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THE NEWSLETTER

BOMBAY HIGH COURT WARNS REVENUE AUTHORITIES TO IMPOSE COST FOR RAISING APPEALS ON SETTLED ISSUES [1]

The Hon'ble Bombay High Court while dealing with the issue of exemption available to insurance companies under section 10(34) of the Income Tax Act, 1961, stated that time and again, the Court had clarified that the computation of profit and gain from the insurance business is to be calculated separately from any other business. Therefore, the provisions were incorporated in the Act, particularly, bearing in mind the nature of the insurance business. However, the revenue pursues and continues to raise the same objections as have been already decided. The court refrained itself from imposing heavy cost to be borne by the officer who had directed to file the appeal.

SUPREME COURT YET AGAIN DECLARES THE TRANSFER OF SCHEDULED CASTES/SCHEDULED TRIBES LAND AS ILLEGAL.[2]

While dealing with the issue of transfer of Scheduled Castes (SC)/Scheduled Tribes (ST) land, the Supreme Court declared such transfer as *void ab initio*. The appellant contended that the Rajasthan Tenancy Act came into force on 22.09.1956 and that the vendor executed the sale deed in favour of the vendee, predecessor in interest of the appellant on 12.01.1962 i.e. after the second amendment. The Supreme Court said that the appellants cannot claim that their right was created much prior to the second amendment i.e. before proviso to Section 42 was inserted, as the alleged sale deed dated 12.01.1962 was effected much after the date of coming into force (22.09.1956) of proviso to Section 42. There was clear prohibition in making any sale by a member of SC or ST in favour of person who was not member of SC or ST since 22.09.1956. The transfer made on 12.01.1962 was against the said prohibition. The Supreme Court further referred to Section 23 of the Contract Act, that the consideration of an agreement is unlawful if it is forbidden by law.

The appeal though was allowed as the objection to such transfer was raised by the District Collector after 31 years of such transfer whereas section 175 of the Rajasthan Tenancy Act, 1956, stipulates that an application for ejectment for illegal transfer or subletting can be made up till 30 years only.

PUBLIC PROVIDENT FUND LIMIT HIKED FROM RS. 1 LAKH TO RS 1.5 LAKH

[Ministry of Finance Notification dated 13.08.2014]

The Government has raised the Public Provident Fund limit from Rs 1 lakh to Rs 1.5 lakh through Public Provident Fund (Amendment) Scheme, 2014 which shall come into force from the date of its publication in the Official Gazette (13.08.2014).

DIT v. *COPAL RESEARCH MAURITIUS LIMITED, MOODY'S ANALYTICS, USA & ORS* [3]

The Delhi HC has ruled that transfer of shares of a foreign company by one overseas entity to another will not trigger capital gains tax in India, if the foreign company which is being sold derives less than 50% of its value from assets in India.

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[1] *Commnr. of Income Tax-VII* v. *Punjab Stainless Steel Industries* [2014]364ITR144(SC)]
[2] *Ram Karan (Dead) through LR's & Ors.* vs. *State of Rajasthan & Ors.* C.A. No. 5853 of 2014 out of SLP(C) No. 16638 of 2012
[3] W.P.(C) 2033/201

MONITORING OF COMPLIANCE BY STOCK EXCHANGES[4]

Securities Exchange Board of India (SEBI), *vide,* Circulars had earlier advised stock exchanges to put in place a system to monitor and review the compliance of listing conditions by listed companies and to devise a framework to detect any non-compliance or violation of the applicable laws. In furtherance to the amendment of Clause 49 of the Listing Agreement, *vide* Circular dated 17.04.2014 which included Principles of Corporate Governance in the said clause, SEBI has made certain observations in relation to some companies belonging to a common group, such companies being formed out of demergers and having 80% common shareholding, that have held their Annual General Meetings (AGM) with a time gap of 15 minutes between two AGMs, which is not an adequate time gap for these common shareholders to attend AGMs of these companies. It was also observed by SEBI that allocation of mere 15 minutes for conducting AGM of a public listed company having more than one lakh shareholders is not a sufficient time to facilitate constructive discussions by investors who wish to seek clarifications. Thus, in order to ensure the compliance of amended Clause 49, SEBI through this Circular has advised all the recognized stock exchanges to identify and monitor such practices, and to ensure that the requirements laid down in Clause 49 are followed in letter and spirit.

FOREIGN DIRECT INVESTMENT IN RAILWAYS INFRASTRUCTURE[5]

The Government of India, *vide* notification dated 22.8.14, has permitted FDI in construction, operation and maintenance of specific sectors in the rail infrastructure. Consequently, Para 6.1 of FDI Policy, 2014, which lays down a list of Prohibited Sectors, has been amended and is now only limited to those railway operations in which such FDI is not permitted. Pursuant to this notification, which is to be brought into immediate effect, 100% investment is allowed via the automatic route. The Notification further stipulates that those proposals involving FDI beyond 49% in sensitive areas from perspective will be brought before the Cabinet Committee on Security (CCS) for perusal on a case to case basis, and such FDI will be subjected to sectoral guidelines of Ministry of Railways.

AMENDMENT IN TAX AUDIT REPORT REQUIREMENTS[6]

The Central Board of Direct Taxes (CBDT) has amended Form 3CA, 3CB and 3CD of the Income Tax Rules, 1962. The new form 3CD prescribes certain new reporting clauses and substitutes some existing clauses with new ones.

FDI RULES FOR MULTI-BRAND RETAIL TO APPLY TO E-COMMERCE[7]

Commerce Minister Nirmala Sitharaman had said that where Foreign Direct Investment was concerned, the same rules applicable to multi-brand retail would apply to e-commerce. FDI is restricted in multi-brand retail and the same applies to e-commerce also. This statement will directly impact the current probe going on against Flipkart and other e-commerce websites. A few days back Enforcement Directorate had found online retail firm Flipkart in violation of Foreign Exchange Management Act (FEMA) provisions. It is also investigating other e-commerce sites for similar violations.

[4] SEBI CIR/CFD/DIL/2014

[5] Press note no. 8 (2014 Series), Notification No. S.O. 2112€

6 Appendix II , Income Tax (seventh amendment) Rules, 1962 [25th July, 2014]

7 Retrieved from , http://indianexpress.com/article/business/economy/same-rule-for-e-tail-and-multi-brand-nirmala-sitharaman/2/ , on 2/9/14 at 09:00am

RBI'S CRACKDOWN ON UBER AND OTHER ENTITIES[8]

Uber is a ride sharing service based in San Francisco, California. The *modus operandi* of Uber is that their smart phone application connects passengers with drivers of vehicles for hire, wherein rides are requested by using that application allowing customers to track their reserved vehicle's location. The service is available around the world including ten cities in India.

In late July, the Association of Radio Taxis (ART) had written to Reserve Bank of India that Uber was storing credit card details of customers in its server and deducting fares without the two-step authentication, which involves entering the CVV (Card Verification Value) number and password.

The Reserve Bank of India through its circular dated 22.8.14 has issued a deadline of 31.10.2014 to the entities bypassing the mandatory two step authentication in CNP (Card Not Present) transactions including Uber to adhere to the mandate i.e. input of CVV and Password by the user, to avoid any kind of business disruption.

SUPREME COURT RE-WRITES SECTION 138

The Hon'ble Supreme Court in its judgment in the matter of *Dashrath Rupsingh Rathod* v. *State of Maharashtra*[9] has opined that the place where the drawee bank is situated will only have jurisdiction in the matters of Section 138 of the Negotiable Instrument Act, 1881. Further, the court held that *"bouncing of cheque"* alone constitutes offence under Section 138 of the Negotiable Instruments Act and the series of acts mentioned in the case of *Bhaskaran* v. *Sankaran Vaidhyan Balan* are essential only for the initial prosecution and are not ingredients of the offence. This decision of the Hon'ble Court overrules the earlier decision in the *Bhaskaran* case.

CCI IMPOSES RS 2,545-CRORE PENALTY ON 14 CAR MAKERS INCLUDING MARUTI SUZUKI, TATA MOTORS[10]

The Competition Commission of India has imposed a combined penalty of over Rs 2,500 crore on 14 carmakers for indulging in unfair practices in the spare parts market, the latest in a series of tough enforcement actions by the newest among India's regulators.

Tata Motors faces the maximum fine of Rs 1,346 crore, followed by Maruti Suzuki Rs 471 crore, Mahindra & Mahindra Rs 292 crore, General Motors Rs 85 crore, Honda Car India Rs 78 crore.

The CCI said in a statement it had fined the 14 automakers after its investigation showed they were restricting access to spare parts, which in turn made them more expensive for consumers.

The CCI said it had launched its investigation in 2011 after receiving information that spare parts made by some companies in India were not freely available in the market, resulting in higher prices for the parts and repair and maintenance services.

It said it had asked the car makers to rectify their anti-competitive behaviour, which it said impacted 20 million customers.

"...spare parts made by some companies in India were not freely available in the market, resulting in higher prices for the parts and repair and maintenance services."

[8] RBI/2014-15/190, DPSS.PD.CO. No.371/02.14.003/2014-2015

[9] Cri. Appeal No. 2287 of 2009

[10] Case No. 03/2011, dated 25.08.2014

CHILD CUSTODY BEYOND TERRITORIAL BOUNDARIES

(MS.RITU SONI, PARTNER AND MS.HARSHA GUPTA, ASSOCIATE)

"It has been said that arguing against globalization is like arguing against the laws of gravity"

–Mr. Kofi Annan

On account of rapid globalisation, Indian Courts have been facing large number of cross border child custody disputes which, *inter alia*, involve jurisdictional conflicts between Indian Courts and foreign Courts. In child custody disputes, whether international or domestic, welfare of the child has been undisputedly recognised as of paramount importance. However, the courts have to strike a fair balance between the principles of 'comity of courts' and 'welfare of child' in international child custody disputes. Supreme Court in past concerning matters of international child custody has given consideration to both the aforementioned principles, however the weightage given to each of these principals vary from case to case.

In the case of *V. Ravi Chandran* v. *Union of India*[11], the question before the court was whether the court should order the handing over the custody of the minor child to the petitioner-father in view of interest of the minor child and the order of the US Courts. In this case, the child was a US national and the petitioner-father and the respondent-mother were ordered by the US courts to have joint custody of the child. The Hon'ble Supreme Court in this case reaffirmed the principle of Comity of Courts and held that the custody issue concerning minor child does not deserve to be gone into by the courts in India.

In *Ruchi Majoo* v. *Sanjeev Majoo*[12], the Apex Court held that since the parties decided to return to India to explore career options etc., their decision had the effect of shifting the 'ordinary residence' of the Appellant and her son Kush from the place they were living in America to Delhi. Therefore, the district was right in assuming the jurisdiction and the order of the High Court was set aside the Hon'ble Supreme Court.

The most recent judgment on this issue is of *Aarathi Bandi* v. *Bandi Jagadrakshaka Rao and Ors*[13]. The petitioner and respondent relied upon the judgment of *Ruchi Majoo* (*supra*) and *Ravichandran* (*supra*) respectively. However, the Court held that the present case is covered by the case of *Ravichandran* and not *Ruchi Majoo* and ordered the return of the child to US. The Court held that the appellant-mother had participated in the proceedings in America for two years prior to fleeing to India in the defiance of the orders passed by the American Court restraining her from taking the child to India for a period of more than 5 days. The appellant-mother, therefore, was not allowed to take advantage of her own wrong.

It may be noticed that in the case *Ravichandran* and *Aarathi Bandi*, wherein the court ordered the return of the child to America, the parent had removed the child from America in violation of the orders of the American Court and therefore, Supreme Court did not allow such parent to gain advantage by his/her wrongdoing. In the case of *Ruchi Majoo*, the proceedings in America were started after the proceedings in India and the child was not removed from America in violation of any court order and on this basis, the court distinguished the judgment of *Ravichandran.*

The Supreme Court has recognised the jurisdiction of India Courts in international child custody matters. Thus, the Indian courts are entitled to examine the matter independently taking welfare of child as important consideration. However, the judgments passed by the foreign court are also an important factor regarding the applicability of principle of comity of court and which principle will prevail over another is dependent upon the facts and circumstances of each case. Also, it is not yet clear whether Indian Courts would have jurisdiction when the domicile of the parties has changed after initiation of proceedings in the foreign courts.

[11] (2010) 1 SCC 174

[12] AIR 2011 SC 1952

[13] AIR 2014 SC 918

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