Newsletter

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CONTENT

DIRECT TAXES

Income-Tax Case Laws

Pr. CIT Vs M/s Electroplast Engineers [2019] 104 taxmann.com 444 (Bombay) - HIGH COURT OF BOMBAY

No Capital Gains, where no transfer of asset took place and the retiring partners were paid sums on reconstitution of the firm.

Facts of the case

1. Respondent assessee a partnership firm, had filed return of income for the AY 2010-11. The assessee was engaged in manufacturing of tubelight fittings and other lighting accessories. Deed of Retirement cum Reconstitution of the partnership was executed by which the original two partners retired from the firm and the new three partners re-distributed their share in a partnership firm. A sum of Rs. 3.75 crores was credited in books on account of Goodwill.

2. The Assessing Officer was of the opinion that the sum so credited is nothing but STCG ariring on distribution of the capital asset by way of dissolution of the firm or otherwise in terms of section 45(4) of the Act.

3. On Appeal before the CIT (A), CIT (A) placed heavy reliance on Full Bench Judgment of Karnataka High Court in the case of **CIT v. Dynamic Enterprises [2013] 40 taxmann.com 318 (Karnataka) (FB)**. CIT(A) agreed that there was neither the dissolution of the firm nor the firm was discontinued. However, there was transfer of capital asset on account of transfer of rights and interest in assets of the firm to the new members and hence section 45(4) would apply in the present case.

4. On further appeal before the Tribunal, Tribunal held that the provisions of Section 45(4) is not applicable in the present case and placed reliance on **CIT v. Dynamic Enterprises [2013] 40 taxmann.com 318 (Karnataka) (FB)**

5. Revenue thereafter preferred appeal before the High Court.

Held

The High Court held as follows: -

6. For the provisions of Section 45(4) to be applicable there has to be transfer of capital asset. The issue has been dealt in **A.N. Naik Associates [2004] 136 Taxman 107/265 ITR 346 (Bom.)** In the instant case there was reorganization of the partnership in quick succession. Such reorganization would not amount to dissolution of firm. Further, it was held that when the asset is transferred to the partner, that falls under the expression “otherwise” and the rights of the other partners in that asset are extinguished and hence it would amount to transfer of capital assets.

7. The above decision has been considered by **Karnataka High Court in the Full Bench Judgment in the case of Dynamic Enterprises.** The question arises that the partners only takes money towards his value of share, whether the firm is to pay capital gains even when there is no distribution of capital asset. It was held in the instant case that after the reconstitution, the partnership continued and the business was carried on by the remaining partners. There was neither dissolution of the firm nor

any distribution of capital asset. Only the money was given to the retiring partners representing the value of their share in the partnership. No gain arises in the hands of partnership due to lack of dissolution of firm and transfer of capital asset.

8. Revenue argued that the incoming partners bought money into the firm and the erstwhile partners took money and left the property to the incoming partners. It is a device adopted by these partners in order to evade payment of profits or gains. As rightly held by this Court in Gurunath's case was argued by the Revenue that the transaction is taxable.

9. The court held that the no capital asset was transferred in favour of the retiring partners by the partnership firm. The firm did not cease to hold the property and consequently the right in the property is not extinguished. Accordingly, the rights were not transferred to the retiring partner as there was no transfer of capital asset. The Division Bench in Gurunath's case did not appreciate this distinguishing factor and by wrong application of the law laid down by the Bombay High Court held the assessee in that case is also liable to pay capital gains tax under Section 45(4). Therefore, the said judgment does not lay down the correct law.

10. Thus, Income Tax Appeal was dismissed, and it was held that no capital gain arise in this case.

Sonu Nigam vs Assistant Commissioner of Income-tax - [2019] 105 taxmann.com 331 (Mumbai - ITAT)

Where the income from the purchased property is taxable under the head Income from House Property and where the property was self-occupied, the same cannot enter into the block of depreciable asset automatically.

Facts of the case

1. The assessee had sold two flats in Amarnath- Towers for a sum of Rs.1.61 crores. The assesse's share was 50% in the said sold property. During the year under consideration the the WDV of the block of depreciable asset was only Rs. 3,81,661/-. The AO during the course of assessment proceedings noted the same and applied the provisions of section 50 of the Act and calculated STCG of Rs. 67 lakhs

2. Assessee stated that the block does not cease to exist as he had purchased another property worth Rs.1,24 crores in Lakhani Centrium' and he was also using part of his residential premises (Namah building) for office purpose and the cost of the said building was also the part of the block of asset.

3. The AO rejected the explanation as both the properties were not the part of depreciable block. AO further noted that the income from 'Lakhani Cenfrium" was being offered under the head 'income from house property' and on the 'Namah' building the assessee had

not claimed any depreciation in the past or in the present.

4. Aggrieved by the order the assessee has preferred an appeal before CIT (A) wherein the CIT (A) upheld the order of the AO.

5. Against the above order passed the assessee appealed before the ITAT.

Held

1. With regards to the claim of the assessee that the he has been using part of his residential premises "Namah" for office purpose, it has been observed that the said premise was treated as self occupied property and it cannot enter the block of depreciable asset. Hence, this claim of assessee is not sustainable at all. Since the assessee has not claimed any depreciation on the same in earlier years the claim of the assessee can only be said to be an afterthought.

2. Further, the assessee has claimed that the income from the new asset purchased has been offered under Income from House property and the same enters the block of asset irrespective of the use. The assessee contended that claim of depreciation on an asset is not dependent upon its user and that asset is entitled for depreciation the moment it enters the block.

3. IT was held that the new flats the income from which was offered under IFHP can never enter the block of depreciable asset and by no stretch of imagination be said to be entitled to automatic entry into the block of depreciable asset. Section 2(11) defines block of asset as a group of asset falling within the class of asset…….. in respect of which the same percentage of depreciation is permissible. The income from 'Namah' building and the premises in 'Lakhani Centrium' was falling under the head 'income from house property' and hence these premises cannot be said to be falling under any asset group on which any rate of depreciation is prescribed as on such asset no depreciation is permissible.

4. In this view of the matter ITAT held that the CIT(A) had passed well reasoned order which does not need any interference from the ITAT.

International Taxation Case Laws

The Nielsen Company (US) LLC vs DCIT (IT) - 4(2) Mumbai (ITAT Mumbai) – AY 2010-11 [TS-304-ITAT-2019(Mum)]

Assessee had made payment to PWC consulting for handling the taxation of the entire Asia- Pacific Region and these services were allocated to the group company on the basis of number of expat employee in the entity on prorate basis, since it merely charged proportionate amount of invoice raised by PWC. Assessee had submitted that it does not involve any income element; Rejects Revenue's stand

that the payment cannot be regarded as reimbursement, as assessee [service provider] has provided services through PWC Consulting to ACNOM [service recipient] and therefore the expenses would have been met by assessee, who might have charged the additional amount from ACNOM, rejects revenue's action of taxing the amount as royalty/FIS.
ITAT rules that since the consideration under the service agreement cannot be taxed as FIS, "on the same principles the receipt cannot be treated as royalty as there is no transfer of process or formula."

Facts:

1. The assessee was a company established under the laws of Delaware, USA. It was one of the world leading Business & Information in Media & Information, Directories & Consumer Information. The assessee group was represented in India through its two legal entity i.e. AC Neilson Org-Marg Private Ltd (ACNOM) for customised research services and retails measurement services and Act Neilson Research Private Ltd. (ACNRS).

2. The assessee filed its return of income for AY 2010-11 on 27.09.2010 declaring income of Rs. 17.75 Cr. The assessment was completed u/s 143(3) r.w.s. 144C (3) of the Act.

3 During the period relevant to the AY under consideration, the assessee received a sum of Rs. 19 Cr. (approx) from ACNOM (Indian Company) under service agreement for administrative and management support services and it claimed the same as not taxable in India under Article-12 of the India-US Tax Treaty (DTAA). The assessee claimed that the services rendered by assessee do not make available any technical knowledge, skill etc.

4. The assessee also received an amount of Rs. 5 Lakhs (approx) from Indian entity on account of reimbursement of actual expenditure which does not fall under Article-12 of DTAA.

5. The Assessing Officer (AO) treated the receipt of Rs. 19 Cr. as income in the nature of Fees for Included Services (FIS). The other receipt of Rs. 5 lakhs was not allowed as reimbursement of expenses and considered for use of a process or formula which falls under the definition of royalty under the DTAA.

6. On appeal before the CIT(A) both the additions were confirmed.

7. Further, aggrieved by the order of CIT(A), the assessee approached ITAT.

Held:

Receipt of Rs. 19 Cr. treated as FIS by the AO and CIT(A):

1. The assessee entered into licence agreement on 01.01.2009 for use of Nelson business system and knowhow of Nelson Software and Patents in India. The assessee also entered into a separate service agreement dated 01.01.2009 with ACNRs for rendering services in the field of commercial, financial, accounting legal matters, logistics, developing and engineering, sales and marketing and others matters.

2. During the assessment, the assessee had claimed that the receipt from service agreement doesn't qualify as FIS as per Article 12 of the India-US DTAA. The AO concluded that the receipt was in the nature of FIS as defined in Article 12(4) of India-US DTAA. The AO further concluded that as per the Article 12(4)(b) of India-US DTAA, all the administrative and management support services rendered as per general service agreement in intra group services were with the primary intention to maintain the brand name of assessee and know-how, with the intention of carrying on the business in line with the best practice globally. The entity might not have been part of the group but the payment was for the usage of brand name of assessee and hence management support services was in the nature of FIS. The AO while making above conclusion, also relied on the decision of AAR in Perfetti VAN Holding B.V (case No. AAR No.869 of 2010 dated 09.12.2011).

3. Before the CIT (A), the assessee filed detailed written submissions. It was also specifically brought to the notice of CIT(A) that the decision rendered by AAR in Perfetti VAN Holding B.V (supra) relied by the AO was already set aside by Delhi High Court, directing AAR to pass the order afresh. The CIT (A), however confirmed the order of AO.

4. 14 ITAT examined the service agreement dated 09.01.2009 between the assessee and ACNOM and also perused the DTAA between India and USA. As per Article 12 of the said DTAA, FIS means payment of any kind to any person in consideration for rendering of any technical or consultancy services. It was noted that the term "managerial service" as prescribed in Explanation 2 to section 9(1)(vii) of the Act was not found in clause 4 of Article 12 of the DTAA between India and USA.

5. 15 ITAT also observed that as per the Memorandum of Understanding executed between India and USA, the consultancy services which are technical in nature alone are to be included as technical and consultancy services for the purpose of fees for included services as per sub clause 4(b) of Article 12 of DTAA between India and USA.

6. 16 ITAT held that while undertaking the above services the assessee had not executed any contract to make available

any technical expertise so as to use those services independently by the licensee. All the services under taken by the assessee were either support services, IT enable services, coordination or tax services as referred above which does not require transfer of technology, skill to the recipient company.

7. 17 In this relation, ITAT also referred to the judgement of Hon'ble Karnataka High Court in the case of CIT Vs De Beers India Minerals (P) Ltd.

8. 18 In view of the above, it was held that the AO erred in taxing the service agreement receipt as FIS as per Article 12(4) of India USA DTAA, in absence of clause in the service agreement, that the recipient would be able to perform these services of its own without any further assistance of the assessee. As a result, the said ground of the appeal was allowed.

- <u>Receipt of Rs. 5 Lakhs on account of reimbursement was treated as royalty by the AO and CIT(A):</u>

9. 20 The assessee submitted that an independent consultant was handling the taxation of the entire Asia- Pacific Region and raised invoice on the assessee for such services. The services were allocated to the group company on the basis of number of expat employee in the entity on prorata basis. In support of his submissions the assessee relied on the decision of Bombay High Court in Siemens Aktiongesellschaft 310 ITR 320 (Bom).

10. It was further submitted that the assessee had not charged any mark-up over the cost incurred by it and merely charged proportionate amount of invoice raised by the consultant and it did not involve any element of income.

11. It was noted by the ITAT that AO had not examined the facts as per the reply and the explanation furnished by the assessee.

12. Considering the facts that ITAT had already allowed the above ground holding that AO erred in taxing the service agreement receipt as FIS under Article 12(4) of India-USA DTAA. Thus, on the same principles the receipt were held to be not treated as royalty as there was no transfer of process or formula. Hence, this ground of the appeal was allowed by the ITAT.

M/s. Hical Infra Private Limited vs The Income Tax Officer, Ward – 3(1) (3), Bengaluru - ITAT Bengaluru (AY 2010-11) [TS-252-ITAT-2019(Bang)]

Export commission constitutes FTS as foreign agents engaged in 'quality check'

Facts:

1 The assessee filed an appeal against the order of Commissioner of Income-tax (Appeals)-3, Bangalore passed u/s. 143(3) and u/s 250 of Income-tax Act, 1961 ("the Act").

2 The assessee is engaged in manufacturing and export of electronic components and filed the Return of income electronically for the Assessment Year (AY) 2010-11 on 13.10.2010 disclosing loss of Rs. 99,77,695/-..

3 The case was then selected for scrutiny and notice u/s. 143(2) and 142(1) of the Act was issued along with the questionnaire. In compliance, the assessee furnished the details from time to time.

4 The Assessing Officer (AO) noted that an amount of Rs. 19,11,000/- had been debited to Profit and Loss account as provision for non-moving/obsolescence stock. The AO called upon the assessee to justify the same.

5 Post perusal of the assessee's response, the AO was of the opinion that assessee could not provide reasons for provisions and disallowed the claim of the assessee.

6 The assessee had entered into an agreement with Pan Services Sas and Live Advanced Technologies Ltd. After verifying the agreement and clauses, the AO was of the opinion that they are not agent or broker.

7. As per the agreement, services provided by them were of a Consultant and they had agreed to place orders on behalf of various customers, coordinate and check the quality of goods ordered from the assessee. Therefore, AO was of the opinion that the commission paid was in the nature of Fee for Technical Services (FTS) and the persons engaged were not agents but brokers who were consultants. Thus, the AO disallowed the expenses towards export commission of Rs. 6,42,000 since no TDS was deducted.

8. Aggrieved by the Assessment Order, the assessee filed an appeal before CIT (A).
9. CIT (A) having considered the grounds of appeal and submissions of the assessee, observed that the assessee had not furnished detailed working before the AO and not listed the items which were absolute. The CIT(A) confirmed the addition of Rs. 19,11,000/- and similarly in the case of non-deduction of TDS on the payments made to non-residents, applying the provisions of section 40(a)(i) of the Act, CIT(A) confirmed the addition.

10 Aggrieved by the order, the assessee filed an appeal before the ITAT

Held

The ITAT held as follows: -

1. ITAT observed that the decision relied upon by the AO was on the provision for warranty whereas in the present case the disallowance was for non-moving / obsolescence goods. The fact remained that the assessee couldn't substantiate the detailed working of provisions and no details of listed items of obsolete were produced. Also, the basis of value and comparable at cost or market value were not submitted. Further, there was no policy decision in respect of such non-moving / obsolescence goods.

2. Since, both the AO and the assessee couldn't substantiate with information and CIT(A) also dealt on this issue, ITAT restored the disputed issue to the file of AO to verify and examine the method of accounting treatment of obsolescence goods and examine the statements filed in the course of hearing.

3. In respect of the second ground of appeall, regarding non-deduction of TDS on payments made to non-residents, ITAT observed from the clauses of the agreement and findings of CIT (A) that the non-resident must have had some technical expertise to check quality of products.

4. In view of Section 9(1)(vii) of the Act, ITAT opined that the submission of the Assessee couldn't be accepted because the non-resident Agent had to check the quality of goods ordered by the customers with some expertise in international market and the assessee couldn't prove that the works were in the nature of procurement of goods only (it was in conflict with clauses of the agreement entered by the assessee with the non-residents). Thus, ITAT upheld the decision of CIT(A) and disallowed the expenditure of export commission.

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Notifications

- **Due date of Form GSTR-01 & GSTR-3B extended in specified districts of Odisha.**
  - Due date for FORM GSTR-1 and FORM GSTR-3B for the month of April, 2019 extended till 10 June 2019 and 20 June 2019 respectively, for registered persons whose principal place of business is in the districts of Angul, Balasore, Bhadrak, Cuttack, Dhenkanal, Ganjam, Jagatsinghpur, Jajpur, Kendrapara, Khordha, Keonjhar, Mayurbhanj, Nayagarh and Puri in the State of Odisha.

(Notification No. 23/ 2019 and 24/ 2019 dated 11 May 2019 (Central Tax))

- **Due date extended to exercise option to pay GST on Real Estate @ 12% or 8%.**
  - Due date to opt for one-time option, to pay tax by promoters at old rates of 12% or 8% with ITC, is extended from 10 May 2019 to 20 May 2019.

Note: Where the option is not exercised in Form Annexure IV by 20 May 2019, new rates as applicable to item (i) or (ia) or (ib) or (ic) or (id) i.e. 1% or 5%, shall be deemed to have been exercised.

- **Kerala Flood Cess ('KFC')**

- Kerala Government has imposed Kerala Flood Cess ("KFC") as provided in Kerala Finance Bill, 2019 to be levied from 1 June 2019 for a period of 2 years.

- KFC would be applicable on Intra State transaction with un-registered dealers ("B2C") and would not be applicable in case of Composition Dealer and exempted supplies.

- Accordingly, Kerala Government has prescribed Kerala Flood Cess Rules, 2019 ("KFC Rules"). Below is the gist of levy and collection of KFC:

- **Objective:**

  KFC is being imposed with sole the intend to provide reconstruction, rehabilitation and meet compensation needs which had arisen due to massive floods that occurred in State of Kerala in month of August 2018 last year.

- **Levy and Collection of KFC:**

  Applicable in case of Intra-State supplies with unregistered dealer (Business to Consumer (B2C));

  - Not applicable in case of following:
    - Supply by Composition Dealer;
    - Supplies between Registered Dealers;
    - Exempted Supplies.

- **KFC Rates:**

Sr.No.	Category of supply	KFC Rates
1	Goods taxable at 0.125% Or 2.5% of KGST Act	Nil
2	Goods taxable at 1.5% of KGST Act	0.25
3	Goods taxable at 6%, 9% or 14% of KGST Act	1%
4	Services taxable at 2.5%, 6%, 9% or 14% under KGST Act	1%

➢ **Invoicing and Payments:**

- Separate disclosure is required on face of invoice about KFC Levy.
- KFC so collected is required to be deposited with Kerala government at the time of filing return.

➢ **Returns Filing:**

- Furnishing a monthly return in Form KFC-A on or before due date of filing of Return in Form GSTR-3B;
- Filing of monthly return and payment KFC-A to be made electronically through www.keralataxes.gov.in;
- No refund of KFC paid along with return.

➢ **Note:**

- KFC is a state levy i.e. under KGST Act and No KFC is to be levied and collected under CGST Act.
- ➢ The same has been postponed by the Government and would be leviable from **1st July, 2019** by notification no. 81/2019 dated 31 May 2019.

  (Notification No. 79/2019 taxes dated 25 May 2019 and Notification No.81/2019 Taxes dated 31 May 2019)

➢ **Legal Updates**

VSG Exports Pvt Ltd Vs Commissioner of Customs 2019-TIOL-977-HC-MAD-GST:

IGST Refund cannot be denied on account of technical glitches.

Facts of the case:

- VSG Exports Private Limited (hereinafter referred as 'Petitioner') had exported Polished Granite Slabs to various countries on payment of IGST.
- As per Rule 96A of CGST Rules, 2017, Shipping Bills filed by an exporter of goods shall be deemed to be an application for refund of integrated tax paid on the goods exported out of India.
- However, Assistant Commissioner Of Customs (Drawback Section), Custom House (Hereinafter referred as 'Respondent') has not refunded IGST amount, being reason that Petitioner has availed drawback at higher side i.e., Composite Rate.
- Respondent referred to Circular No.37/2018, dated 09 October 2018 issued by CBEC, which reads as follows:

  "3.It has been noted that exporters had availed the option to take drawback at higher rate in place of IGST refund out of their own volition. Considering the fact that exporters have made aforesaid declaration while claiming the higher rate of drawback, it has been decided that it would not be justified allowing exporters to avail IGST refund after initially claiming the benefit of higher drawback. There is no justification for re-opening the issue at this stage."

- As drawback code has not been correctly mentioned, refund payable for shipping bill could not be processed by system.
- Since Respondent did not refund the IGST amount, Writ Petition was filed in the court of law.

- Petitioner submitted as under:

- Drawback rates have been prescribed in Drawback Schedule annexed to the Customs, Central Excise duties and Service Tax Drawback Rules, 1995, as amended vide Notification No.131/2016-CUSTOMS (N.T), dated 31 October 2016.

- In the above schedule, goods exported by Petitioner i.e. Polished Granites Slabs are classifiable under Tariff Item No.680203

- As per Notification No.131/2016 – Customs (N.T.) date 31 October 2016
  "If the rate indicated is the same in the columns (4) and (6), it shall mean that the same pertains to only Customs component and is available irrespective of whether the exporter has availed of CENVAT Facility or not"
- Petitioner exported, Polished Granite Slabs, which attracts same rate, stated in columns (4) & (6). Accordingly, they have claimed only drawback of customs component.

- Further, Petitioner had claimed lower rate of drawback, however mistakenly declared in Shipping Bills that they had availed higher drawback by selecting 680203A instead of 680203B.

- To overcome such inadvertent errors, CBEC, Ministry of Finance, Government of India, issued a Circular No.8/2018, dated 23 March 2018 which reads as under
  "Exporters that by mistake they have mentioned the status of IGST payment as "NA" instead of mentioning "P" in the Shipping Bill. In other words, the exporter has wrongly declared that the shipment is not under payment of IGST, despite the fact that they have paid the IGST. As a onetime exception, it has been decided to allow refund of IGST through an officer interface, wherein, the officer can verify and satisfy himself of the actual payment of IGST based on GST return information forwarded by GSTIN. DG (Systems) shall open a physical interface for this purpose".

- Mistake committed by Petitioner is similar to the mistake referred to in CBEC Circular. Accordingly, refund of IGST is allowed through an officer interface specially opened by DG(Systems).

- On the basis of above, Petitioner requested to process its refund claim.

Observation:

- Case on hand will clearly indicate that only due to inadvertence, drawback code in shipping bill was wrongly mentioned as 680203A instead of 680203B.

- Respondent do not dispute that IGST refund is payable to Petitioner but only due to fact that Export General Manifest for shipping bills have been closed by the computer system, it is not possible to refund the IGST amount to the Petitioner.

- Petitioner cannot be made helpless just because the computer system does not enable them to refund the IGST amount

- Petitioner had never availed option to take drawback at higher rate in place of IGST refund and, therefore, the Circular No.37/2018 dated 09 October 2018 is not applicable to the facts of the instant case.

- Further, the Circular No. 37/2018, dated 09 October 2018 issued by CBEC does

not rescinded the earlier Circular No.08/2018, dated 23 March 2018.

- Settled law is that although the circular is not binding on Court or an assessee, revenue cannot raise contention contrary to binding circular; that when a circular remains in operation, revenue is bound by it and cannot be allowed to plead that it is not valid or it is contrary to the terms of statute. (Hon'ble Supreme Court in a case of *Commissioner of Customs, Calcutta Vs. Indian Oil Corporation Limited reported in 2004 (165) E.L.T 257 (S.C.)2004-TIOL-23-SC-CUS*)

- Being an undisputed fact that IGST refund is payable to Petitioner, the Petitioner is absolutely entitled to IGST refund from the Respondent

Held:

- Court is of view that Respondent ought to have refunded IGST amount for the aforementioned shipping bills to Petitioner.

Selvel Media Services Pvt Ltd Vs State of UP reported in2019-TIOL-1034-HC-ALL-GST:

Demand of Advertisement Tax post GST imposed by Nagar Nigam, Kanpur, set aside by the High Court.

Facts of the case:

- Selvel Media Services Private Limited (hereinafter referred as 'Petitioner') are advertising companies and are aggrieved by demand of advertisement tax imposed by the Nagar Nigam, Kanpur on displaying advertisement through hoarding within its jurisdiction.

- Petitioner submits that w.e.f. 01 July 2017, provision to levy advertisement tax has been deleted and UP GST Act, 2017 has come into force, so no advertisement tax can be levied.

- Petitioner submitted as under:

  - There is no dispute to the fact that previously Nagar Nigam Kanpur framed U.P. Municipal Corporation (Assessment and Collection of Tax on Advertisement) Rules, 2009.

  - These Rules were struck down by the Lucknow Bench of the Allahabad High Court in the case of *Anurag Bansal Vs. State of U.P. & others 2011 (5) ADJ (LB) (FB)*.

  - Thereafter, Kanpur Nagar Nigam made another set of rules for the purposes of levying advertisement tax known as Kanpur Nagar Nigam (Vigyapan Kar Ka Nirdharan Aur Wasuli Viniyam) Upvidhi, 2016 which were enforced w.e.f. 2 April 2016.

  - The said bye laws were also struck down vide judgment and order dated 4 May 2017 in writ petition no. 9389 of 2017.

  - Thereafter, no further rules or bye laws for levying advertisement tax have been made and enforced by the Nagar Nigam, Kanpur but even then, demand for advertisement tax has been raised against the petitioners.

Observation:

- The power to levy advertisement tax was contained in Section 172 (2) (h) of the Municipal Corporation Act, 1916 which stood deleted w.e.f. 1 July 2017 by virtue of Section 173 of U.P. GST Act.

- In addition to the above, even the power of the State Government to legislate regarding advertisement tax as provided under Entry 55 of List II of the VII Schedule of the Constitution of India also stood deleted w.e.f. 12 September 2016 by the Constitution (101 Amendment) Act, 2016.

- Article 265 of the Constitution of India mandates that no tax shall be levied or collected except by the authority of law. Therefore, the authority to levy any tax much less the advertisement tax must be derived from the Statutes.

- Since the provision of Section 2 (h) of Section 172 of the Municipal Corporation Act was omitted vide Section 173 of the U.P. GST Act w.e.f. 1 July 2017 and even the power of State legislature to legislate with regard to advertisement tax stood deleted w.e.f. 12 September 2016, there is neither any power left with the State Government or the Municipal Corporation to legislate about the imposition of tax on advertisement.

- In view of the above, after 12 September 2016 or from 1 July 2017 the Nagar Nigam, Kanpur ceased to have any jurisdiction to impose and realize tax on advertisement. Accordingly, the demand of tax on advertisement from the petitioners after 1 July 2017 is held to be illegal and without jurisdiction.

- The notices of demand impugned in the petition to the above extent are quashed and the amount, if any of the advertisement tax deposited by the petitioners for the period 1 July 2017 onwards shall be refunded to the petitioners. Petitioner is absolutely entitled to IGST refund from the Respondent.

Held:

The writ petition is allowed and it is held that the Nagar Nigam, Kanpur shall not realize any tax on advertisement after 1 July 2017.

CGST - Central Goods and Services Tax Act, 2017, SGST – State Goods and Services Tax Act, 2017, IGST- Integrated Goods and Services Tax Act, 2017, UTGST- Union Territory Goods and Services Tax Act, 2017, GST (CTS) - The Goods and Services Tax (Compensation to States) Act, 2017, ITC – Input Tax Credit

SEBI & MCA

SEBI & MCA UPDATES

SEBI Updates

➢ **ENHANCED DISCLOSURE IN CASE OF LISTED DEBT SECURITIES**

- With a view to further secure the interests of investors in listed debt securities, enhance transparency and to enable Debenture Trustees (DTs) to perform their duties effectively and promptly, pursuant to public consultation, amendments to the existing regulatory framework for governing Debenture Trustees (DTs)
- Disclosure of compensation arrangement with clients by DTs on their websites.
- Calendar of interest/ redemptions, due and paid, to be displayed on the website of DT(s) for the financial year
- Furnishing of updated list of debenture holders to the DTs by Issuers/ Registrars to an Issue and Share Transfer Agent (RTA)
- Additional covenants in case of privately placed issues

➢ **ENHANCED DISCLOSURES BY CREDIT RATING AGENCIES(CRAS)**

- In order to further strengthen the disclosures made by CRAs and enhance the rating standards, it has been decided to prescribe the following disclosures
- Computation of Cumulative Default Rates (CDR)
- Introducing Probability of Default (PD)benchmarks for CRAs
- Rating symbol for Instruments having explicit Credit Enhancement feature
- Disclosure of rating sensitivities in press release
- Tracking deviations in bond spreads

MCA Updates

➢ **COMPANIES (PROSPECTUS AND ALLOTMENT OF SECURITIES) THIRD AMENDMENT RULES, 2019**

- Every unlisted public company governed by this rule shall submit Form PAS-6 to the Registrar with such fee as provided in Companies (Registration Offices and Fees) Rules,2014 within sixty days from the conclusion of each half year duly certified by a company secretary in practice or chartered accountant in practice
- The company shall immediately bring to the notice of the depositories any difference observed in its issued capital and the capital held in dematerialised form.

➢ **NATIONAL COMPANY LAW TRIBUNAL(SECOND AMENDMENT) RULES, 2019**

- The Following Rule Prescribes Right To Apply For Class Action u/s 245 Of The Companies Act, 2013

- Rule 3- In case of a company having a share capital, the requisite number of member or members to file an application under sub-section (1) of section 245 shall be –

  (i) at least 5% of the total number of members of the company; or 100 members of the company, whichever is less; or

  (ii) member or members holding not less than 5% of the issued share capital of the company, in case of an unlisted company;

  member or members holding not less than 2% of the issued share capital of the company, in case of a listed company
- Rule- 4 The requisite number of depositor or depositors to file an application under sub-section (1) of section 245 shall be –

  (i)at least 5% of the total number of depositors of the company; or 100 depositors of the company, whichever is less; or

  (ii) depositor or depositors to whom the company owes 5% of total deposits of the company

➢ **COMPANIES (APPOINTMENT AND QUALIFICATION OF DIRECTORS) 2ND AMENDMENT RULES,2019**

- Where a company governed by Rule 25A of the Companies (Incorporation) Rules, 2014, fails to file the e-form ACTIVE within the period specified therein, the Director Identification Number (DIN) allotted to its existing directors, shall be marked as "Director of ACTIVE non-compliant company
- Where the DIN of a director has been marked as "Director of ACTIVE non-compliant company", such director shall take all necessary steps to ensure that all companies governed by rule 25A of the Companies (Incorporation) Rules, 2014, where such director has been so appointed, file e-form ACTIVE
- After all the companies referred to in sub-rule (2) file the e-form ACTIVE, the DIN of such director shall be marked as "Director of ACTIVE compliant company

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