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# THE NEWSLETTER

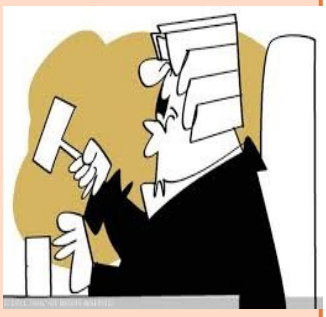
## Inside this issue:



## UPDATE YOURSELF

### Arbitral Tribunal can approach Court if Parties violate Tribunal's Orders

The Division bench of the Hon'ble Supreme Court of India ("**Court**") in the matter of ***Alka Chandewar* v. *Shamshul Ishrar Khan*** [Civil Appeal No. 8720 of 2017] dated 6th July, 2017, while addressing the issue of non-adherence to the orders passed by arbitral tribunals ("**Tribunals**") constituted under the Arbitration and Conciliation Act, 1996 ("**Act**") has held that the Tribunals are empowered to make representations to the jurisdictional High Courts for the contempt. The dispute in the present case was that the sole arbitrator appointed by the parties passed an interim order dated 7th October, 2010 under Section 17 of the Act, wherein it was stated that no more flats were to be disposed off without the leave of the Tribunal. The respondent, breaching the aforesaid interim order, transferred 5 flats and also undermined the other interim directions passed *vide* the said interim order. Against such non-adherence on the part of respondent, sole arbitrator referred this contempt to the Hon'ble High Court of Bombay ("**HC**") which observed that the Act does not empower the Tribunal to make representation to the courts for contempt of its' orders. The Court while setting aside the order of the HC observed that under Section 27(5) of the Act the persons failing to attend in accordance with the court process fall under a separate category i.e. '*any other default*' clearly provided. Further, the said Section specifically states that a person guilty of any contempt to the Tribunal during the conduct of the arbitral proceedings, is within its ken. The Court further observed that the entire object of providing that a party may approach the Tribunal instead of the court for interim reliefs would be stultified if interim orders passed by such Arbitral Tribunal are toothless.



### Ineligible Arbitrator cannot nominate another Arbitrator

In the July, 2017 edition of our newsletter, an update related to the following case: ***DBM Geo Technics & Constructions Pvt. Ltd* v. *Bharat Petroleum Corporation Ltd.*** [Arbitration Application No. 65 of 2016] decided on 26th May, 2017 was published. In the said case, the Hon'ble High Court of Bombay ("**Bombay HC**") held that the power to nominate an arbitrator is independent of the choice of nominee and the ineligibility to act as an arbitrator by the person on whom the power to nominate is conferred does not divest such person from exercising such power notwithstanding the limitations on the choice of the nominee. Now, the Hon'ble Supreme Court of India ("**Court**") in ***TRF Ltd. ("TRF")* v. *Energo Engineering Projects Ltd.("Energo"),*** [Civil Appeal No. 5306 of 2017 (@ S.L.P. (C) NO. 22912 OF 2016] decided on 3rd July 2017 has given a view contrary to the view given by the Bombay HC in **DBM Geo Technics & Constructions Pvt. Ltd.** (***Supra***) and has held that once the arbitrator has become ineligible to be appointed as an arbitrator by operation of law his power to

nominate any other person as an arbitrator also ceases, irrespective of the fact that such other person is an independent person, i.e., he/she does not have any financial or other relationship with the person appointing him. In the instant case, due to some disputes arising out of the contract entered into by the parties ("**Contract**"), TRF invoked the arbitration clause which provided that any dispute or difference between the parties in connection with the Contract shall be referred to a sole arbitration of the Managing Director of Energo ("**MD**") or his nominee. TRF objected the procedure of appointment of arbitrator under Contract. Energo didn't responded to said objection and suggested appointment of a retired judge of the Court as the sole arbitrator in terms of the arbitration clause given under the Contract. As a result, TRF approached High Court of Delhi ("**Delhi HC**") under Section 11(6) of the Arbitration and Conciliation Act, 1996, seeking the appointment of an arbitrator and contented that by virtue of Section 12(5) of the Arbitration and Conciliation (Amendment) Act, 2015 ("**Amended Act**"), read with the 5th and 7th Schedules to the Amended Act, the MD had become ineligible to act as the arbitrator and as a natural corollary, he has no power to nominate another as the arbitrator. The Delhi HC, after analysing the facts and circumstances, held that the power to nominate by MD is not affected by Section 12(5) of the Amended Act. Aggrieved by the decision of the Delhi HC, TRF approached the Court. The Court explained that once the identity of the MD as the sole arbitrator is lost, the power so conferred on him to nominate someone else as an arbitrator is obliterated. The Court relying on the decision in ***Firm of Pratapchand Nopaji* v. *Firm of Kotrike Venkata Setty & Sons*** [(2015) 3 SCC 800] and a host of other authorities, reiterated the maxim '*qui facit per alium facit per se*' and held that if an ineligible arbitrator was allowed to nominate another arbitrator, it would tantamount to carrying out the proceedings of arbitration himself.


## Buyer of Property under Committed Return Plan will be considered as a Financial Creditor under IBC, 2016

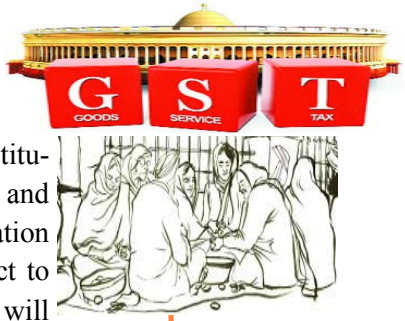
**INSOLVENCY AND BANKRUPTCY CODE 2016**

The National Company Law Appellate Tribunal, New Delhi ("**Tribunal**") in the matter of ***Nikhil Mehta and Sons* v. *AMR Infrastructure Limited*** [Company Appeal (AT) (Insolvency) No. 07 of 2017] decided on 21st July, 2017 examined the issue as to whether a buyer of a property under a committed assured return plan ("**CARP**") can be considered a financial creditor within the meaning of Section 5(7) of the Insolvency and Bankruptcy Code, 2016 ("**Code**") because the arrangement of CARP made while purchase of shop by the appellants was different from pure and simple agreement of sale and purchase. In the present case, the appellants had entered into different agreements/MOUs with the respondent for the purchase of 3 properties. Amongst the properties, a shop ("**Unit**") was purchased by the appellants under the CARP according to which, if the appellants make an upfront payment of a substantial portion of the total sale consideration with respect to the Unit at the time of execution of the MOU, the respondent will pay a particular amount to the appellants each month from the date of execution of the said MOU till the time the actual physical possession of the Unit is handed over to the appellant ("**Assured Returns**"). After paying some installments under the Assured Returns, the respondent stopped the payment of the amount which the respondent was liable to pay under the Assured Returns without giving any reason for the same. The appellants approached the National Company Law Tribunal ("**NCLT**") under Section 7 of the Code contending that being a financial creditor under the Code, insolvency proceedings against the respondent shall be initiated due to failure to pay the due Assured Returns (financial debt) on the part of the respondent. NCLT rejected the application of the appellants on the ground that appellants are not financial creditors and the transaction is merely a simple agreement of sale and purchase. Aggrieved by the order of NCLT, the appellant filed an appeal before the Tribunal. Upon scrutiny of the expression 'financial creditor' and 'financial debt' as given under the Code, the Tribunal concluded that; the

of expression 'financial creditor' under the Code refers to a person to whom a 'financial debt' is owed and the debt along with interest, if any, is disbursed against the consideration for time value of money. The key feature of financial transaction as postulated by Section 5(8) is its consideration for time value of money which means those financial transactions which are usually for a sum of money received today to be paid for over a period of time in a single or series of payments in future. The said definition requires the understanding of the expression 'financial debt'. Thus, the amount due to the appellants comes within the meaning of 'debt' as defined in Section 3(11) of the Code. Therefore, the appellant will fall under the expression of 'financial creditors' as defined under the Code, as the amount so borrowed by the respondent satisfies the requirement of financial debt.

## Food served in Religious Community Kitchens exempted under GST

Goods and Services Tax ("**GST**") is levied on all supplies of goods and services or both, except some which are specifically kept outside from the purview of GST. Even the items used to prepare foods at community kitchens run by religious institutions ("**Kitchens**") such as langars in Gurudwara's and prasads in Manidr's also attract GST. However, many representations were sent to the Union Finance Ministry ("**Ministry**") requesting them to grant exemption under GST with respect to items purchased for serving free food in the Kitchens. Recently, the Ministry has announced that prasadam distributed at religious places of worship like temples, mosque, churches, gurudwara and dargahs will not attract GST. Further, the Ministry also exempted anna kshetras run by religious institutions from the ambit of GST. However, the Ministry has clarified that some inputs and inputs services such as sugar, vegetable edible oils, ghee, butter, service for transportation of such goods, etc. which are required for preparing food at Kitchens will be subject to GST because such inputs and input services have multiple uses. Under GST regime, it will be difficult to prescribe different rates for these products when used for some specified purpose. It was also clarified by the Ministry that since GST is a multi stage taxation system, it is difficult to administer end used based exemptions or concessions. Therefore, it will not be possible to provide such end used based exemption for inputs and input services with are used/undertaken for preparing prasadam or food for free distribution by the Kitchens.




## Power to revoke Passport is a Serious Restriction on Fundamental Rights

The Hon'ble Delhi High Court ("**Court**") in the case of ***Sikandar Khan* v. *Union of India and Anr.*** [Writ Petition (C) 5315/2017] decided on 6th July, 2017, set aside the impugned order extending the suspension of passport of the petitioner. In the instant case, the petitioner was working as a marketing specialist in Riyadh since 2006. Due to some complaints against the petitioner, an order under Section 10A of the Passports Act, 1967 ("**Act**") suspending the passport of the petitioner was passed when he was visiting India on a leave with his family. Under Section 10A of the Act, the Central Government may suspend the passport with immediate effect, if it is satisfied that the passport is likely to be impounded or revoked for the reasons stated under Section 10(3)(c) of the Act, if the same is necessary in the interests of sovereignty and integrity of India, security of India, friendly relations of India with any foreign country or in the interests of general public. The Court referred to the judgment of ***Satwant Singh Sawhney* v. *D. Ramarathnam, Assistant Assistant Passport Officer*** and observed that a passport is an aspect covered within the ambit of fundamental rights guaranteed under Article 21 of the Constitution of India ("**Constitution**"). The Court further observed that: (i) suspending the passport will prevent the petitioner from travelling abroad for continuing his employment and is therefore violative

of Article 19(1)(g) of the Constitution; (ii) In India, with respect to the complaints against the petitioner, no court has issued any order restraining the petitioner from travelling abroad; (iii) The show cause notice is vague and only provides that petitioner is indulging in unlawful activities and thus the same was framed without application of mind and as a formality; and (iv) The principles of natural justice must be followed in action under Section 10(3)(c) of the Act and right to be heard cannot be reduced to a mere formality. Thus, the Court held that the order passed under Section 10 and Section 10A of the Act by the passport authority without sufficient cause and without complying with the conditions as given thereunder or without following principles of natural justice, is liable to be set aside, as it is a serious restriction on fundamental rights.

## Reasonable Time depends upon the Facts of each Case and cannot be Quantified like a Period of Limitation

The Hon'ble High Court of Allahabad ("**Court**") in the case of ***Mass Awash (P.) Ltd.* v. *Commissioner of Income-tax (International Taxation)*** [[2017] 83 taxmann.com 306 (Allahabad)] has held that where time period is not prescribed for the exercise of power, a reasonable time would depend upon the facts of each case and cannot be quantified or prescribed like a period of limitation. In the instant case, the assessee failed to deduct the tax at source ("**TDS**") under Section 195 of the Income Tax Act, 1961 ("**Act**") on payment of sale consideration made to a Non-resident Indian ("**Payee**") in connection with the sale of land. Consequently, re-assessment proceedings were initiated by the department against the Payee in order to collect tax on the transaction entered into between the assessee and the Payee. However, as the department failed to recover tax from the Payee, it initiated proceedings against the assessee under Section 201(1)/201(1A) of the Act ("**Proceedings**") which provides for consequences of failure to deduct tax at source or pay tax deducted at source to the Government. The proceedings were initiated by the D.C.I.T. by serving a notice upon the assessee under Section 201(1)/201(1A) of the Act after almost 10 years from the date of execution of the sale-deed alleging that it has not deducted the TDS on payment of sale consideration to the Payee. However, the assessee submitted that the notice issued after 10 years is barred by limitation. The department contended that it was not guilty of undue and unreasonable delay of 10 years in initiating the proceedings as when the fact of the Payee being a N.R.I., came to its notice, it proceeded with the matter, and as no amount of tax could be realized from her, power was exercised under S. 201(1)/201(1A) of the Act. The Court held that defense of the assessee that it was misrepresented by the Payee by not disclosing that she was an NRI would equally be available to the department also for explaining the delay of 10 years. Further, bonafide of the department is established by the fact that they made all the possible efforts to recover the amount of tax from the Payee and as a last resort only power was exercised under Section 201 (1)/201(1A) of the Act against the assessee. Therefore, it could not be said that the proceedings initiated against the assessee after a period of 10 years were barred by limitation.

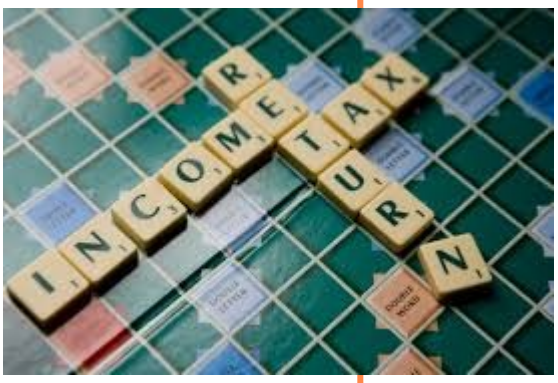
## Compulsory Manual selection of Returns in certain Cases

The Central Board of Direct Tax *vide* Instruction No. 5/2017 dated 7th July 2017, laid down the guidelines for compulsory manual selection of returns/cases requiring scrutiny during the financial year 2017-2018 in the following cases:

i) Cases involving assessment pertaining to survey proceedings under Section 133A of the Income Tax Act, 1961 ("**Act**");

ii) With regards to the cases where addition is involved in earlier assessment year(s);

- Cases pertains to 8 metro cities viz. Ahmedabad, Bengaluru, Chennai, Delhi, Hyderabad, Kolkata, Mumbai & Pune in which addition in excess of Rs. 25,00,000/- (Rs. Twenty Five Lakhs only) is involved;
- In other cases, the quantum of such addition should exceed Rs. 10,00,000/- (Rs. Ten Lakhs only) only; and
- In case of transfer pricing, the amount of addition should be in excess of Rs. 10,00,00,000/- (Rs. Ten Crores only).




iii) Cases where the return was filed in response to notice of income escaping assessment under Section 148 of the Act;

iv) Cases where the search and seizure authorization under Section 132 or Section 132A of the Act was executed; and

v) Cases where assessee is claiming any exemption/deduction in the his income tax return which he is not entitled for, is covered.

## Revised and Extended Deadlines for filing GST Returns for July and August, 2017

The Central Board of Excise and Customs ("**CBEC**") has finally notified the timeline for furnishing final tax returns for the months of July and August, 2017 under the new indirect tax regime – Goods and Services Tax ("**GST**"). *Vide* notifications no. 18/2017; 19/2017; 20/2017 and 21/2017, the following deadlines have been either revised or extended in relation to the 3 monthly returns to be filed under GST regime –

| Month | GSTR-3B | GSTR-1 | GSTR-2 | GSTR-3 |
|---|---|---|---|---|
| July, 2017 | 20th August, 2017 | 1st – 5th September, 2017 | 6th – 10th September, 2017 | 11th- 15th September, 2017 |
| August, 2017 | 20th September, 2017 | 16th -20th September, 2017 | 21st – 25th September, 2017 | 26th – 30th September, 2017 |

Moreover, the window for filing GSTR-3B has opened on 5th August, 2017 and is fully functional now. Taxpayers can log into their account on the GST portal and file their GSTR–3B return, in which the taxpayer needs to provide consolidated details of outward supplies and input credit. They can also make tax payment using internet banking at the portal.

# QUICK TAKEAWAYS

- Goods imported by Special Economic Zones has been exempted by the Central Government *vide* N.N. 64/2017- Customs dated 5th July, 2017.
- Government clarifies that the star rating of hotels is irrelevant for determining the applicable rate of GST. GST rates for accommodation in any hotel shall be according to the declared tariff of a unit of accommodation.
- Central Board of Direct Taxes *vide* circular no. 23/2017 dated 19th July, 2017 has clarified that no tax deducted at source shall be deducted on the GST component, if the GST is shown separately in invoices.
- Government *vide* N.N.04/2017- Compensation Cess (Rate) dated 20th July, 2017 has exempted the intra-State supplies of 2nd hand goods received by a registered person from an unregistered person, if he pays GST Compensation Cess on the value of outward supply of such second hand goods.
- SEBI *vide* notification dated 13th July, 2017 specified the eligibility criteria for qualifying as a debenture trustee. It has been clarified that a person shall not be appointed as a debenture trustee in case the debenture trustee beneficially holds shares in the company.
- The Hon'ble High Court of Delhi held that all the legal services provided by advocates, law firms of advocates, or LLPs of advocates will continue to be governed by the reverse charge mechanism under GST regime.
- The Lok Sabha on 27th July, 2017 has passed the Companies Act (Amendment) Bill, 2016 which seeks to make significant changes to the Companies Act, 2013 and to remove complexities and improve ease of doing business, strengthen corporate governance standards and prescribes strict action against defaulting companies.
- The Income Tax Appellate Tribunal ("**ITAT**") has up held a tax demand raised on USD150 million investments by a United States television network in NDTV in 2008, an order which the company said has 'numerous inconsistencies and contradictions'.
- CBDT changes the format of Form no. 3CD of Audit Report by way of issues of Notification no. 58/2017 dated 3rd July, 2017 and corrigendum vide notification dated 6th July, 2017.
- CBDT issued clarifications *vide* Circular No. 24/2017 on 25th July, 2017 on computation of book profit for the purpose of levy of minimum alternate tax under Section 115JB of the Income-tax Act, 1961 for Indian Accounting Standards compliant companies.
- The Ministry of Finance by way of press release dated 24th July, 2017 has clarified that the non-residents who are not claiming refund or non-residents who are claiming refund but having a bank account in India are not required to furnish details of their foreign bank account in the return of income. However, the non-residents, who are claiming income-tax refund and not having bank account in India may, at their option, furnish the details of one foreign bank account in the return of income for issuance of refund.
- The government extended the deadline for small businesses to opt for the composition scheme in GST regime by nearly 4 weeks to 16th August, 2017.
- The Ministry of Women and Child Development ("**Ministry**") on 24th July, 2017 launched an online complaint box by the name of SHe- hosted at the Ministry's website (providing a portal for women visiting or working any office of central government to file complaints related to sexual harassment at workplace under the Sexual Harrassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013.
- The missionaries of charity have obtained trademark for the blue striped white cotton sari. The Trademark Registry, Government of India, has granted the registration for the blue pattern of the sari.
- The Hon'ble High Court of Gujarat, in the case of ***Jalpa Pradeepbhai Desai* v. *Bar Council of India*** has held that a legal consultant of a corporation cannot enroll as a lawyer.
- Ministry of Corporate Affairs has informed that the PAN fee has been revised from Rs. 107/- to Rs. 110/- and TAN fee from Rs. 63/- to Rs. 65/- w.e.f. 1st July 2017.
- The Union Cabinet has approved the Labour Code on the Wages Bill, 2015 to amend, simplify and consolidate the (i) Minimum Wages Act, Minimum Wages Act, 1948; (ii) Payment of Wages Act, 1936; (iii) Payment of Bonus Act, 1965 and (iv) Equal Remuneration Act, 1976. The said bill is expected to be placed in both the Houses of the Parliament in the current monsoon session.

# KNOWLEDGE CENTRE

## FAQs on FEMA (*conti……*)

**Q.11. Who is a Person of Indian Origin ("PIO")?**

For the purpose of the Foreign Exchange Management Act, 1999 ("**FEMA**"), means a citizen of any country other than that of Bangladesh or Pakistan, if (i) he at any time held Indian passport; (ii) he or either his parents or any of his grand parents was a citizen of Indian by virtue of the Citizenship Act, 1955; or (iii) the person is a spouse of an Indian citizen or a person referred to in (i) or (ii) above.

**Q. 12. What are the different kinds of bank accounts that an Non-Resident Indian ("NRI") and a PIO can open in India?**

An NRI and a PIO are allowed to open 3 types of bank accounts in India, i.e., (i) Non Resident Ordinary Rupee account ("**NRO account**"); (ii) Non Resident External account ("**NRE account**"); and (iii) Foreign Currency Non Resident account ("**FCNR account**").

**Q. 13. Whether NRI can maintain resident accounts in India which they had when they were residents?**

It is not allowed. On becoming an NRI, a person shall immediately inform its banker to redesigned its resident accounts into NRO account, e.g., NRO S.B. Account, NRO Fixed Deposit Account or NRO Current Account as the case may be.

**Q. 14. When NRI returns to India for good, are they allowed to keep foreign currency balances held in NRE/FCNR accounts?**

Returning NRIs for permanent stay, who were non-residents earlier are permitted to open, hold and maintain with an authorized dealer banks in India as Resident Foreign Currency account ("**RFC account**") to keep their foreign currency. Foreign currency held outside India at the time of return can be credited to the RFC account.

**Q. 15. For going abroad on a trip, from where one can get the foreign currency?**

Foreign currency may be availed from the authorized dealer banks and money exchanger. However, foreign currency can be issued in cash or in form of travelers' cheque against the demand draft or by debiting to the bank account.

**Q. 16. What are the documents required to be submitted for acquiring the foreign currency?**

Person going to abroad has to submit Form A2 to the authorized dealer bank and money exchanger, which is available with them. However, no documents are required if foreign currency is required upto US$ 25,000 only.

**Q. 17. How much Indian currency can be taken outside India while on visit abroad?**

Travelers cannot take Indian currency outside India exceeding Rs. 25,000/-.

**Q. 18. What are the different categories of foreign currency accounts a person resident in India can open in India?**

A person resident in India can open 3 types of foreign currency accounts in India, i.e., the Resident Foreign Currency account for returning Indians, the Resident Foreign Currency (Domestic) account and the Exchange Earners' Foreign Currency account.

**Q. 19. Whether an NRI and a PIO can purchase immovable property? What are the documents required for purchasing such immovable property?**

General permission has been accorded to the NRI and PIO to purchase the residential/commercial property only in India. No form or documents are required to be submitted to anyone for purchasing residential/commercial property only in India.

**Q. 20. Is there any restriction on number of residential/commercial property an NRI and a PIO can purchase as per general permission?**

There is no restriction on number of residential/commercial property that an NRI and a PIO can purchase under the general permission available to them.

# EDITORIAL

## *Encouraging the Housing Sector in India - Section 80-IBA of the Income Tax Act, 1961*

**- By *CA Deepak Pareek, Associate***

Section 80-IBA of the Income Tax Act, 1961 ("**Act**") was inserted by the Finance Act, 2016 with the purpose to incentivize and encourage the affordable housing sector in India. This Section was aimed to encourage the 'Housing for All' initiative led by the BJP government. As per the said Section an assessee shall be allowed 100% deduction in relation to profits and gains derived from the business of developing and building housing projects, if certain conditions as specified in Section 80-IBA are fulfilled. List of the conditions which are required to be fulfilled in order to get the benefit of the provisions of Section 80-IBA of the Act are enumerated below:

1. The housing project should be approved by the competent authority within 1st June, 2016 to 31st March, 2019.
2. The housing project should be completed within the period of 5 years from the date of the approval by the competent authority.
3. The carpet area of the shops and the commercial establishments should not exceed 3 percent of the aggregate built up area of the housing project.
4. The project should be on the plot of land admeasuring:
   - 1,000 sq. mtrs. or more, if the project is located within the cities of Chennai, Delhi, Kolkata or Mumbai.
   - 2,000 sq. mtrs. or more, where the project is located at any other place.
5. The project should be the only housing project on the said plot of land.
5. The carpet area of the residential unit comprised in the housing project should not be more than:
   - 30 sq. mtrs., if the project is located within the cities of Chennai, Delhi, Kolkata or Mumbai.
   - 60 sq. mtrs., if the project is located at any other place
7. If one residential unit is allotted to an individual, than no other residential unit in the housing project can be allotted to that individual or the spouse or the minor children of such individual.
8. The project should utilize more than equal to:
   - 90% of the floor area ratio permissible, if the project is located within the cities of Chennai, Delhi, Kolkata or Mumbai.
   - 80% of the floor area ratio permissible, if the project is located at any other place.
9. The assessee is required to maintain separate books of accounts in respect of the housing project.

## ISSUES UNDER CONSIDERATION

As regard to the condition no. 5 mentioned above, suppose if an assessee has a plot of land admeasuring 50,000 sq. mtrs., out of which 20,000 sq. mtrs. area is already used by building under construction on the said plot of land on or before 1st April, 2016. Now, the question that certainly arises is that whether the developer assessee who wants to utilize the remaining part of land for a new project, will be eligible to claim benefit under Section 80-IBA of the Act. In order to understand this, we have to first analyse the condition mentioned under Section 80IBA of the Act, same has been reproduced hereinafter for your ready reference:

"*the project is the only **housing project** on the **plot of land** as specified in clause (d)*"

The two words that require analysis and close examination are highlighted herein above. It is pertinent to mention that the term 'housing project' is defined in Section 80-IBA(6)(d) of the Act. The said definition is reproduced herein below for the sake of ready reference:

> "*"housing project" means a project consisting predominantly of residential units with such other facilities and amenities as the competent authority may approve subject to the provisions of this section.*"

It is imperative to understand that a project will be considered as a housing project, if that project consists predominantly of residential units and fulfills other conditions mentioned in Section 80-IBA of the Act. Clause (e) of Section 80-IBA(2) of the Act provides that the housing project should be the only housing project on a plot of land, i.e., if more than one housing projects are constructed on a single piece of land, then no deduction under Section 80-IBA of the Act can be availed by the assessee(s) carrying such projects. In the case for our discussion, a project, the construction of which was started before 1st March, 2016 shall not fall within the meaning of 'Housing project' as defined in Section 80-IBA(6)(d) of the Act as the said Section was not in force at that point of time. Taking the discussion further, it is pertinent to mention that the said Section nowhere states that a piece of land having a patta from the local authority shall be considered as 'plot of land' for the purpose of Section 80-IBA of the Act. The only condition mentioned in the said Section regarding the plot of land is that it should not be less than 1000 or 2000 sq. mtrs. in area, as the case may be. Therefore, an option to sub-divide the plot of land into two is available to the assessee for the purpose of claiming deduction u/s 80-IBA of the Act.

Thus, in view of the above discussion, it can be construed that even if a project is under construction on a plot of land, then, an assessee willing to start a housing project on the same plot of land is eligible for availing the benefit of Section 80-IBA of the Act, if all the conditions mentioned under the said Section are duly satisfied.

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