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WINS

(WHITESPAN INFORMATION AND NEWS SERVICES)

A GATEWAY TO KNOWLEDGE

Monthly Newsletter
April, 2024



INDEX		
S.No.	Section	Page No.
1	MAA Foundation Activities	3
2	Message from the Chief Editor	4
3	Editorial Board	5
4	Ministry of Corporate Affairs (MCA)	6-7
5	Securities Exchange Board of India (SEBI)	8-13
6	Reserve Bank of India(RBI)	14-16
7	Central Board of Direct Taxes (CBDT)	17-20
8	Miscellaneous law	21-22
9	Article on (Article-1)	23-26
10	Articles on (Article-2)	27-32
11	Article on (Article-3)	33-39
12	Case Laws	40-44
13	Compliance Checklist for the Month of May 2024	45-46

MAA FOUNDATION ACTIVITIES



Women Empowerment: Maa Foundation is dedicated to advancing women's empowerment. Additionally, as part of the goal, Maa Foundation is offering women vocational training through our initiative "Sui Dhaga".

MESSAGE FROM THE CHIEF EDITOR

“When I let go of what I am, I become what I might be.” – Lao Tzu

It gives us immense satisfaction to share the 84th Edition of “WINS – E-Newsletter” for April 2024, covering legal updates released during the month of April 2024, articles shared by respected professionals, Case Laws and compliance calendar for the month of May 2024.

In this issue, we have covered the following:

1. Corporate Updates from SEBI, RBI, CBDT and other miscellaneous Laws
2. Articles
3. Case Laws
4. Compliance checklist for the month of May 2024.

Trust, WINS not only helps you to keep yourself updated, but also saves your time with crisp summary, in the form of Editor’s Quick Take.

My sincere gratitude to each one of you for sparing your precious time in reading this newsletter and sharing your valuable feedback. Your suggestions and ideas have been a source of inspiration for us and have motivated and guided us to scout for better contents, every month, in timely manner. We take this opportunity to invite articles on topics of professional interest. Please ensure that the article is original, written in good style and adds value for the readers.

You may reach to us at vinayshukla@whitespan.in or [+91 9810 624 262](tel:+919810624262)

With warm regards,

TEAM WINS (Whitespan Information and News Services)
April 30, 2024

OUR EDITORIAL BOARD COMPRISES THE FOLLOWING PROFESSIONALS

- 1. Mr. Vinay Shukla**, a fellow member of The Institute of Company Secretaries of India (ICSI), a graduate in Law, Commerce and Management and the co-founder of WsA having more than thirty years' experience in wide spectrum of corporate functions.
- 2. Ms. Jaya Yadav**, a practicing company secretary based at Gurgaon is a fellow member of The Institute of Company Secretaries of India (ICSI) and a graduate in Law and Commerce from Delhi University.
- 3. Ms. Divya Shukla**, a practicing advocate enrolled in the Bar Council of Delhi and a graduate in Law and Commerce from Christ University, Bengaluru.
- 4. Mr. Shubham Tyagi**, a practicing advocate enrolled in the Bar Council of Delhi and a graduate in Law and Commerce from Delhi University.
- 5. Mr. Pushkar Garg**, Senior Associate at Whitespan Law Offices and member of The Institute of Company Secretaries of India (ICSI) and a graduate in Law and Commerce from MJP Rohilkhand University.
- 6. Ms. Tanya Shukla**, a semi qualified company secretary and a graduate in Commerce from Kanpur University.

Ministry of Corporate Affairs (MCA)

THERE ARE NO UPDATES FROM THE MCA DURING THE MONTH OF APRIL 2024.



Securities Exchange Board of India (SEBI)

1. Framework for Category I and II Alternative Investment Funds (AIFs) to create encumbrance on their holding of equity of investee companies

Date of Notification: April 26, 2024

Effective date: April 26, 2024

Link:

https://www.sebi.gov.in/legal/circulars/apr-2024/framework-for-category-i-and-ii-alternative-investment-funds-aifs-to-create-encumbrance-on-their-holding-of-equity-of-investee-companies_83067.html

Securities Exchange Board of India vide its circular dated April 25, 2024 amended the SEBI (Alternative Investment Funds) Regulations, 2012. **Key highlights of the amendment are:**

Existing schemes of Category I or Category II AIFs who have not on-boarded any investors prior to April 25, 2024, may create encumbrance on equity of investee company for the purpose of borrowing of the said investee company as specified in para 2 above, subject to explicit disclosure with respect to creation of such encumbrance in this regard and disclosure of associated risks in their Private Placement Memorandums (PPMs).

Any encumbrances already created by a scheme of Category I or Category II AIF prior to April 25, 2024, on the securities of investee company for the purpose of borrowing of such investee company, may continue if such encumbrances were created after making an explicit disclosure in the PPM of the scheme

2. SCORES 2.0 New Technology to strengthen SEBI Complaint Redressal System for Investors

Date of Press Release: April 01, 2024

Effective date: April 01, 2024

Link:

https://www.sebi.gov.in/media-and-notifications/press-releases/apr-2024/scores-2-0-new-technology-to-strengthen-sebi-complaint-redressal-system-for-investors_82618.html

Securities Exchange Board of India vide its press release dated April 01, 2024 launched new version of SCORES to strengthen the investor complaint redress mechanism in the securities market by making the process more efficient through auto-routing, auto-escalation, monitoring by the 'Designated Bodies.

SCORES is an online system where investors in securities market can lodge their complaints through web URL and an App.

The website URL for SCORES 2.0 from April 01, 2024 is <http://www.scores.sebi.gov.in/>

Salient features of SCORES 2.0 are as follows:

- i. Reduced and uniform timelines for redressal of investor complaints across the Securities Market i.e. 21 Calendar days from date of receipt of complaint.
- ii. Introduction of auto-routing of complaints to the concerned regulated entity so as to eliminate time lapses, if any, in the flow of complaints.
- iii. Monitoring of the timely redressal of the investors' complaints by the 'Designated Bodies'. Page 2 of 2
- iv. Providing two levels of review: First review by the 'Designated Body' if the investor is dissatisfied with the resolution provided by the concerned regulated entity. Second review by SEBI if the investor is still dissatisfied after the first review.
- v. Introduction of auto-escalation of complaint to the next level in case of nonadherence to the prescribed timelines by the regulated entity or the Designated Body as the case may be.
- vi. Integration with KYC Registration Agency database for easy registration of the investor on to SCORES. Investors can lodge complaints only through new version of SCORES i.e. <https://scores.sebi.gov.in> from April 01, 2024. In the old SCORES i.e. <https://scores.gov.in> investors would not be able to lodge any new complaint. However, Investors can check the status of their complaints already lodged in old SCORES and pending in the old SCORES. Further, the disposed of complaints filed in the old SCORES can be viewed at SCORES 2.0.

3. Relaxation in requirement of intimation of changes in the terms of Private Placement Memorandum of Alternative Investment Funds through Merchant Banker

Date of Circular: April 29, 2024

Effective date: April 29, 2024

Link:

https://www.sebi.gov.in/legal/circulars/apr-2024/relaxation-in-requirement-of-intimation-of-changes-in-the-terms-of-private-placement-memorandum-of-alternative-investment-funds-through-merchant-banker_83091.html

Securities Exchange Board of India vide its circular dated April 29, 2024 in continuation of its Master Circular No. SEBI/HO/AFD/PoD1/P/CIR/2023/130 dated July 31, 2023 for Alternative Investment Funds (AIFs), intimation with respect to any change in the terms of Private Placement Memorandum (PPM) is required to be submitted to SEBI through a merchant banker, along with a due diligence certificate from the merchant banker in the format specified by SEBI.

In this regard, based on the feedback received from the market participants, the aforesaid requirement was reviewed to identify changes in the terms of PPM which may not be required to be submitted through a merchant banker and may be filed directly with SEBI, thereby, facilitating ease of doing business and rationalizing cost of compliance for AIFs.

4. Nomination for Mutual Fund Unit Holders – exemption for jointly held folios

Date of Circular: April 30, 2024

Effective date: April 30, 2024

Link:

https://www.sebi.gov.in/legal/circulars/apr-2024/nomination-for-mutual-fund-unitholders-exemption-for-jointly-held-folios_83122.html

Securities Exchange Board of India vide its circular dated April 30, 2024 in continuation to its circulars prescribing the requirement for nomination/opting out of nomination for all the existing individual unit holder(s) holding Mutual Fund units either solely or jointly, by June 30, 2024, failing which the folios shall be frozen for debits.

In order to simplify, ease and reduce cost of compliance, a working group was constituted to review the present regulatory framework of Mutual Funds and recommend measures to promote the ease of doing business. Based on the recommendations of the working group, a public consultation was carried out.

Accordingly, it has been decided that the requirement of nomination specified under clause 17.16 of the Master Circular for Mutual Funds shall be optional for jointly held Mutual Fund folios.



RESERVE BANK
OF INDIA
(RBI)

1. Foreign Exchange Management (Foreign Currency Accounts by a person resident in India) (Amendment) Regulations, 2024

Date of Notification: April 23, 2024

Effective date: April 23, 2024

Link:

<https://www.rbi.org.in/Scripts/NotificationUser.aspx?Id=12674&Mode=0>

RBI vide its notification dated April 23, 2024, in exercise of the powers under Section 9 and clause (e) of sub-section (2) of section 47 of the Foreign Exchange Management Act, 1999 (42 of 1999) have amended the Foreign Exchange Management (Foreign Currency Accounts by a person resident in India) Regulations, 2015.

As per the amendment, subject to compliance with the conditions regarding raising of External Commercial Borrowings (ECB) or raising of resources through American Depository Receipts (ADRs) or Global Depository Receipts (GDRs) or through direct listing of equity shares of companies incorporated in India on International Exchanges, the funds so raised may, pending their utilisation or repatriation to India can be held in foreign currency accounts with a bank outside India.

2. Foreign Exchange Management (Mode of Payment and Reporting of Non-Debt Instruments) (Amendment) Regulations, 2024

Date of Notification: April 23, 2024

Effective date: April 23, 2024

Link: <https://www.rbi.org.in/Scripts/NotificationUser.aspx?Id=12673&Mode=0>

RBI vide its notification dated April 23, 2024, has made amendments in the Foreign Exchange Management (Mode of Payment and Reporting of Non-Debt Instruments) Regulations, 2019.

A. Mode of Payment

(1) The amount of consideration for purchase / subscription of equity shares of an Indian company listed on an International Exchange shall be paid, -

- (i) through banking channels to a foreign currency account of the Indian company
- (ii) as inward remittance from abroad through banking channels.

Explanation: The proceeds of purchase / subscription of equity shares of an Indian company listed on an International Exchange shall either be remitted to a bank account in India or deposited in a foreign currency account of the Indian company

B. Remittance of sale proceeds

The sale proceeds (net of taxes) of the equity shares may be remitted outside India or may be credited to the bank account of the permissible holder maintained in accordance with the Foreign Exchange Management (Deposit) Regulations, 2016.



Central Board of Direct Taxes (CBDT)

1. Extension of due date for filing of Form No. 10A / IOAB under the Income-tax Act,

1961

Date of Circular: April 25, 2024

Effective date: April 25, 2024

Link:

[chrome-](#)

[extension://efaidnbnmnnibpcajpcglclefindmkaj/https://incometaxindia.gov.in/communications/circular/circular-7-2024.pdf](https://efaidnbnmnnibpcajpcglclefindmkaj/https://incometaxindia.gov.in/communications/circular/circular-7-2024.pdf)

Central board of direct taxes vide its circular dated April 25, 2024, has extended the due date for filing Form No. 10A and 10AB till 30.06.2024.

Purpose of Form 10A and 10AB:

Form 10A applies to a charitable or religious trust for applying and obtaining registration under Section 12A. Those charitable or religious trusts who wish to claim exemptions under Sections 11 and 12 are required to get registered under the Income Tax Act of India by filing Form 10A.

Form 10AB is a mandatory document for charitable trusts and organizations that intend to claim tax benefits under Section 10 (23C), 12A, or 80G of the Income Tax Act (ITA), 1961. The form demands comprehensive information about the entity, specifically its activities and financials.

2. Implementation of e-Verification Scheme-2021

Date of Press Release: February 26th, 2024

Effective Date: February 26th, 2024

Link:

[chrome-](#)

[extension://efaidnbmnnnibpcajpcglclefindmkaj/https://incometaxindia.gov.in/Lists/Press%20Releases/Attachments/1180/Press-Release-Implementation-of-e-Verification-Scheme-2021-dated-26-02-2024.pdf](https://efaidnbmnnnibpcajpcglclefindmkaj/https://incometaxindia.gov.in/Lists/Press%20Releases/Attachments/1180/Press-Release-Implementation-of-e-Verification-Scheme-2021-dated-26-02-2024.pdf)

CBDT vide press release dated February 26th, 2024 notified that for taxpayers to provide their response for the information mismatches relating to Financial Years 2021-22 and 2022-23 displayed on the Compliance portal an on-screen functionality has been made available on the e-filing website..

The taxpayers who have already registered on the e-filing website, can navigate to Compliance portal directly after logging into their account whereas those who are not registered on the e-filing website have to register themselves on the e-filing website to view the mismatch.

In case the taxpayer has disclosed the interest income in the ITR under the line item 'Others' in the Schedule OS, he/she need not respond to the mismatch pertaining to the interest income. The taxpayers who are unable to explain the mismatch may consider the option of furnishing an Updated Income Tax Return if eligible, to make good any under reporting of income.

3. CBDT extends due date for filing Form 10A/10AB

Date of Press Release: April 25th, 2024

Effective Date: April 25th, 2024

Link:

[PressRelease-CBDT-extends-due-date-for-filing-Form-10A-10AB-25-4-24.pdf \(incometaxindia.gov.in\)](https://www.incometaxindia.gov.in/press-release-cbd-extends-due-date-for-filing-form-10a-10ab-25-4-24.pdf)

CBDT vide press release dated April 25, 2024, extended the due date of filing Form 10A/ Form 10AB upto 30th June, 2024, in respect of certain provisions of section 10(23C)/ section 12A/ section 80G/ and section 35 of the Act. CBDT further clarifies that, if any such existing trust, institution or fund had failed to file Form 10A for AY 2022-23 within the extended due date, and subsequently, applied for provisional registration as a new entity and received Form 10AC, can also now avail this opportunity to surrender the said Form 10AC and apply for registration for AY 2022-23 as an existing trust, institution or fund, in Form 10A till 30th June 2024. It is also clarified that those trusts, institutions or funds whose applications for reregistration were rejected solely on the grounds of late filing or filing under wrong section code, may also submit fresh application in Form 10AB within the aforesaid extended deadline of 30th June, 2024. The applications as per Form 10A/ Form 10AB shall be filed electronically through the e-filing portal of Income Tax Department. The Circular No. 07/2024 is available on www.incometaxindia.gov.in.

Miscellaneous Laws

1. Change in Trademark Application Services website

Date of Public Notice: April 01, 2024

Effective date: March 28, 2024

Link:

<https://ipindia.gov.in/newsdetail.htm?985>

DPIIT vide its Public notice dated April 01, 2024 has introduced new URL to cater Trademark Application Services.

URLs are provided as under:

TMR Show cause hearing

Current URL : <https://ipindiaservices.gov.in/TMRDynamicUtility/CauseListForHearingCase/Index>

NEW URL: <https://tmrsearch.ipindia.gov.in/TMRDynamicUtility/CauseListForHearingCase/Index>

TMR Copyright NOC Show cause hearing

Current URL:<https://ipindiaservices.gov.in/TMRCopyrightNoc/CauseListForHearingCase/Index>

NEW URL:<https://tmrsearch.ipindia.gov.in/TMRCopyrightNoc/CopyRightNOChearingCase/Index>

Article 1

Beyond Biases: Building a More Equitable Workplace with the POSH Act

The modern workplace aspires to be a meritocratic ideal, where talent and dedication pave the path to success. However, a persistent challenge continues to impede this ideal: stereotypes. As the recently released [Handbook On Combating Gender Stereotypes by the Supreme Court of India](#) defines it, stereotype means “*a set idea that people have about what someone or something is like, especially an idea that is wrong.*” People are constantly subjected to stereotypes based on their nationality, region, caste, gender, disability, sexuality, skin colour, physical appearance, and race.

Impact of Stereotypes

We often rely on stereotypes without even realizing it. Stereotypes manifest in various ways at work and can lead to exclusion, discrimination and even sexual harassment. A woman might be passed over for a promotion because she's seen as "too emotional" for leadership, despite possessing the necessary skills. A man taking parental leave might be seen as less dedicated to his career than a woman who takes leave.

The impact of stereotypes goes beyond individual experiences. It affects company culture, innovation, and ultimately, the bottom line. When talent is judged based on pre-conceived notions rather than skills, businesses miss out on valuable contributions. Stereotypes can also lead to a lack of diversity of thought, hindering creativity and problem-solving.

Relevance of POSH Act

This is where the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013 (POSH Act) plays a crucial role. By mandating the formation of Internal Committees (ICs) and outlining clear reporting mechanisms, the POSH Act empowers victims to speak up and discourages a culture of tolerance towards harassment. Significance of the POSH Act is multifaceted:

- **Creates a Safe Space:** A robust POSH system fosters a safe space for employees to report any form of harassment thereby discouraging the normalization of biased behavior.
- **Promotes Accountability:** The POSH Act holds employers accountable for creating a harassment-free workplace. This includes addressing and preventing all forms of harassment, including those stemming from stereotypes.
- **Training and Awareness:** The POSH Act mandates training programs for employees and management which are instrumental in raising awareness about stereotypes and their impact.

Building a More Equitable Future

In order to mitigate biases and stereotypes at workplace, employers should:

- Conduct comprehensive training on unconscious bias for all employees.
- Establish clear guidelines, policies and procedures to address sexual harassment at workplace.
- Foster a culture of respect that values diversity and inclusion and promotes a productive work environment.

Conclusion

Eradicating stereotypes at the workplace requires a multi-pronged approach. By complying with the POSH Act which is mandatory, organizations can create a workplace where talent thrives irrespective of background. This not only empowers individuals but also unlocks the true potential of the workforce.

Author:

Pooja Vohra

Advocate

Certified POSH Trainer | IC External Member

Article 2

GST Updation

The Hon'ble High Court of Patna vide its judgment dated 19.04.2024 in the matter of Sincon Infrastructure (P.) Ltd. vs Union of India had enunciated that as per section 50(1) of the GST Act, interest liability arises automatically on delayed filing of returns, irrespective of whether payment is made from Electronic Credit Ledger or Electronic Cash Ledger. Hence, it very important to file all returns under GST on time to avoid the interest on GST liability.

Arrest of CA or Advocate in GST matters:

In the case of Akhil Krishnan Maggu Vrs DGGI [(2020) 32 GSTL 516 (P&H)], the hon'ble court held that a CA or an advocate cannot be arrested if he simply files GST Returns and not involved in fraud with his client.

Article over Direct Tax

1. No Disallowance shall be made u/s 14A of Income Tax Act when assessee have own funds more than Investments earning Exempt Income: ITAT grants relief to macro tech Developers Deputy Commissioner of Income tax vs M/s Macrotech Developers Limited

The Income Tax Appellate Tribunal (ITAT), Mumbai bench held that no disallowance should be made under Section 14A of the Income Tax Act, 1961, when assessees have their own funds exceeding investments earning exempt income. The bench granted relief to Macrotech Developers.

The two-member bench, consisting of Ms. Padmavathy S (Accountant Member) and Kuldip Singh (Judicial Member), concluded that no disallowance should be made under Section 14A of the Income Tax Act, 1961. The bench dismissed the revenue's appeal.

The CBDT With a view to redressing the grievances faced by deductors/collectors who have collected TDS/TCS at normal rate but was required to deduct /collect at double the rate on account of PAN of the deductee being inoperative due to non-linkage of such PAN with Aadhar from 1st April ,2023 has issued a circular no 6 on 23rd April ,2024 not to treat such TDS deductors in default (short deduction) for the tax deducted at normal rate for transactions entered into upto 31.03.2024 if in such cases the PAN of deductee is linked to Aadhar and hence becomes operative on or before 31.05.2024. In such cases there will be no liability on the deductor/collector to deduct/collect the tax under section 206AA/206CC at double the rate because of PAN being inoperative due to non-linkage of PAN with Aadhar and hence such deductors will not be required to pay the difference. Recently many notices have been issued to deductors for shortfall in tax deducted since PAN of deductee was found to be inoperative.

Accordingly where notices have been recd for short deduction because of this reason, it will be advisable to reach out to the deductee and get his PAN linked with Aadhar immediately and in any case on or before 31st May, 2024. It may be noted that this relief is for transactions up to 31st March, 2024. Accordingly for transactions on or after 1st April, 2024 make sure PAN of deductee is linked to Aadhar and valid. The facility of verification of PAN being valid is available on income tax portal.

No investment made outside books of Accounts: ITAT deletes Income Tax Addition ITO vs Direct Trading Co. P. Ltd,

The Income Tax Appellate Tribunal (ITAT), Delhi bench, while deleting the Income Tax Addition, held that no investment has been made by the assessee outside the books of account. The two-member bench of M. Balaganesh (Accountant Member) and Anubhav Sharma (Judicial Member) deleted the Income Tax addition because no investment has been made by the assessee outside the books of account

Exemption u/s 54EC shall not be allowed when Investment has not been made during Period of limitation provided u/s 54EC: ITAT The ITO, 11(2)-4 Aayakar Bhavan Mumbai-400 020 vs Shri Jagdish R. Mookhey CITATION: 2023 TAXSCAN (ITAT) 2673

The Mumbai bench of the Income Tax Appellate Tribunal (ITAT) ruled that an exemption under Section 54EC of the Income Tax Act would not be granted if the investment was not made within the specified timeframe. The case involved an original assessment under Section 143(3), where the total income was assessed at INR 2,44,769. Subsequently, the assessment was reopened under Section 147, and the Assessing Officer found that the assessee claimed exemption under Section 54EC for investing INR 73.50 lakhs in NABARD Bonds. The AO argued that the investment was made beyond the 6-month period from the date of transfer, which occurred on 2.4.2004. The tribunal, led by H.L. Karwa and N.K. Billaiya, agreed with the Revenue's stance, stating that the investment exceeded the permissible timeframe. Consequently, the assessee's appeal was dismissed as the investment was not made within the specified limitation period outlined in Section 54EC of the Income Tax Act, upholding the decision of the CIT(A).

Ex-Parte order passed for Non-Appearance of Assessee: ITAT grants another opportunity giving relief to Oriental Bank Oriental Bank of Commerce vs Jt. Commissioner of Income Tax CITATION: 2023 TAXSCAN (ITAT) 2674

The Jaipur bench of the Income Tax Appellate Tribunal (ITAT) offered relief to Oriental Bank by overturning an ex-parte order due to the non-appearance of the assessee. The government bank, engaged in banking activities, faced a demand of INR 4,92,684 for non/short deduction of Tax Deducted at Source (TDS) under Section 194A of the Income Tax Act. Despite the case being fixed for a hearing, the assessee failed to provide information, leading to the imposition of a penalty of INR 2,67,763 by the Joint Commissioner of Income Tax (TDS) Jaipur. The Commissioner of Income Tax (Appeal) upheld the penalty in an ex-parte order, confirming the levy under Section 271C of the Income Tax Act. The ITAT, comprising Sandeep Gosain and Rathod Kamlesh Jayantbhai, set aside the ex-parte order, remanding the matter to the Assessing Officer (AO) for a fresh adjudication. The AO was instructed to provide the assessee with a reasonable opportunity to present their case, requiring the submission of necessary documents and evidence. The ITAT granted the assessee another chance to be heard, emphasizing the importance of a fair hearing in the interest of justice.

Assessee unaware of Notices being issued in Income Tax Portal: ITAT provides another Opportunity Vrajlal Umedlal Jhaver vs ITO CITATION:2023 TAXSCAN (ITAT) 2675

The Mumbai bench of the Income Tax Appellate Tribunal (ITAT) granted another opportunity to the assessee as he was unaware of the notices that were being issued in the Income Tax Portal. The counsel appearing for the assessee submitted that the learned Commissioner of Income Tax (Appeal) [CIT(A)] has dismissed the appeal in limine, without deciding the issues urged before him on merits on the reasoning that the assessee did not respond to the notices issued by him. The Authorized Representative submitted that the assessee is an aged man and no physical notice was issued to him. All the notices were posted in the income tax portal and the assessee was not aware of those notices. Accordingly, he prayed that, in the interest of natural justice, all the issues may be restored to the file of the CIT(A) for adjudicating them on merits. Therefore, in the interest of natural justice, the bench provided one more opportunity to the assessee to present his case properly before the CIT(A). Thus, the order of the CIT(A) was set aside and the appeal of the assessee was allowed.

Instrumentation Laboratory India (P) Ltd. vs DCIT, Circle 10(2), New Delhi before ITAT, "C" Bench, New Delhi.

Assessment year: 2013-14

Date of Order: 19.4.2024

Issue: Assessment Order u/s 143(3) made beyond limitation provided in section 153.

Facts:

- * Assessment Order signed on 28.12.2016.
- * Limitation for assessment was expiring on 31.12.2016.
- * Assessment Order and other documents were served by speed post in terms of section 282(1)(a) of the Act.
- * Speed post was booked and dispatched on 2.1.2017.
- * Assessment Order and other documents were served on 3.1.2017.

ITAT held: Though in the body of the order, the date of passing the order has been mentioned as 26.12.2016, yet it was dispatched on 2.1.2017.

Following the decision of ITAT, Delhi in the case of Pankaj Sharma dated 8.2.2019, held that the assessment is barred by limitation provided in section 153 of the Act.

Donation given to other trust out of accumulated fund not allowable as application of income under section 11

Assessing Officer completed assessment of assessee-trust under section 143(3), for assessment years 2017-18. Subsequently, CIT(E) notice that certain amount had been donated by assessee to other institutions out of accumulated fund in earlier previous year and Assessing Officer failed to tax same. As per Explanation to section 11(2) read with section 11(3)(d), donation give out of accumulated funds u/s 11(2) of earlier previous years are not allowable as application of income for charitable or religious purposes, and therefore, same would be deemed to be income of assessee of previous year 2016-17, and Assessing Officer ought to have examine this issue during assessment u/s 143(3). Therefore, CIT(E) rightly set aside matter to file of Assessing Officer for making a denovo assessment after proper examination of issue involved. [In favour of revenue] (Related Assessment year: 2017-18) – [Sanganeria Foundations for Health & Education V/s. CIT(Exemption) [2004] 161 taxmann.com 165 (ITAT Delhi)].

Assessee received notice u/s 153A on 05/02/2021 and filed Settlement application on 18/03/2021 i.e. after dissolution of SC by virtue of F.Bill 2021. The application was contended invalid by department.

Held, since F.bill 2021 become effective on 01/04/2021, therefore the amendment barring application on and from 01/02/2021 before SC is retrospective in nature, thus during the interregnum period the assessee is otherwise eligible and have vested right to submit application which cannot be taken away. Also held CBDT was not empowered to allow only those assessee to file belated application who were eligible on 31/01/2021, Notification dated 28/09/2021 to this extent held invalid. Principle followed that *'Retrospective amendment cannot take away vested statutory right of assessee'.*

CA Mrattunjay

AVP- Business Finance Head

BEST GROUP (Automotive & Lighting Business)

Article 3

Liability of Guarantor is co-extensive

Corporate guarantor is co-extensively or coterminous liable to repay debt. *In Laxmi Pat Surana vs. Union Bank of India & Anr. Vs. Civil Appeal No.2734 of 2020, Civil Appeal No.2734 of 2020, Civil Appeal No.26 March 2021.* Bank extended credit facility to M/s Mahaveer Construction, a proprietary firm and corporate guarantee was extended by M/s Surana Metals Ltd. The said loan accounts were declared NPA on 30.1.2010. On being non making repayment by proprietary firm, the banker filed application u/s 7 against the corporate guarantor M/s Surana Metals Ltd on 13.2.2019. The Adjudicating Authority held that action had been initiated against the corporate debtor being co-extensively or coterminous liable to repay debt and failed to repay so despite the recall notice. The reliance was placed *in Bank of Bihar vs. Dr. Damodar Prasad & Anr. In Kiran Gupta vs. State Bank of India & Anr., W.P.(C) 7230/2020 & C.M.APPL.24414/2020(Stay), High Court of Delhi Date of Decision 2 November, 2020.* The issue in the Writ Petition is whether proceedings against the Principal Borrower under the IBC Code and against the Guarantor under SARFAESI Act can be instituted and continued simultaneously. A plea has been taken that after approval of the Resolution Plan under the IB Code, the liability of the Guarantor also comes to an end. The Court held that the liability of the principal borrower and the Guarantor remain co-extensive and the bank is entitled to initiate proceedings against the principal debtor and the guarantor simultaneously. Reliance is placed in the judgment of the Supreme Court *in State Bank of India v. V.Ramakrishan and Another, reported as (2018) 17 SCC 394*, who holds that Section 14 and Section 31 of the IB Code do not bar initiation and continuation of SARFAESI proceedings against the Guarantor; *in Industrial Investment Bank of India Limited vs. Biwswanath Jhunjunwala, reported as (2009)9 SCC 478; In SBI vs. Indexport Registered[1992] 3 SCC 159:AIR 1992 SC 1740]. Similarly, In B. Rajesh vs. Union of India Rep. by its MCA & Ord., W.P. No.31140, 31432 of 2019 and WMP. No.31608, 31609 and 31623 of 2019, Madras High Court Date of Decision 3.09.2020.*

In SBI vs. Indexport Registered [1992] 3 SCC 159: AIR 1992 SC 1740]. The Court held that the decree-holder bank can execute the decree against the guarantor without proceeding against the principal borrower. The guarantor's liability is coextensive with that of the principal debtor. *In Indexport case [(1992) 3 SCC 159: AIR 1992 SC 1740] SCC p.164, para 10).* The liability of the surety is coextensive with that of the principal debtor, unless it is otherwise provided by the contract. A surety's liability to pay the debt is not removed by the reason of the creditor's omission to sue the principal debtor. The creditor is not bound to exhaust his remedy against the principal before suing the surety, and a suit may be maintained against the surety though the principal has not been sued. Reliance is placed *in Chitty on Contracts, 24th Edition., Vol. 2 at pp. 1031-32, para 4831; In Halsbury's Laws of England, 4th Edn. Vol.20, para 159 at p.87. In Jagannath Ganeshram Agarwala v. Shivnaarayan Bhagirath [AIE 1940 Bom 247].* A Double Bench of Bombay High Court held that the liability of the surety is co-extensive, but is not in the alternative. Both the principal debtor and the surety are liable at the same time to the creditors. *In the matter of Manwar Raj Bhagat Suspended Director of Gujarat Hydrocarbons and Power SEZ Ltd. vs. Gujarat Hydrocarbons and Power SEZ Ltd, Co. Appeal (AT)(Insolvency) No.1096 of 2020, NCLAT Principal Bench, New Delhi Date of Decision 11 May, 2021.* The Financial Creditor can simultaneously or one after another initiate CIRP against the Corporate Debtor as well as Corporate Guarantor. Reliance is placed on *the cases of Dr. Vishnu Kumar Aggarwal vs. Dr. Piramal Enterprises Ltd, CA(AT)(Ins.) 346/2018 and State Bank of India vs. Athena Energy Ventures Pvt. Ltd CA (AT)(Ins.) No.633 of 2020.* Financial Creditor can simultaneously or one after another initiate CIRP. *In the matter of Mr. Sandeep Garg, Vs, M/s DMI Finance Pvt. Ltd, Company Appeal (AT)(Insolvency) No.321 of 2021, NCLAT Date of Judgement:24.03.2022.* The release or discharge of a principal borrower from the debt owed by it to its creditor, by an involuntary process, i.e., by operation of law or due to liquidation or insolvency proceeding, does not absolve the surety/guarantor of his or her liability, which arisen out of an independent contract.

Reliance is placed in *the case of Lalit Kumar Jain v/s UOI & Ors [Transferred Case (C) No.245 of 2000], in para 11 and 112; In State Bank of India vs. Athena Energy Ventures Pvt Ltd [CA {AT}(Ins) No.633 of 2000, wherein simultaneous action regarding liquidation or bankruptcy of a corporate debtor and personal guarantor can take place simultaneously. In K.Paramasivam vs. The Karur Vusa Bank Ltd & Anr., Civil Appeal No. 9286 of 2019, Supreme Court of India Date of Judgement: 6 September, 2022. The liability of the guarantor is co-extensive with that of the Principal Borrower. It is open to the Financial Creditor to proceed against the guarantor without first suing the Principal Borrower. Reliance is placed in the three Bench Judgment of Hon'ble Supreme Court in Laxmi Pat Surana.*

2. Corporate debtor as a guarantor fall under the definition of 'Financial Debtor'

Corporate Debtor as a guarantor falls under the definition of Financial Debtor. *In the matter of Essar Steel Ltd IA No.431 of 2018 in CP(IB) Nos.39 & 40 of 2017 and allied IAS. NCLT Ahmedabad date of order 8.3.2019. The corporate debtor is guarantor in any tripartite agreement to any party/lender, the debts fall under the definition of 'Financial Debt' under Sections 5, 7, and 8 of the "I & B" Code. Reliance is placed on the decision of the Honourable NCLAT in the matter of Nikhil Mehta & Sons V. AM Infrastructure Limited. In the matter of 9M Corporation through its Proprietor Vs. Mr. Naresh Verma, Resolution Professional, Company Appeal (AT)(Insolvency) No.45 of 2021, NCLAT New Delhi Date of Judgement:13.07.2021. Guarantee given in the loan agreement provides the status of financial creditor u/s 5(8). Reliance is placed in the NCLAT judgment of Ascot Realty Private Limited Vs. Ajay Kumar Agarwal and Others (Company Appeal) (AT)(Ins. No.658 of 2020. In the matter of Maitreya Doshi, Ex-Director Vs. Anand Rathi Global Finance Ltd, Company Appeal (AT) (Insolvency) No.191 of 2021, NCLAT, Principal Bench, New Delhi Date of Judgement:25.08.2021. If the guarantee is only for security interest like pledging of share, the guarantor is liable only to pledging of share. Vis-à-vis if in addition to pledging of share, if there is guarantee or co-borrower, the guarantor is liable to pay debtor alike corporate debtor.*

3. Admissibility of Application in case of extending guarantee

If the principal debtor does not pay the debt, the application may be filed against the guarantor. If the application is admitted, then application cannot be admitted for the same set of claims against the other corporate debtor (corporate guarantor/s). *In Dr. Vishnu Kumar Agarwal Vs. M/s Piramal Enterprises Ltd.- Company Appeal(AT) (Insolvency) No. 346 of 2018* dated 8.1.2019 wherein Appellate Tribunal held, however, once for same set of claim application under Section 7 filed by the Financial Creditor is admitted against one of the Corporate Debtor (Principal Borrower or Corporate Guarantor(s)), second application by the same Financial Creditor for same set of claim and default cannot be admitted against other Corporate Debtor (the Corporate Guarantor(s) or the Principal Borrower. *In Edelweiss Asset Reconstruction Company Ltd Vs. Sachet Infrastructure Pvt. Ltd, Company Appeal (AT)(Insolvency)No.377 of 2019*, NCLAT Date of decision 20.09.2019. This appeal is against the order of Adjudicating Authority, it held that Appellant- Edelweiss Asset Reconstruction Company Limited being the holder of the corporate Guarantee form the aforesaid Corporate Debtor and the corporate insolvency resolution process having triggered against the Principal Borrower, for the same set of claims against other Corporate Debtor (Corporate Guarantors) are not maintainable. Reliance was placed in the case of *Dr. Vishnu Kumar Agarwal Vs. M/s Piramal Enterprises Ltd.- Company Appeal (AT)(Insolvency)No. 346 of 2018* dated 8.1.2019. *Reversing the order*, the NCLAT held that group corporate Insolvency Resolution Process proceedings required to be initiated against five Corporate Debtors. Apart from the corporate insolvency resolution process which has already been initiated against principal Borrower (para 34).

Reliance was placed in *Mrs. Mamatha vs. AMB Infrabuild Pvt Ltd & Ors., Company Appeal (AT) (Insolvency) No.155 of 2018*: Date of Decision 30th November, 2018. In *Padmaiah Vuppu Vs. Reliance Capital AIF Trustee Company Pvt Ltd & Ors. Company Appeal (AT) (No.1025 of 2019*: NCLAT Date of Decision: 14.10.2019. The appeal was filed against the order u/s 7 of the Code that the Managing Director was not authorised to guarantee on behalf of the corporate debtor. The Appellate Authority held that the Adjudicating Authority has no jurisdiction to decide the question of legality and propriety of the Corporate Guarantee executed by the Corporate Debtor. The Adjudicating Authority has noticed that the debt is payable and there is default, therefore, the application has been rightly admitted. The reliance was placed in the Hon'ble Supreme Court order in *Innoventive Industries Ltd Vs. ICICI Bank and Ors.*'-9201801 SCC 407 (para 27) wherein the Supreme Court held that to mean a right to payment even if it disputed. The Code gets triggered the moment default is of rupees one lakh or more. Followed in *Karan Goel Vs. M/s Pashupati Jewellers & Anr., Co. Appeal (AT)(Insolvency) No.1021 of 2019*. NCLAT Date of Decision 1.10.2019. In the matter of *State Bank of India Vs. Athena Energy Ventures Private Limited, Company Appeal (AT) (Ins) No.633 of 2020*, NCLAT Date of Judgement:24th November, 2020.

CIRP can proceed against Principal Borrower as well as guarantor simultaneously. The Appellate Authority directed to appoint the same resolution professional. Reliance is placed in the case of *Edelweiss Asset Reconstruction Company Limited vs. Sachet Infrastructure Ltd and Ors. dated 20 September, 2019*.

In the matter of *Rajnish Gupta, Erstwhile Director, DMC Infrastructure Pvt. Ltd vs. Union Bank of India, Company Appeal (AT)Insolvency No 351 of 2021*, NCLAT Principal Bench, New Delhi Date of Judgement:22nd February, 2022.

Mere withdrawal of CIRP against the Principal Borrower will not be a bar for the Lender in initiating fresh CIRP against the Guarantor. *In Xylem Water Solutions India Pvt. Ltd EPC Construction India Ltd & Anr., I.A. No.712 of 2022 in Company Appeal (AT)(Ins.)No.1474 of 2019, NCLAT Principal Bench, New Delhi Date of order: 15.07.2022.* If the counter guarantee is discharged, the Bank guarantee is also discharged.

In case of further query, clarification, you may direct contact to the Author. Various books of the author have published, i.e.

(1) [SERIOUS FRAUD UNDR THE COMPANIES ACT & THE LLP ACT](#) -

https://www.amazon.in/Serious-fraud-under-companiesact/dp/9358113553/ref=sr_1_1?keywords=SERIOUS+FRAUD+UNDER+THE+COMPANIES+ACT+%26+THE+LLP+ACT&sr=8-1

(2) [LAW ON INSOLVENCY AND BANKRUPTCY](#) -

https://www.amazon.in/dp/9356596808?ref=myi_title_dp

(3) [ADJUDICATION OF COMPANIES ACT, MATTERS UNDER NCLT \(Third Edition-2023\)](#)

https://www.amazon.in/dp/9353619084/ref=cm_sw_em_r_mt_dp_KXX67601KJSBGXWESMFM

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Case Laws

State of Bihar & Ors Vs Ziqitza Health Care Ltd. & Anr. (Supreme Court of India)

Dated – 16.04.2024

The Supreme Court's ruling in the case centered on the interpretation of Section 134(7) of the Companies Act regarding the inclusion of notes of account in balance sheets. The court stressed the importance of these notes for understanding a company's financial position. Multiple parties were involved, presenting arguments about disqualification from tender processes. The court examined whether disqualifications based on non-compliance with explanatory note submissions were justified. The decision highlights the significance of explanatory notes in balance sheets and clarifies the legal obligations of companies in financial reporting. This landmark judgment sets a precedent for future cases involving corporate governance and tender processes, emphasizing transparency and adherence to statutory provisions. Through this analysis, it becomes evident that meticulous attention to detail in financial reporting is essential for upholding corporate integrity and ensuring fair competition in tender processes.

Global Credit Capital Limited and Another vs Sach Marketing Pvt. Ltd. and Another

Dated- 26.04.2024

The Supreme Court, in a recent judgment, discussed the test to determine whether a debt is a financial debt within the meaning of sub-section (8) of Section 5 of the Insolvency and Bankruptcy Code 2016 (IBC) and held that there cannot be a debt within the meaning of subsection (11) of Section 5 of the IB Code unless there is a claim within the meaning of sub-section (6) of Section 5 of thereof. The test to determine whether a debt is a financial debt within the meaning of sub-section (8) of Section 5 is the existence of a debt along with interest, if any, which is disbursed against the consideration for the time value of money.

The cases covered by categories (a) to (i) of sub-section (8) must satisfy the said test laid down by the earlier part of sub-section (8) of section 5. While deciding the issue whether a debt is a financial debt or an operational debt arising out of a transaction covered by an agreement or arrangement in writing, it is necessary to ascertain what is the real nature of the transaction reflected in the writing; and where one party owes a debt to another and when the creditor is claiming under a written agreement/arrangement providing for rendering 'service', the debt is an operational debt only if the claim subject matter of the debt has some connection or co- relation with the 'service' subject matter of the transaction.

Ashok Dattatray Atre & Ors. v. State Bank of India & Ors.

Dated- 04.01.2024

Hon'ble NCLAT in this decision tried eliminating common problems faced by resolution applicants in implementation phase of the resolution plan. In this judgement Hon'ble NCLAT held that: (i) Extension of time in the payment as per Resolution Plan is not a modification of the Resolution Plan, for which jurisdiction can be exercised by the Adjudicating Authority/ Appellate Tribunal. (ii) it is not necessary that CoC should express its concurrence, only then the Adjudicating Authority can exercise its jurisdiction. (iii) The jurisdiction is there with the Adjudicating Authority in appropriate cases for granting extension of time in payment as per Resolution Plan and to pass appropriate order. These important clarifications regarding the non requirement of the CoC's concurrence and the sale of assets for making payments under the resolution plan would go a long way in making plans more workable and secure investors' interests.

Shantanu Sanjay Hundekari v. Union of India

Dated- 28.03.2024

Hon'ble Bombay High Court in the above case observed that the provision of Section 122(1-A) of the CGST Act applies to the taxable persons who retain the benefit of certain transactions conducted in contravention of the Act, and does not apply, an individual employee lacking the legal status of a taxable person, cannot fall within its purview. Furthermore, the invocation of Section 137, which deals with offenses by companies. In the judgment, deeming the show cause notice against the individual as devoid of jurisdiction and legality, the Court highlighted the disproportionate nature of the demanded penalty. The judgment serves as a significant legal precedent, shedding light on the complexities surrounding tax penalties and the necessity for stringent adherence to jurisdictional principles.

Cox & Kings Limited vs. SAP India Private Limited

Dated- 06.12.2023

The Supreme Court made a significant ruling regarding the applicability of the group of companies doctrine in arbitration proceedings within India. The court established that non-signatory parties, owing to their relationship with the signatory and involvement in commercial activities, cannot be considered as unrelated entities to a dispute under arbitration. Furthermore, the Supreme Court highlighted the importance of determining whether a non-signatory to an arbitration agreement intended to form a legal relationship with the signatory and consented to be bound by the arbitration agreement. Additionally, it referenced Section 7A of the Arbitration and Conciliation Act, underscoring that while arbitration is contractual in nature, it is not obligatory for parties to be signatories in order to be bound by its terms.

Shakti Yezdani and Another v. Jayanand Jayant Salgaonkar and Others

Dated-14.12.2023

The Supreme Court in this judgement has offered clarification on the status of nominees as nominated under Section 109A of the erstwhile Companies Act, 1956 ('Act') in the context of succession laws. The court emphasized that the nomination process outlined in the Companies Act does not supersede succession laws. It stated that the responsibility of succession planning for shareholders lies outside the realm of the company's affairs. In cases involving a will, the court specified that it is the duty of the administrator or executor under the Indian Succession Act, 1925, or, in instances of intestate succession, the applicable succession laws to determine the rightful heirs.

Compliance Checklist

COMPLIANCE CALENDAR FOR MAY 2024

Sun	Mon	Tue	Wed	Thu	Fri	Sat
			1	2	3	4
5	6	7	8	9	10	11
12	13	14	15	16	17	18
19	20	21	22	23	24	25
26	27	28	29	30		31

Tax Related Compliance

GSTR-1 Return (Monthly)

GSTR-3B Return (Monthly)

GSTR-5

GSTR-7

GSTR-8

GSTR-6

SEBI Compliances

Secretarial Compliance Report

Financial Results

Statement of Deviation or Variation

Ministry of Corporate Affairs

Form-11

PAS-06

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