocate* CA Yogesh Thar *Moderators*: CA Rajiv Luthia CA Mahendra Sanghvi

"Take up one idea. Make that one idea your life; dream of it; think of it; live on that idea. Let the brain, the body, muscles, nerves, every part of your body be full of that idea, and just leave every other idea alone. This is the way to success, and this is the way great spiritual giants are produced."

— *Swami Vivekananda*

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

— *Mahatma Gandhi*

International Taxation Committee

Cultivating Expertise: The Advanced FEMA Summit (*Jointly with Bombay Chartered Accountants' Society*) was held on 14th October, 2023 at Walchand Hirachand Hall, IMC, Churchgate.

Inaugural Session

Shri Aditya Gaiha (Chief General Manager-in-Charge, RBI) delivering his Keynote Address

CA Paresh P. Shah (Speaker) addressing the delegates

Panel Discussion by RBI Officials. Panellists seen from L to R: Shri K. K. Bhagat (Deputy General Manager, RBI), Shri Shiv Shankar (Deputy General Manager, RBI), Shri Sanju Thomas Punnoose (General Manager, RBI), Shri Prashant Kumar Dayal (General Manager, RBI), Shri Malayatil Satyapal Unni (Deputy General Manager, RBI) and Moderator: CA Rashmin Sanghvi

L. S. Shetty, Advocate (Speaker) addressing the delegates

CA Kirit Dedhia (Chairman) welcoming the speakers and the delegates

Dussehra Puja at CTC Office

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