

DIRECT TAX CASE LAWS

Where approval has been given in a mechanical manner without appreciating the facts properly and there being complete non-application of mind by the superior authorities, whole proceedings u/s 147 held void

RMP HOLDING (P) LTD., VERSUS ITO, 020 (11) TMI 402 - ITAT NEW DELHI

Original assessment was framed u/s 143(3) on 10th March, 2014 determining the income at ₹ 20,06,714/- as against the returned loss of ₹ 20,53,019/- and wherein the issue of unsecured loan creditors was duly considered and accepted on the basis of various supporting documents filed at the time of original assessment and since there is no allegation in the reasons recorded that there is failure on the part of the assessee to disclose fully and truly all material facts necessary for completion of the assessment, therefore, the notice issued u/s 148 after a period of four years from the end of the relevant assessment year in the instant case is illegal and invalid being without jurisdiction.

AO has proceeded to reopen the assessment on the basis of wrong appreciation of facts by mentioning that the assessment is proposed to be made for the first time whereas the facts stood otherwise, i.e., the assessment was, in fact, completed u/s 143(3) therefore, there is complete non-application of mind by the AO as well as by both the superior authorities.

Order of the Ld. Pr. CIT u/s. 263 of the Act, to have been passed in an arbitrary manner, without confronting the assessee with the error in the order of the AO, and based on incorrect appreciation of facts, order be set aside.

SH. BIKRAMJEET SINGH VERSUS THE PCIT-2, CHANDIGARH 2020 (11) TMI 860 - ITAT CHANDIGARH

AO had accepted the generic reply of the assessee and not cared to enquire as to under what circumstances such huge number of edits were required to be done in the client codes. The figure has been incorrectly taken as ₹ 11,58,692.40 instead of ₹ 1,15,86,912.40. Further the 'mtm' markings are not the profits earned by the assessee on account of trading in futures and options, but represent the daily settlement of the unsold trades at their prevailing market price. PCIT we find has neither picked up the correct figures from the statement of accounts submitted

by the brokers, nor understood what the figures represented and accordingly arrived at an incorrect finding that the assessee had not reflected true profits, running in crores, earned on trading in futures and options. The vague and illogical show cause notice, the incorrect interpretation of documents by the Ld. Pr. CIT all show the arbitrary manner in which this extraordinary power to revise the order of the AO has been exercised by the Ld. Pr. CIT. Since the impugned order of the Ld. Pr. CIT u/s. 263 of the Act, to have been passed in an arbitrary manner, without confronting the assessee with the error in the order of the AO, and based on incorrect appreciation of facts, there is no hesitation in setting aside the order of the Ld. PCIT passed u/s. 263.

When the AO has not applied his mind at the time of initiation of penalty proceedings by satisfying himself where it is a case of “concealment of income” or “furnishing of inaccurate particulars of income” then the entire penalty proceedings are vitiated and bad in law

M/S. CHEGG INDIA (P) LTD. VERSUS ACIT, CIRCLE 6 (1), NEW DELHI. 2020 (11) TMI 776 - ITAT DELHI

AO himself was not aware/sure as to whether he is initiating penalty proceedings by way of impugned notice either for “concealment of particulars of income” or “furnishing of inaccurate particulars of income” by the assessee rather issued vague or ambiguous notice by incorporating both the limbs of section 271 (1) (c) of the Act. AO also neither invoked Explanation 7 of section 271(1)(c) of the Act nor any satisfaction note in the notices initiating the penalty proceedings has been recorded. When the charge is to be framed against any person so as to move the penal provision against assessee, he is required to be specifically made aware of the charges to be levied against the assessee under specific provisions of the Act. Not only this, even at the time of assessment proceedings, AO has not applied his mind as to whether he is satisfied if the assessee company has “concealed the income” or “furnished inaccurate particulars of income” mandatory to initiate the penalty proceedings u/s 271(1)(c) of the Act which is apparent from the satisfaction note of the AO. When the AO has not applied his mind at the time of initiation of penalty proceedings by satisfying himself if it is a case of “concealment of income” or “furnishing of inaccurate particulars of

income” then the entire penalty proceedings are vitiated and bad in law.

Additions without proper examination of the veracity of the claim, not justifiable

SRI BOMMINENI SUNIL KUMAR, SRI BOMMINENI PAPI REDDY, HANAMKONDA VERSUS INCOME TAX OFFICER, WARD-2, WARANGAL. 2020 (11) TMI 446 - ITAT HYDERABAD

There are no findings by the Ld. Revenue Authorities that both the assessee are engaged in any other activity earning income other than agricultural income. In this situation, it is a great injustice inflicted on both the assessee by the Ld. Revenue Authorities for making additions without properly examining the veracity of the claim of the assessee when sufficient documents and explanation were furnished before them. Amount deposited by both the assessee are from the sale proceeds of the agricultural owned by them. Hence the addition made by the Ld. AO which was further sustained by the Ld. CIT (A) on this count is not justifiable and order of the Ld. CIT (A) set aside and the Ld. AO directed to delete the addition made u/s 69.

Where the Assessee has discharged its onus u/s 68, no addition can be made unless the AO brings forward some corroborative evidence to substantiate the addition

THE INCOME TAX OFFICER-14 (3) (4) , MUMBAI VERSUS M/S. SUPERGOLD PROPERTIES PVT. LTD., (SUCCESSOR OF M/S. ADVAYA TEX TRADING PVT. LTD.) 2020 (11) TMI 46 - ITAT MUMBAI

Assessee has discharged the primary onus to demonstrate fulfillment of primary ingredients of Sec.68 and it was incumbent upon revenue to dislodge the assessee's claim by bringing on record, cogent material to establish that the assessee's unaccounted money was routed in its books of account in the garb of unsecured loans. However, bench is unable to find any such material except for the fact that additions were made merely on suspicious, conjectures and surmises. Therefore, no infirmity could be found, in the impugned order.

NOTIFICATIONS

Notification No. 89/2020 dated the 2nd November, 2020

In exercise of powers conferred by sub-clause (vi) of clause (b) of the Explanation to clause (23FE) of section 10 of the Income-tax Act, 1961 (hereinafter referred to as the “Act”), the Central Government hereby specifies the sovereign wealth fund, namely, the MIC Redwood 1 RSC Limited, Abu Dhabi, United Arab Emirates, (hereinafter referred to as “the assessee”) as the specified person for the purposes of the said clause in respect of the investment made by it in India on or after the date of publication of this notification in the Official Gazette but on or before the 31st day of March,

2024 (hereinafter referred to as “said investments”) subject to the fulfilment of the specified conditions.

CIRCULARS

Circular No. 19/2020 F.No.197/135/2020-ITA-1 3rd November, 2020

Representations have been received by the Board/field authorities stating that Form No. 10BB could not be filed along with the return of income for AY 2016-17 and AY 2017-18. It has been requested that the delay in filing of Form No 10BB may be condoned.

Accordingly, with a view to expedite the disposal of applications filed by such entities for condoning the delay and in exercise of the powers conferred under section 119(2) (b) of the Act, the Central Board of Direct Taxes hereby directs that:

(i) In all the cases of belated applications in filing of Form No. 10BB for years prior to AY. 2018-19, the Commissioners of Income-tax are authorized to admit such applications for condonation of delay u/s 119 (2) (b) of the Act. The Commissioner will while entertaining such applications regarding filing Form No. 10BB shall satisfy themselves that the applicant was prevented by reasonable cause from filing such application within the stipulated time. Further, all such applications shall be disposed of by 31.03.2021.

(ii) where there is delay of upto 365 days in filing Form No. 10BB for Assessment Year 2018-19 or for any subsequent Assessment Years, the Commissioners of Income-tax are hereby authorized to admit such belated applications of condonation of delay under section 119(2) of the Income-tax Act, 1961 and decide on merits.

The Commissioners of Income-tax shall, while entertaining such belated applications in filing Form No. 10BB, satisfy themselves that the applicant was prevented by reasonable cause from filing such application within the stipulated time.

NEWS

Income Tax relief for Real-estate Developers and Home Buyers

As part of the Aatma Nirbhar Bharat Package 3.0 as announced by Hon'ble Finance Minister on 12th November, 2020, certain income tax relief measures were brought in for real-estate developers and homebuyers.

Up to 2018, section 43CA of the Income-tax Act, 1961 (‘the Act’) provided for deeming of the stamp duty value (circle rate) as sale consideration for transfer of real-estate inventory in the case the circle rate exceeded the declared consideration. Consequentially, stamp duty value was deemed as purchase consideration in case of buyer under section 56(2)(x) of the Act.

In order to provide relief to real estate developers and buyers, the Finance Act, 2018, provided a safe harbour of 5%. Accordingly, these deeming provisions triggered only where the difference between the sale/purchase consideration and the circle rate was more than 5%. In order to provide further relief in this matter, **Finance Act, 2020**

increased this safe harbour from 5% to 10%. Therefore, currently, the circle rate is deemed to be the sale/purchase consideration for real estate developers and buyers only where the variation between the agreement value and the circle rate is more than 10%.

In order to boost demand in the real-estate sector and to enable the real-estate developers to liquidate their unsold inventory at a rate substantially lower than the circle rate and giving benefit to the home buyers, **it has been decided to further increase the safe harbour from 10% to 20% under section 43CA of the Act for the period from 12th November, 2020 to 30th June, 2021 in respect of only primary sale of residential units of value up to Rs. 2 crore.** Consequential relief by increasing the safe harbour from 10% to 20% shall also be allowed to buyers of these residential units under section 56(2)(x) of the Act for the said period. Therefore, for these transactions, circle rate shall be deemed as sale/purchase consideration only if the variation between the agreement value and the circle rate is more than 20%.

Legislative amendments in this regard shall be proposed in due course.

CBDT to validate Unique Document Identification Number (UDIN) generated from ICAI portal at the time of upload of Tax Audit Reports

The Institute of Chartered Accountants of India, in its gazette notification dated 2 August, 2019, had made generation of UDIN from ICAI website www.icai.org mandatory for every kind of certificate/tax audit report and other attestations made by their members as required by various regulators. This was introduced to curb fake certifications by non-CAs misrepresenting themselves as Chartered Accountants.

In line with the ongoing initiatives of the Income Tax Department for integrating with other Government agencies and bodies, Income-tax e-filing portal has completed its integration with the Institute of Chartered Accountants of India (ICAI) portal for validation of Unique Document Identification Number (UDIN) generated from ICAI portal by the Chartered Accountants for documents certified/attested by them.

It may be noted that, in consonance with the above requirement, Income-tax e-filing portal had already factored mandatory quoting of UDIN with effect from 27 April, 2020 for documents certified/attested in compliance with the Income-tax Act, 1961 by a Chartered Accountant. With this system level integration, UDIN provided for the audit reports/certificates submitted by the Chartered Accountants in the e-filing portal shall be validated online with the ICAI. This will help in weeding out fake or incorrect Tax Audit Reports not duly authenticated with the ICAI.

If for any reason, a Chartered Accountant was not able to generate UDIN before submission of audit report/certificate, the Income-tax e-filing portal

permits such submission, subject to the Chartered Accountant updating the UDIN generated for the form within 15 calendar days from the date of form submission in the Income-tax e-filing portal. If the UDIN for the audit report/certificate is not updated within the 15 days provided for the same, such audit report/certificate uploaded shall be treated as invalid submission.

AATMANIRBHAR BHARAT 3.0

Finance Minister announces measures on Aatma Nirbhar Bharat 3.0

Union Minister for Finance & Corporate Affairs Smt. Nirmala Sitharaman has announced **12 key measures**, as part of Government of India's stimulus to the economy, under Aatma Nirbhar Bharat 3.0. The net stimulus announced today amounts to ₹ 2.65 Lakh crore. While addressing the Press Conference, Smt Sitharaman also informed that the total stimulus announced by the Government and Reserve Bank of India till date, to help the nation tide over the COVID-19 pandemic, works out to ₹ 29.87 lakh crore, which is 15% of national GDP. Out of this, stimulus worth 9% of GDP has been provided by the government.

The following are the 12 key announcements under Aatma Nirbhar Bharat 3.0-

1) Aatma Nirbhar Bharat Rozgar Yojana

A new scheme to incentivize job creation during COVID-19 recovery has been launched. If EPFO-registered establishments take in new employees without EPFO registration or those who lost jobs earlier, the Yojana will benefit these employees.

Beneficiaries / New Employees under the scheme would be: (i) any new employee joining employment in EPFO registered establishments on monthly wages less than Rs.15,000, (ii) EPF members drawing monthly wage of less than Rs.15,000 who made exit from employment during COVID Pandemic from 01.03.2020 to 30.09.2020 and is employed on or after 01.10.2020.

Central Govt. will provide subsidy for two years in respect of new eligible employees engaged on or after 01.10.2020 at following scale:

Establishments employing up to 1000 employees: Employee's contributions (12% of Wages) & Employer's contributions (12% of wages) totalling 24% of wages

Establishments employing more than 1000 employees: Only Employee's EPF contributions (12% of EPF wages)

The scheme will be effective from October 1, 2020 and operational till 30 June 2021. Certain other eligibility criteria would have to be met, and Central Government will provide subsidy for two years in respect of new eligible employees.

2) Emergency Credit Line Guarantee Scheme for MSMEs, businesses, MUDRA borrowers and individuals (loans for business purposes), has been extended till March 31, 2021.

A Credit guarantee support scheme ECLGS 2.0 is being launched for Healthcare sector and 26 stressed sectors with credit outstanding of above

Rs. 50 crore and up to ₹ 500 Crore as on 29.2.2020 stressed due to COVID-19, among other criteria. Entities will get **additional credit up to 20% of outstanding credit** with a tenor of five years, including 1 year moratorium on principal repayment. This scheme will be available till 31.3.2021.

3) Production Linked Incentive worth ₹ 1.46 Lakh Crore to 10 champion sectors.

10 more Champion Sectors will be covered under the Production Linked Incentives Scheme to help boost competitiveness of domestic manufacturing. This will give a big boost to economy, investment, exports and job creation. A total amount of nearly 1.5 Lakh Crore has been earmarked across sectors, for next five years. The ten sectors are - Advance Cell Chemistry Battery, Electronic/Technology Products, Automobiles & Auto Components, Pharmaceuticals Drugs, Telecom & Networking Products, Textile Products, Food Products, High Efficiency Solar PV Modules, White Goods (ACs & LED), and Specialty Steel.

4) ₹ 18,000 Crore Additional outlay of for PM Awaas Yojana - Urban

A sum of Rs 18000 cr is being provided for PMAY-Urban over and above Rs. 8000 Crore already allocated this year. This will help ground 12 Lakh houses and complete 18 Lakh houses, create additional 78 Lakh jobs and improve production and sale of steel and cement, resulting in multiplier effect on economy.

5) Support for Construction & Infrastructure - Relaxation of Earnest Deposit Money & Performance Security on Government Tenders

To provide ease of doing business and relief to contractors whose money otherwise remains locked up, performance security on contracts has been **reduced from 5-10% to 3%**. It will also extend to ongoing contracts and Public Sector Enterprises. EMD for tenders will be replaced by Bid Security Declaration. The relaxations in the General Financial Rules will be in force till December 31, 2021.

6) Income Tax relief for Developers & Home Buyers

Differential between circle rate and agreement value in real estate income tax under Section 43 CA of IT Act has been increased from 10% to 20%. This is for primary sale of residential units up to ₹ 2 Crore (from date of announcement of this scheme, till June 30 2021). Consequential Relief up to 20% shall also be allowed to buyers of these units under section 56(2)(x) of IT Act for the said period. The Income Tax relief provides incentive to middle class to buy homes.

7) Platform for Infra Debt Financing

Government will make ₹6,000 Crore equity investment in debt platform of National Investment and Infrastructure Fund (NIIF), which will help

NIIF provide a debt of ₹ 1.1 Lakh Crore for infrastructure projects by 2025.

8) Support for Agriculture: ₹65,000 Crore for subsidized fertilizers

As fertilizer consumption is going up significantly, ₹65,000 Crore is being provided to ensure increased supply of fertilizers to farmers to enable timely availability of fertilisers in the upcoming crop season.

9) Boost for Rural Employment:

Additional outlay of ₹10,000 Crore is being provided for PM Garib Kalyan Rozgar Yojana to provide rural employment. This will help accelerate rural economy.

10) Boost for Project Exports

₹3,000 Crore boost is being provided to EXIM Bank for promoting project exports under Indian Development and Economic Assistance Scheme (IDEAS Scheme). This will help EXIM Bank facilitate Lines of Credit development assistance activities and promote exports from India.

11) Capital and Industrial Stimulus

₹10,200 Crore additional budget stimulus is being provided for capital and industrial expenditure on domestic defence equipment, industrial infrastructure and green energy.

12) R&D grant for COVID Vaccine

₹900 Crore is being provided to Department of Biotechnology for Research and Development of Indian COVID Vaccine.

GST NEWS

GSTN issued advisory on auto-population of e-invoice details into GSTR-1 dated 17 November, 2020

The GSTN has issued advisory on auto-population of e-invoice details into GSTR-1. Before filing GSTR-1, taxpayers are advised to review the details of e-invoices auto-populated. Taxpayers are advised to modify/update only those documents where the details auto-populated from e-invoices are not as per the actual invoice issued.

The notified registered taxpayers have to prepare and issue their invoices by obtaining Invoice Reference Number ('IRN') from Invoice Registration Portal ('IRP'). Upon successful generation of IRN, details of such e-invoices will be auto-populated in respective tables of GSTR-1. The same can be downloaded as excel file as well. In case the GSTR-1 for corresponding period was already filed by the taxpayer, then, the details from e-invoices can be downloaded as excel file only. The details would be auto-populated based on document date. After auto-population of details from e-invoices, in case of cancellation of IRN, such documents will be deleted in the respective table. Details of e-invoices auto-populated in GSTR-1 can be edited/deleted by the taxpayer. Such edited documents will be

treated as if they were not auto-populated but uploaded separately by taxpayer. Taxpayers are advised to modify/update only those documents where the details auto-populated from e-invoices are not as per the actual invoice issued. Any subsequent modifications made to the auto-populated documents (in GSTR-1 tables) would not be reflected in this excel file.

NOTIFICATIONS

Notification No. 82/2020 – Central Tax dated 10th November, 2020.

Govt. amends CGST Rules; time and manner of filing GST returns prescribed.

The Government has made several amendments to CGST Rules. The form and manner of furnishing details of outward supplies, form and manner of ascertaining details of inward supplies and time limit manner of furnishing of GST return have been amended. Also, the new manner of opting for furnishing quarterly return is prescribed.

Notification No. 83/2020 – Central Tax dated 10th November, 2020

Govt. notifies time limit for filing GSTR-1 w.e.f 01.01.2021

The Government has notified the due dates for furnishing the details of outward supplies in FORM GSTR-1. These new dates shall be applicable w.e.f 01.01.2021. The monthly GSTR-1 shall be filed on or before 11th day of next month and quarterly GSTR-1 shall be filed on or before 13th day of next month after ending such quarter.

Notification No. 84/2020 – Central Tax dated 10th November, 2020

Option to file quarterly returns now available to taxpayers having turnover upto Rs. 5 Cr.

CBIC notified that registered persons having an aggregate turnover of up to Rs. 5 Cr. in the preceding FY, and who have opted to furnish a return for every quarter shall furnish a return for every quarter from January 2021 onwards, and pay the tax due every month in accordance with section 39(7).

A registered person whose aggregate turnover is above Rs. 5 Cr. during a quarter in a FY shall not be eligible for furnishing of return on a quarterly basis from the first month of the succeeding quarter.

Notification No. 85/2020 – Central Tax dated 10th November, 2020

CBIC notifies procedure to opt Quarterly GSTR 3B

The registered persons, notified under section 39(1), who have opted to furnish a return for every quarter or part thereof, as the class of persons who may, in first month or second month or both months of the quarter, follow the special procedure such that the said persons may pay the tax due under proviso to sub-section (7) of section 39, by way of making a deposit of an amount in the

electronic cash ledger equivalent to with some proviso's, -

-35% of the tax liability paid by debiting the electronic cash ledger in the return for the preceding quarter where the return is furnished quarterly; or

-the tax liability paid by debiting the electronic cash ledger in the return for the last month of the immediately preceding quarter where the return is furnished monthly;

This notification shall come into force with effect from the 18th day of January, 2021.

Notification No. 86/2020 – Central Tax dated 10th November, 2020

Notification 76/2020-Central tax dated 15.08.2020 rescinded by CBIC, w.r.t to due dates of GSTR 3B for October 20 to March 21

CBIC rescinded Notification No. 76/2020-Central Tax, dated the 15th October 20 w.r.t due dates of filing GSTR-3B for October 20 to March 21.

Notification No. 87/2020- Central Tax Dated 10th November, 2020

Time limit of filing Form ITC-04 for period July to Sep 2020 extended to 30.11.2020

The Government has extended the time limit for furnishing the declaration in FORM GST ITC-04, in respect of goods dispatched to a job worker or received from a job worker, during the period from July, 2020 to September, 2020 till the 30th day of November, 2020.

Notification No. 88/2020- Central Tax Dated 10th November, 2020

Threshold for mandatory E-invoice to be Rs. 100 Crores w.e.f 01.01.2021

With effect from 01.01.2021, the notified registered persons whose aggregate turnover in any preceding financial year from 2017-18 onwards exceeds 100 crore rupees shall prepare e-invoice in FORM GST INV-01 after obtaining an Invoice Reference Number. Currently, this threshold limit is 500 crore rupees.

Notification No. 89/2020- Central Tax Dated 29th November, 2020

No penalty will be imposed for QR Code requirement for Dec 20-Mar 21, if compliance is done from Apr 21

Penalty for Non compliance with QR Code on B2C transactions waived from 1st December 2020 till 31st March 2021, provided compliance with the said provision is adhered from 1st April 2021

CIRCULARS

Circular No. 143/13/2020- GST Dated 10th November, 2020

Govt. issued clarification on 'Filing Quarterly Return with monthly GST Payment' for small taxpayers

Every registered person who is required to furnish a return in FORM GSTR-3B, and who has an aggregate turnover of up to 5 crore rupees in the

preceding financial year, is eligible for the Quarterly Return Monthly Payment Scheme (QRMP) Scheme. This new Scheme will be effective from 01.01.2021. The facility to avail the Scheme on the common portal would be available throughout the year.

PRESS RELEASE

Four persons arrested for fraudulent ITC by Directorate General of GST Intelligence, Mumbai dated November 11, 2020

Four persons arrested by the Mumbai Zonal Unit of Directorate General of GST Intelligence. The arrested persons, who are Director of M/s. Rane Mega Structure Private Limited, Proprietor of M/s. ACS Hardware and Networking, Director/promoter of M/s Keshariya Metal Pvt. Ltd. & its group companies and Managing Director of M/s Shailaja Commercial Trade Frenzy Ltd. have availed and passed on fictitious Input Tax Credit amounting to a total of Rs. 408.67 Crore.

Gross GST Revenue of Rs 1,04,963 crores collected in November,2020 dated 1st December, 2020

The gross GST revenue collected in the month of November, 2020 is 1,04,963 crore of which CGST is 19,189 crore, SGST is 25,540 crore, IGST is 51,992 crore (including 22,078 crore collected on import of goods) and Cess is 8,242crore (including 809 crore collected on import of goods). The total number of GSTR-3B Returns filed for the month of November up to 30 November 2020 is 82 lakhs.

CASE LAWS / ADVANCE RULINGS

Assessment Order can't be set aside where returns are filed beyond the time period of section 62

Softouch Health Care (P.) Ltd. v. State Tax Officer - [2020] 121 taxmann.com 105 (Kerala)

The petitioner was engaged in providing ayurvedic and spa services. The petitioner was aggrieved by the assessment orders that were passed for the period from April 2018 to October 2019 on best judgment basis. In the writ petition, the contention of the petitioner was that it complied with the assessment orders within the statutorily permitted period of 30 days from the date of receipt of the said assessment orders.

The petitioner submitted that it filed returns for the various months as required and also filed applications for rectification of errors apparent on the face of the assessment orders that were served on him. It also contended that in view of the returns subsequently filed within the period permitted, assessment orders had to be withdrawn.

The Hon'ble High Court observed that the mode of communication of an order, by making it available on the common portal, would be deemed as a recognized method of communication of the order to an assessee. The petitioner filed the returns for the various months beyond the period of one month after the date of communication of the

assessment order through publication on the common portal. Therefore, it was held that the petitioner could not avail the benefit of getting the assessment orders set aside and writ petition would be dismissed.

BG can't be encashed where assessee preferred appeal against the detention order before Appellate authority

Quality Enterprises v. Assistant State Tax Officer (Intelligence) - [2020] 121 taxmann.com 106 (Kerala)

The GST officers detained the goods of petitioner on noticing a discrepancy in the documents that ought to have accompanied the transportation of the goods. The department issued final order under section 129, in Form GST Mov 09 and it contended that the petitioner would file an appeal before the appellate authority, and if the petitioner would want a clearance of the goods and the vehicle in the meanwhile, he must produce a bank guarantee for the amounts confirmed through the detention order. Later, the petitioner furnished a bank guarantee before the department for enabling an expeditious clearance of the goods and the vehicle.

The petitioner filed writ petition to keep in abeyance coercive steps for encashing the bank guarantee that was furnished by him as appeal has been preferred by the petitioner. It submitted copy of the Appeal Memorandum that it has preferred against order of detention. It prayed for a direction to the First Appellate Authority to consider and pass orders on appeal expeditiously, and to keep in abeyance coercive steps for encashing the bank guarantee.

The Honorable High Court observed that a final order under section 129(3) in Form GST Mov 09 has already been passed. Now, considering the facts and circumstances of the case and the submissions, directed the First Appellate Authority to dispose appeal within three weeks from the date of receipt of a copy of this judgment, after hearing the petitioner either through a physical hearing or through video conferencing. Also, bank guarantee furnished before the respondent shall not be encashed till such time as orders would be passed by the First Appellate Authority.

Mere mismatch in GST Returns is not conclusive for any suppression of tax

Appellate Authority - GST, ANDHRA PRADESH Sri Kali Krishna Industries, In re - [2020] 121 taxmann.com 149 (AA - GST - AP)

The assessing authority conducted scrutiny of GST returns of the appellant for the tax period from July, 2017 to June, 2018. On such scrutiny, the assessing authority noticed that the appellant's declared turnover in GSTR-3B did not equal to the GSTR-1. Accordingly, the assessing authority determined under declared tax. Aggrieved by the orders passed by the assessing authority, the appellant filed appeal to the Appellate Authority.

The appellant submitted that due to unknown problems in GSTN network software, it attempted to file GSTR-3B return for the month of October, 2017 but it automatically conceived 'NIL' return and it could not file any return for this month afterwards since no pending return shown in the GSTN login. But, without appraising these facts, the assessing authority unilaterally determined under declared tax merely basing on mismatch between GSTR-1 and GSTR-3B.

The Appellate Authority observed that mismatch reports is indicative in nature, but cannot be seen as final to conceive any suppression of turnover/tax. The assessing authority ought to have examined the appellant contentions submitted in response to the show cause notice, which assessing authority failed to do so. Therefore, the tax levied basing on mismatch reports annulled & the appellant contentions were found sustainable with reference to rational arguments and corroborative evidence.

Best judgment assessment under GST can't be invoked in respect of non-filing of Form GSTR-3B: AA-AP

Appellate Authority Omsai Professional Detective & Security Services (P.) Ltd., In re - [2020] 121 taxmann.com 192 (AA - GST - AP)

The appellant was engaged the business of supplying the security services. It filed the returns in Form GSTR-1 by declaring the outward taxable supplies but not filed the returns in Form GSTR-3B for the tax periods and not paid tax. The reason for non -filing of GSTR-3B was that the appellant was facing the liquidity crunch. The GST Authorities had issued notice for filing of the returns in Form GSTR-3B, but the appellant failed to file the same. So, GST Authorities passed best judgement order under GST. GST Authorities estimated the appellant's outward taxable supplies, by enhancing the returned outward taxable supplies in the returns in Form GSTR-1 by 50% towards probable supplies. Thus, the Authorities had best judged the turnover of the appellant @ 150% of the returned outward supplies and levied tax thereon @ 18%. The appellant filed appeal against the order.

The Appellate Authority ('AA') observed that the returns in Forms GSTR-1, GSTR-2 and GSTR-3 were prescribed, but due to the difficulty in the implementation of the relevant returns under the Act, which were designed to be implemented, were not implemented by the Government of India. Later a new FORM GSTR-3B was prescribed in lieu of the return in FORM GSTR-3. Therefore, relying on decision of Honorable High Court of Judicature of Gujarat at Ahmadabad in R/Special Civil Application No. : 18962 of 2018, dated 24-6-2019, it would be construed that FORM GSTR-3B was not a return prescribed under GST laws during the relevant period. Thus, it was held that the best judgment assessment can be made only when the dealer failed to file the return specified in GST Laws i.e. the return in Form GSTR-3.

No refund to SEZ unit/developers for ITC involved in supplies received from non-SEZ suppliers: AA-AP

Appellate Authority - GST Vaachi International (P.) Ltd., In re - [2020] 121 taxmann.com 191 (AA - GST - AP)

The appellant was a SEZ unit, engaged in the business of export of Dried Ornamental Plant materials. The appellant was claiming refund under "Refund of ITC on Export of Goods and Services without payment of Integrated Tax". Since, the appellant was involved in zero-rated supplies made without payment of tax, they were eligible for refund under GST Laws. The Assessing Authority ('AA') rejected its refund due to the reason that it was not eligible for refund of ITC, as the facility of getting refund of tax paid is statutorily made available to those taxpayers who made supplies to SEZ, with payment of tax. Aggrieved from the said order, the appellant filed appeal against such order.

The Appellate Authority ('AA') observed that the SEZ unit/developers shall not claim any refund against the ITC involved in supplies received by them from non SEZ suppliers. The Act facilitates eligibility for refund claim to the suppliers who made supplies to SEZ unit/developers with payment of tax. The Assessing Authority had rightly adhered to these provisions and rejected the refund claim in legitimate manner. In addition to this, it was to be observed that the appellant contentions of their eligibility regarding refund against the zero-rated supplies received by them, was found to be not tenable. Therefore, rejection of refund by the assessing authority was confirmed, and the appeal had to be dismissed.

Non-updation of Part B of EWB is merely a procedural lapse and minor penalty shall be leviable.

Integrated Constructive Solutions, In re - [2020] 121 taxmann.com 104 (AA- GST - HP)

The appellant was trader and trading in Earth Moving machinery/goods having various offices across North India in the State of Himachal Pradesh, Punjab and part of Haryana. It procured materials from various locations across India and sales were made to the various buyers differently located and at times the machinery was shipped to different place than the billed to address. The appellant purchased the equipment from registered person located in Pune with proper invoice and e-way bill. The equipment was further supplied to registered person located in Himachal Pradesh (HP) with proper invoice and e-way bill. Thereafter, the same equipment whose movement originally started from Pune was on its way to final destination in HP, at night the vehicle broke down on the way at mid night in dark and the equipment was shifted to the new Vehicle due to traffic reasons for a small distance to destination. The E-way Bill was not updated as the mobile network was not there. Meanwhile, the inspection was done and the inspector alleged that the taxes have been

evaded as the vehicle mentioned in the e-way bill number is incorrect. It filed appeal against the order.

The Appellate Authority ('AA') observed that the appellant had already generated an e-way bill and mere updation of vehicle number cannot deny the validity of transaction. The officer shall not impose any penalty for minor breaches of tax regulations or procedural requirements, any omission or mistake in documentation which would be easily rectifiable and made without fraudulent intent or gross negligence.

Order levying tax & penalty set aside as assessee not given reasonable opportunity to extend validity of e-way bill

Bhushan Power & Steel Ltd., In re -[2020] 114 taxmann.com 454 (AA- GST - HP)

The Appellate Authority ('AA') observed that the goods were accompanied by proper documents transshipped into another vehicle at Chandigarh and the vehicle No. was updated by the appellant and e-way bill was valid at the time of transshipment of the vehicle. The validity of the e-way bill expired on midnight of 20.11.2018. The validity of e-way bill could be extended within 8 hours from the time of its expiry but in the instant cases the vehicle was practically apprehended in almost 08 to 09 hours of the expiry of the e-way bill, thus prima facie it appeared that the assessee had not been given reasonable opportunity to update the Part A of e-way bill. It was noted that Part B of the e-way bill was duly filled which put to rest on any doubts about the intention of the appellant to evade tax.

Further, in case a consignment of goods was accompanied with an invoice or any other specified document and e-way bill, proceeding under GST may not be initiated. It was held that the imposition of tax/penalty by the respondent was harsh and unsustainable. Since the appellant made minor procedural laps, therefore a penalty of Rupees One thousand only in each case would be imposed.

Proceedings under section 129 not to be initiated in case of minor mistakes in e-way bill: AA-HP

K.B.Enterprises v. Assistant Commissioner of State Taxes & Excise - [2020] 121 taxmann.com 250 (AA- GST - HP)

The appellant was engaged in whole sale and retail business of taxable goods. The appellant's vehicle carrying goods had been intercepted and Commercial Tax Officer detained goods and imposed penalty on ground that there was mistake in vehicle No. mentioned. The appellant filed appeal before First Appellate Authority (AA). It submitted that a clerical mistake occurred while generating E-way Bill. It was also submitted that applicable tax i.e. CGST/HPGST was paid and the action of imposing double tax on single transaction would violate basic principle of equity enshrined in Constitution of India.

The AA observed that as per standard operating procedure mentioned in Circular No. 64/38/2018, dated 14-9-2018, in case of consignment of goods is accompanied with an invoice or any other specified document and also an e-way bill, proceedings under section 129 may not be initiated in case of minor mistakes like error in one or two digits/characters of vehicle number. Since, the E-way bill was duly generated and no other mistake was found in other information entered in e-way bill. Therefore, penalty of Rs.500 each in CGST and HPGST Act would be imposed and proceedings under section 129 not to be initiated.

GST leviable on services provided by co-operative housing society against consideration to its members: AAAR-MH

Appellate Authority for Advance Ruling Apsara Co-operative Housing Society Ltd., In re - [2020] 121 taxmann.com 225 (AAAR-MAHARASHTRA)

The appellant was a Co-operative Housing Society, providing services to its members and raising fund by collecting contributions from the members named as 'Society Charges'. The society charges included property taxes, water charges, common electricity charges, car parking charges, etc. The said charges were collected on monthly or Quarterly basis. The appellant filed an advance ruling to determine whether the said activities would amount to supply, and liable to GST?

The Authority for Advance Ruling ('AAR') held that the said activities had been carried out by the appellant for consideration in the course or furtherance of business, and hence the same would qualify as supply as per GST Laws. Aggrieved from the ruling, the appellant filed an appeal.

The Appellate Authority for Advance Ruling ('AAAR') observed that the activities performed by the appellant were entirely oriented towards providing facilities, benefits or conveyance to its members which were shared jointly by all the members of the society, or undertaking various social or cultural activities. Therefore, all these activities would rightly get covered under the definition of business. Since, the appellant was providing services to its members against the consideration, named as Society Charges in the course or furtherance of Business, therefore it would be termed as Supply under GST Laws and the same would be liable for GST subject to condition that the monthly subscription charged by the society would be more than Rs. 7500 per month per member. Therefore, the appeal was dismissed.

Supply, installation and commissioning of AC units is composite supply, taxable @ 28%

Nikhil Comforts, In re - [2020] 122 taxmann.com 14 (AAAR-MAHARASHTRA)

The assessee entered into a contract of supply of goods i.e. air conditioning units with cables etc. As per agreement, it would be required to do

execution of air-conditioning work and provide services of installation, testing and commissioning of system. It filed an application for advance ruling to determine whether this transaction would be covered under works contract or to be treated as composite supply of air conditioner.

The Authority for Advance Ruling held that supply of goods and services were conjoint to each other and were naturally bundled and, therefore, a composite supply, where, principal supply would be of goods, i.e air conditioner units falling under Chapter 8415 and would be taxable at rate of 28 per cent. The assessee filed appeal against the order of advance ruling and prayed that it should be treated as works contract.

The Appellate Authority of Advance Ruling observed that the agreement was for supply of goods i.e. air conditioning units along with services of installation, testing and commissioning of system. The essential nature of work was installation of air conditioners. It can be dismantled and erected at other location. The major part of contract would be for supply of goods and services would be naturally bundled. Therefore, it would be contract of composite supply not for immovable property and thus would not be treated as works contract. Hence, the order of Authority of Advance Ruling was upheld.

REAL ESTATE RAJASTHAN NEWS

Rajasthan housing department's nod to construction of buildings above 32 metres



The Urban Housing and Development (UDH) department issued order to allow the construction of multi-storey buildings up to 32 metre and above due to Increasing population and land

rates in the cities.

According to orders of the Rajasthan High Court in 2018, no new high-rise building permit can be given till the municipal corporation gets Aerial Hydraulic Ladder Platform equivalent to 32 metre or above. The ladder is used by the fire department to control blaze in high-rise buildings.

Jaipur fire brigade already has 42 metre of ladder and a proposal of 70 metre has been given. According to fire brigade officials, in February 2021, they are expecting to get the 70-metre ladder for Jaipur city.

Once they will get the ladder, security of high-rise buildings won't be an issue. Till then, they have a 42-metre high ladder which will be sufficient.

Apart from Jaipur, order also includes cities like Jodhpur, Kota, Ajmer, Bikaner, Udaipur and Bharatpur high-rise buildings can be constructed. In cities where buildings above 32 metre are to be constructed, then a written permission has to be obtained from the government. If in a city, a ladder above 32 metres is not available, then the

construction company has to give it in writing that they will construct further only when the ladder become available in their municipality.

[Source: Economic Times:
<https://realty.economictimes.indiatimes.com/news/industry/rajasthan-housing-departments-nod-to-construction-of-buildings-above-32-metres/79457035>]

Civic bodies in Rajasthan asked to implement Building Act by November 28

The urban development and housing (UDH) has directed the civic bodies including Jaipur Development Authority (JDA) to implement the Rajasthan Urban Area Building Regulation, 2020 by November 28.

A letter has been sent to the development authorities and Urban Improvement Trust (UIT) to issue the notification on the given date. The department had earlier released the regulation; but implementation was pending as the model code of conduct was in place due to civic polls.

On November 12, civic bodies were given 15 days' time for implementation of the regulation. In JDA, the rules will be implemented under Section 96 of the JDA, Act, 1982.

Once implemented, a developer can construct a structure up to a height of 18 metre (5 storeys) on a plot sized 500 sq-mt or more. The minimum height for a building under the high-rise category has been amended to 18 metres from the earlier 15 metres.

[Source: Economic Times:
<https://realty.economictimes.indiatimes.com/news/regulatory/civic-bodies-in-rajasthan-asked-to-implement-building-act-by-november-28/79381900>]

Rajasthan housing department to end physical survey for land-related works

The urban development and housing (UDH) department has directed the civic bodies officials not to conduct a physical survey of the houses, which was earlier required for name transfer process in lease deeds.

After receiving a feedback from the residents, that officers allegedly delay the process deliberately and harass applicants, UDH minister directed the department to end the process. Orders regarding the same will be issued soon. The civic bodies will also have to clear name transfer file within time limit.

Similarly, the department will also eliminate the physical survey process for other land-related works. Earlier, during the time of property registration, a signature of civic body official was required. Before giving a nod, the civic body officials were conducting a physical survey of the property. Also, a survey was conducted to give no objection certificate to the plot owners who were taking loan from the banks. Before disbursement of the loan, the banks were asking a NOC from the civic body and survey was conducted for the same.

The process wasn't required and complaints were received that plot owners were allegedly harassed. [Source: Economic Times: <https://realty.economictimes.indiatimes.com/news/regulatory/rajasthan-housing-department-to-end-physical-survey-for-land-related-works/79472749>]

Labour welfare cess collection till October less than half of last year

The collection of Building and Other Construction Workers welfare cess in 2020-21 under the labour department has been less than half so far (up to October 31) compared to last year (2019-20). While the cess collection was Rs 412 crore in 2019-20, it has been Rs 170 crore up to October 31.

It has been observed that most of the private sectors/owners in the state are not paying cess for construction of buildings. Hence, strict instructions have been issued to the department officials to collect cess from private sector/owners. There was some impact in cess collection due to Covid. Also, due to the current situation, department have set a low target this year for cess collection.

Department have given strict instructions to officials to increase cess collection from private players/sectors. From the government sector, the cess will anyway come sooner or later.

As per rule, the owner is required to pay welfare cess of 1% for construction of a building costing more than Rs 10 lakh. If they don't deposit the amount, they would be liable to pay a cess of 2% per month (24 per cent per annum).

[Source : Economic Times:

<https://realty.economictimes.indiatimes.com/news/industry/rajasthan-labour-welfare-cess-collection-till-october-less-than-half-of-last-year/79472244>]

RERA

Clarification of expression "Real Estate Project"



Rajasthan Real Estate Regulatory Authority has clarified that as per section 2 (zn) of The Real Estate (Regulation and Development) Act, 2016, the meaning of expression "real estate

project" includes the development of land into plots for sale. Dividing a piece of land into two or more plots and providing or widening an access road for the plot to be sold fall within the meaning of 'development' provided in section 2(s) of the Act.

RERA CASE LAWS

Rajasthan Real Estate Regulatory Authority in its order dated 12.11.2020 in **suo moto versus Shubham Landcon LLP**, the bench stated that due to lack of specific arrangements for mentioning of registration no. of project and website of RERA during publication of

advertisement of relevant documents (whether in print or social media) to intend for sale/book etc. activities for Real Estate project. The bench on behalf of the authority is obligated to regulate mentioning of a registration no. of project and website of RERA in the advertisements/contents published aforesaid in any of media or otherwise and directs as under:-

The registration no. of the Project registered with RERA and its website be depicted in advertisement/contents intended to sale/book any of the Real Estate property being developed by the developers/builder.

A minimum size (3x2 cm.) for aforesaid depiction/mention be insured and ascertained by the builders/developers.

The depiction aforesaid in the advertisement or otherwise in print media lessor against the half of the space utilized for mention for the name of the project as published by the builder.

The background for depiction for aforesaid registration no. and website shall be in yellow color for print and social media or otherwise document. 14 Font Size for print media be used. For the use of social media Fonts size of letter of registration no. and website be accordingly to the font size used for depiction for the name of the project i.e. "SHUBH ASHISH, IMPERIAL or EXCLUSIVE-123".

Name of the builder/promoter or Real Estate Agent with their mobile/phone no., e-mail or postal address as mentioned in the application for registration of the project with RERA be mentioned. Any change in this regard be updated as prescribed by the authority.

The content on social media - Facebook, what'sapp, Instagram, you tube or any platform without aforesaid requirement be viewed seriously. The contents already be uploaded on social media are allowed to be modified upto 31.12.2020 positively. Any lack city for updation or none mentioning as stated above for new contents upon social media be treated violative against the directions and liable to be penalty under relevant provisions of the statutes.

The builders shall inform to the Authority for appointment/authorization of their Real Estate Agents. These agents also require to be registered with Authority under the provisions of section-9 of the Act. The advertisement/published documents/contents print/social media intendant for sale/book the unit by Real Estate Agent or promoter/builder without their registration no., e-mail, postal address (as applicable) etc. shall attract penal provisions of the Act if not complied. The promoters/builders are required for timely updation of the status of their Real Estate Agent on quarterly basis or otherwise as directed by the Authority on this issue.

Any deviation or leniency for compliance of directions, be monitored by the office of the Registrar to take cognizance for any violative and contumacious Act against the provisions of the statute or any directions of the Authority. The

Registrar of the Authority has been directed to follow the above directions i.e. *obiter dictum*.

UTTAR PRADESH NEWS

UPRERA welcomes SC order on home buyers seeking justice from consumer forums

The Uttar Pradesh-Real Estate Regulatory Authority (UPRERA) welcomes the recent order by the Supreme Court, which enables home buyers to seek justice under the Consumer Protection Act even though their rights are protected by the Real Estate Regulatory Act of 2016. However, earlier, in March 2019, the UPRERA had written to the ministry of housing and urban affairs, seeking amendments in the Real Estate (Regulation and Development) Act, 2016. In the letter, the regulatory body had mentioned three points: First, the regulatory body should be vested with directive powers; second, the National Consumer Disputes Redressal Commission should not hear home buyers' cases, and third, the National Company Law Tribunal (NCLT), which hears realtors' cases under the Indian Bankruptcy Code (IBC-2016), should not hear a case in a housing project until more than 10% buyers — out of the total number of purchased flats in a housing project — approach it for justice.

SC Justice UU Lalit, in its order, said that the Section 79 of the Real Estate Regulatory Authority Act, 2016, does not stop consumer forums to hear pleas of home buyers seeking justice under the provisions of the Consumer Protection Act. The order came in response to a counter plea filed by a Gurugram-based developer, who had sought the quashing of an order by the consumer forum in response to a plea filed by a homebuyer, who was given relief. The consumer forum had imposed a penalty of ₹50,000 against the developer for a delay in delivery.

Allahabad HC upholds UP-RERA's order against Paramount Prop Build

The Allahabad High Court has upheld an UPRERA order to a real estate developer to hand over the possession of its flats to their allottees within 60 days besides paying interest on their investments for the delay in completion of the project.

A bench of justices S P Kesarwani and Y K Srivastava gave the order, dismissing the plea of realtor Paramount Prop Build Pvt Ltd, challenging the Uttar Pradesh Real Estate Regulatory Authority's bench at Gautam Budh Nagar. The Guatam Budh Nagar bench of RERA had given its order to the relator on August 18, 2019 on a joint plea by relator's customers who had booked flats for themselves in the 'Paramount Golf Foreste' project.

According to the customers, they all had been given allotment letters for their respective flats in the project on August 10, 2011. But the relator could not complete the project within the

stipulated time and none of the allottees were handed over the possession of flats.

HARYANA RERA

Haryana RERA sets up mediation centre for amicable conciliation of disputes



The Haryana Real Estate Regulatory Authority (HARERA) in Gurugram has established a full-fledged mediation forum for amicable conciliation of disputes between the promoter and the allottee. Alternate dispute resolution (ADR) mechanisms like arbitration, mediation, and conciliation are much more private, economical and time-efficient than litigation and therefore, it is prudent that such mechanisms are incorporated in the myriad field of laws, particularly laws dealing with the real estate sector, which has a huge pendency of cases due to home buyers approaching the real estate regulatory authorities for grievance redressal.

[Source:

<https://realty.economictimes.indiatimes.com/news/regulatory/haryana-rera-sets-up-mediation-centre-for-amicable-conciliation-of-disputes/79108870>]

Mediation forum of H-Rera, Gurugram holds its first session

The newly established mediation forum at Haryana Real Estate Regulatory Authority (H-Rera) in Gurugram started functioning from Monday. H-Rera officials said the response from developers, homebuyers and other stakeholders is encouraging as people want a quick resolution of their problems through mediation and discussion rather than taking the time-consuming legal route. The mediation panel comprises SC Goyal, retired district and sessions judge, who is the adjudicating officer (AO); Deepa Malik, chief grievance redressal and chief public relation officer, and Geeta Rathee Singh, senior legal officer.

[Source

<https://www.hindustantimes.com/gurugram/mediation-forum-of-h-rera-gurugram-holds-its-first-session/story-ViChhBFFV8GRyvoHo9GAWP.html>]

Haryana RERA Warns Penal Action against Builders for Concealing Information On Building Plan

The Haryana Real Estate Regulatory Authority (HARERA) said that penal action would be taken against the builders for concealing information pertaining to building plan, specifications and timeline. This will be treated as violation of the Real Estate (Regulation and Development) Act of 2016.

Quoting a recent sitting of the HARERA bench headed by its Chairman K.K. Khandelwal and members S.C. Kush and Samir Kumar, HARERA said that it has been observed that a large number

of complaints had been filed pertaining to allegations of misbehaviour by the colonisers.

It has been observed that as and when the allottees contact the promoter or their representatives, the information is either not provided, or if provided then it is incomplete, a statement by the regulator said.

The allottee has the right to visit the site and can check the quality of undergoing construction. But, even after the persistent requests no such opportunity is given to the allottees and when the allottee visits the site, the security guards of the promoters not only prevent him from the lawful visit of the site, but also at times misbehave.

[Source:

<https://www.moneylife.in/article/haryana-rera-warns-penal-action-against-builders-for-concealing-information-on-building-plan/62089.html>]

One-fourth real estate units in Gurugram are stressed: RERA chief

Around 70,000 real estate units – almost one-fourth of the total units being monitored by the Haryana Real Estate Regulatory Authority (HRERA) in the Millennium City – across 30-odd projects are stressed for various reasons, disclosed HRERA Gurugram Chairman K.K. Khandelwal. He was speaking to The Hindu on a variety of issues concerning the sector and the authority. Mr. Khandelwal said RERA was ordering refund to the unit owners for the projects that seemed doomed, but supporting those projects that could still be completed keeping in mind the interests of the large number of unit-holders.

[Source:

<https://www.thehindu.com/news/cities/Delhi/one-fourth-real-estate-units-in-gurugram-are-stressed-rera-chief/article33207903.ece>]

MAHARASHTRA RERA

Delegation of powers to Secretary, MahaRERA, in case of failure to comply with orders of interest or penalty or compensation imposed by Maha RERA and/or Adjudicating officers



Maha RERA Authority through its circular 15/2020 dated 24.11.2020 delegates its power under section 40 to deal with non compliance applications to the Secretary,

MahaRERA. Section 40 empowers the Authority to recover the dues as arrear of land revenue if promoter/allottee/real estate agent fails to comply with orders of interest or penalty or compensation. Authority has taken such step in order to devote quality time for final disposal of large number of pending complaints.

RERA CASE LAWS

Flat buyers can't seek relief for delay after project ready

Flat buyers are not entitled to compensation for delay if the demand is made after the project is complete or handing over possession has begun, said Maharashtra Real Estate Regulatory Authority or MahaRERA on November 12, 2020. MahaRERA rejected a plea for compensation sought by Ashley Serrao who had purchased a flat in Runwal Greens in Mulund in 2012. The builder, Propel Developers Pvt Ltd, said the project had already received part occupancy certificate (OC) in July 2018, before the buyers had lodged their complaints and it had also “already offered possession to the complainants”.

In 2018, the Serraos had led a complaint claiming that possession of flat, as per the agreement for sale, was promised by December 2015, but was offered only on July 11, 2018.

MahaRERA in its order said Section 18 (1) (a) of the RERA Act stipulates obligations and liabilities if a promoter fails to complete or is unable to give possession of a flat. If the buyer wishes to withdraw from the project, the builder is liable to return the amount received by him for the apartment, plot or building as the case may be, with interest. And if the buyer wishes to continue in the project, the builder has to pay “an interest for every month of delay, till handing over of the possession”.

Authority in his order, said: “Simple present tense used in the starting line of Section 18 clearly indicates that the provision shall apply only till the project is incomplete or the promoter is unable to give possession. Once the project is complete or possession is given, the provision ceases to operate.” He ‘advised the Serraos to take possession of the flat and make balance payment

[Source

<https://economictimes.indiatimes.com/wealth/real-estate/flat-buyers-cant-seek-relief-for-delay-after-project-ready-maharera/articleshow/79316403.cms>]

The **Maharashtra Real Estate Regulatory Authority** in the case of **Vinod Kumar Agrawal Versus Shreeniwas Cotton Mills**, dismissed the complaint from a home buyer seeking a refund for delayed possession. The Authority held that the relief can be given only for registered under construction projects, and that the Promoter had received the Occupancy Certificate (OC) for the Complainant's apartment. Ready flats with Occupancy Certificate (OC) does not fall under the ambit of MahaRERA.

GUJARAT RERA

Former HC judge is RERA tribunal chief

The state government has appointed former judge of Gujarat High Court, justice R D Kothari as chairman of RERA Appellate tribunal. As per the notification issued by the state government, a judicial member and a technical member too have

been appointed. All three appointments have taken place for the first time since its establishment. The appointments were made after the high court had asked the state government to complete the process as early as possible while disposing of a PIL filed by Nipun Singhvi through his lawyer Vishal Dave in August this year. Earlier, the tribunal was being run by in-charge judge R L Dave whose tenure had concluded on August 5. The government has extended his term for a year. He was appointed for the Food Safety Appellate Tribunal and kept hearing cases for RERA Tribunal too until a regular judge to be appointed by the government.

Demonstration of Project Registration on modified RERA 2.0 Portal with CREDAI Gujarat

The real estate regulator of Gujarat has readied its new portal with improved software services called Gujarat RERA 2.0, the new portal bundled with a mobile application. In pursuance to that, a User Manual for Project Registration Management has been updated on Gujarat RERA website as well as a video on the demonstration for registering a project on modified RERA 2.0 portal with CREDAI Gujarat has been uploaded on YouTube to give an overview and understanding on the new portal management.

CORPORATE LAWS & OTHER COMMERCIAL POLICIES

NEWS

The MCA extends due date of defaulting LLP to file belated documents under LLP Settlement Scheme, 2020.

The MCA has notified the extension for defaulting LLP to file belated documents under LLP Settlement Scheme, 2020 till Nov. 30, 2020. The Government issued this notification due to the prevailed COVID-19 pandemic, in continuation of the Ministry's General Circular No. 13/2020 dated March 30, 2020, and in General Circular No. 31/2020 dated September 28, 2020, the scheme was extended till 31st December 2020. It has been decided to extend the date on applicability to defaulting LLP and therefore, in serial number 3, para 8A, sub-para (iii) of the said circular dated 30.03.2020, belated documents due for filing till 30th November 2020 shall be substituted instead of August, 2020. All other requirements provided in the said circulars shall remain unchanged. It is further clarified that, if a statement of account and solvency for the financial year 2019-2020 has been signed beyond the period of six months from the end of the financial year but not later than 30th November 2020, the same shall not be deemed as non-compliance. [Source:

http://www.mca.gov.in/Ministry/pdf/GeneralCircularNo.37_09112020.pdf]

MCA notifies CS (Procedure of Investigations of Professional and Other Misconduct and Conduct of Cases) Amendment Rules, 2020

The Ministry of Corporate Affairs (MCA) notified the Company Secretaries (Procedure of

Investigations of Professional and Other Misconduct and Conduct of Cases) Amendment Rules, 2020. The notification seeks to amend Company Secretaries (Procedure of Investigations of Professional and Other Misconduct and Conduct of Cases) Rules, 2007.

[Source: <https://www.taxscan.in/mca-notifies-cs-procedure-of-investigations-of-professional-and-other-misconduct-and-conduct-of-cases-amendment-rules-2020/83224/>]

The Insolvency and Bankruptcy Board of India has issued the Insolvency Professionals to act as Interim Resolution Professionals, Liquidators, Resolution Professionals and Bankruptcy Trustees (Recommendation) (Second) Guidelines, 2020.

The Board will prepare a common Panel of IPs for appointment as IRP, Liquidator, RP and BT and share the same with the AA (Hon'ble NCLT and Hon'ble DRT) in accordance with these Guidelines. An IP will be eligible to be in the Panel of IPs, if there is no disciplinary proceeding, whether initiated by the Board or the IPA of which he is a member, pending against him; He has not been convicted at any time in the last three years by a court of competent jurisdiction; He expresses his interest to be included in the Panel for the relevant period; He undertakes to discharge the responsibility as IRP, Liquidator, RP or BT, as he may be appointed by the AA; He holds an Authorization for Assignment (AFA), which is valid till the validity of Panel. For example, the IP included in the Panel for appointments during January – June 30, 2021 should have AFA valid up to June 30, 2021.

[Source:

<https://ibbi.gov.in/uploads/legalframework/18c79bb7deb50c0ab7d0a195f155ff82.pdf>]

Delhi High Court allows bank action against guarantor under SARFAESI Act

The Delhi High Court today held that Banks/Financial Institutions can initiate and continue the proceedings against the guarantor for recovering their dues under Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002. A divisional bench comprising Justice Hima Kohli and Justice Subramonium Prasad while pronouncing the judgment noted that "The liability of the principal borrower and the Guarantor remain co-extensive and the respondent/Bank is well entitled to initiate proceedings against the petitioner under the SARFAESI Act during the continuation of the Insolvency Resolution Process against the Principal Borrower." <https://www.indialegalive.com/constitutional-law-news/courts-news/delhi-high-court-allows-bank-action-against-guarantor-under-sarfaesi-act/>

Arbitration and Conciliation (Amendment) Ordinance, 2020

The Central Government has issued the Arbitration and Conciliation (Amendment) Ordinance, 2020 to further amend the Arbitration and Conciliation Act, 1996. The amendments have been made in Section 36(3), which specifies the award given after the arbitration proceeding, a proviso has been inserted, to provide that where the Court is satisfied that a prima facie case is made out that the arbitration agreement or contract which is the basis of the award or the making of the award, was induced or effected by fraud or corruption, it shall stay the award unconditionally pending disposal of the challenge under section 34 to the award. Further, Section 43J, which specifies the norms of the arbitrators, has been substituted, to provide the qualifications, experience and norms for accreditation of arbitrators shall be such as may be specified by the regulations.

[Source:

<http://www.egazette.nic.in/WriteReadData/2020/222941.pdf>]

JUDGEMENTS / ORDERS

Can Indian parties choose a foreign seat of arbitration and enforce the arbitral award in India? Gujarat High Court says yes.

GE Power Conversion Pvt. Ltd. v. PASL Wind Solutions Pvt. Ltd.

The Gujarat High Court unequivocally settled the position of law that two Indian parties can choose a foreign seat of arbitration and the award decreed therefrom could be enforced as a foreign arbitral award in India. A Single Judge Bench of Justice Biren Vaishnav pronounced judgment in a dispute between two power companies. The two Indian companies, GE and PASL were engaged in a tussle over a contract pertaining to wind turbines.

[Source:

<https://www.barandbench.com/news/litigation/gujarat-high-court-on-enforcement-of-awards-in-foreign-seated-arbitration>]

Proceedings U/s 34 Arbitration & Conciliation Act Not Maintainable Against Foreign Award:

the Supreme Court has observed that the proceedings under Section 34 of the Arbitration and Conciliation Act is not maintainable to challenge a foreign award, In this case, Jindal filed a petition before the Bombay High Court under Section 34 of the Act challenging the partial award. Though the single bench dismissed this petition, the Division Bench, referring to the Supreme Court decisions in Bhatia International v. Bulk Trading S. A. & Anr and Venture Global Engineering v. Satyam Computer Services Ltd. & Anr, held that proceedings under Section 34 of the Act could be validly maintained to challenge a foreign award. [Source:

<https://www.livelaw.in/top-stories/sec-34-arbitration-conciliation-act-not-maintainable-against-foreign-award-166544>]

ACCOUNTING & AUDIT

Cabinet approves the Memorandum of Understanding between the Institute of Chartered Accountants of India (ICAI) and the Vereniging van Register controllers (VRC), the Netherlands

The Union Cabinet chaired by the Prime Minister, Shri Narendra Modi has approved the signing of the Memorandum of Understanding (MoU) between the Institute of Chartered Accountants of India (ICAI) and the Vereniging van Register controllers (VRC), the Netherlands.

The MoU would help in strengthening and development of the Accounting, Financial and Audit Knowledge Base between the Netherlands and India.

ICAI and VRC will work together to hold and conduct Technical Events, Seminars, Conferences in the Netherlands;

-To establish possible co-operation in respect of Member Management, Professional Ethics, Technical Research, Continuing Professional Education; Professional Accountancy Training, Education and Examinations, as well as the Institutional Capacity Building of the Accountancy profession;

-To offer short term professional courses in the domain of Accounting, Finance, Information Technology and Audit in the Netherlands;

-To discuss potential emerging developments in form of Students and Faculty Exchange programmes;

-Share available unrestricted information concerning the accountancy profession in India and the Netherlands and internationally when required.

The engagement between the premier Institutes of both the countries would help to generate greater employment opportunities for Indian Chartered Accountants and also greater remittances back to India.

Verenigingvan Register controllers (VRC), established in 1988, is a voluntary professional organization and members offer services in management accounting, financial accounting, integrated reporting, strategic control and risk management, and corporate governance.

IFRS 16: Exposure draft issued on proposing amendments to leases for sale & lease back transactions

The proposed amendments aims on clarifying the subsequent measurement requirements to the lease liability that arises in case of sale and lease back transaction. The proposed amendments are applicable to all the sale and lease back transaction but are expected to affect the transactions that include variable lease payments.

AS 29: Recognize provision for allocated amount on CSR activities if remained unspent

As per AS 29 Provisions, Contingent Liabilities and Contingent Assets, an entity should recognize a provision in its books of accounts when an entity has a present obligation as a result of past event; a

reliable estimate of amount of obligation can be made; it is probable that there will be an outflow of resources to settle the obligation.

MISCELLANEOUS

CCI approves acquisition of 7.73% equity share capital of Jio Platforms Limited by Google International LLC

The Competition Commission of India (CCI) approves acquisition of 7.73% equity share capital of Jio Platforms Limited (JPL) by Google International LLC (GIL) under Section 31(1) of the Competition Act, 2002.

GIL is a wholly owned subsidiary of Google LLC (collectively with all Google LLC subsidiaries, Google). Google LLC is a Delaware limited liability company and wholly owned subsidiary of Alphabet Inc. GIL is a holding company and does not own / operate any of Google's products / services.

JPL is a subsidiary of Reliance Industries Limited, which holds the majority of its issued equity share capital. JPL along with its subsidiaries primarily offers / will offer digital products / services, including wireless, home broadband and enterprise broadband services, telecommunication services, mobile applications, various digital platforms, back-end technology services

Cabinet approves Scheme of Amalgamation of Lakshmi Vilas Bank with DBS Bank India Limited

The Union Cabinet, chaired by the Prime Minister, Shri Narendra Modi has given its approval to the Scheme of Amalgamation of Lakshmi Vilas Bank Limited (LVB) with DBS Bank India Limited (DBIL). On 17.11.2020, to protect depositors' interest and in the interest of financial and banking stability, on RBI's application under section 45 of the Banking Regulation Act, 1949, LVB had been under moratorium for a period of 30 days. In parallel, RBI, in consultation with Government, superseded the Board of Directors of LVB and appointed an Administrator to protect the depositors' interest.

DBIL is a banking company licenced by RBI and operating in India through wholly owned subsidiary model, DBIL has a strong balance-sheet, with strong capital support and it has the advantage of a strong parentage of DBS, a leading financial services group in Asia, with presence in 18 markets and headquartered and listed in Singapore. The combined balance-sheet of DBIL would remain healthy even after amalgamation and its branches would increase to 600.

IFSC Authority approves the International Financial Services Centres Authority (Banking) Regulations, 2020

A meeting of the International Financial Services Centres Authority (IFSCA) was held today. The IFSC Authority, after detailed deliberations, approved the International Financial Services Centres Authority (Banking) Regulations, 2020.

Banking constitutes one of the major focus areas of IFSC and is expected to drive and facilitate the other constituent operations in the IFSC in due course. A self-contained regulation laying down the major principles of banking operations at IFSCs is thus an important step in the IFSC reaching its desired potential.

The Authority approved the draft banking regulations at its meeting today, which paves the way for putting in place the rules for the various aspects of banking operations that would be permissible at the IFSC.

Cabinet approves PLI Scheme to 10 key Sectors for Enhancing India's Manufacturing Capabilities and Enhancing Exports


The Union Cabinet chaired by the Prime Minister, Shri Narendra Modi has given its approval to introduce the Production-Linked Incentive (PLI) Scheme in the following 10 key sectors for Enhancing India's Manufacturing Capabilities and Enhancing Exports.


The PLI scheme will be implemented by the concerned ministries/departments and will be within the overall financial limits prescribed. The PLI scheme across these 10 key specific sectors will make Indian manufacturers globally competitive, attract investment in the areas of core competency and cutting-edge technology; ensure efficiencies; create economies of scale; enhance exports and make India an integral part of the global supply chain.

ABOUT SRNG ADVISORS LLP

SRNG Advisors is an LLP providing advisory services catering to the needs of its clients across the country. SRNG offers a wide range of specialized, multidisciplinary professional services that meet immediate as well as long term needs of any business. Our multidisciplinary team of dedicated professionals is well equipped with the requisite business and technical skills, experience and knowledge base to deliver customized solution to our clients across industries.

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