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THE NEWSLETTER

CBDT Releases Draft Rule to Compute Accreted Income under Income Tax

The Finance Act, 2016, *inter alia* inserted Chapter XII – EB in Income tax Act, 1961 ("**Act**") to levy additional income-tax on the accreted income of charitable institutions where the concerned charitable trust exempted under the Act ceases to exist as charitable organization or have got converted into a non-charitable organization.

Accreted income is defined under Section 115TD(2) of the Act as an amount by which the aggregate fair market value of the total assets of the trust or the institution, as on the specified date, exceeds the total liability of such trust or institution computed in accordance with the method of valuation as may be prescribed. The Central Board of Direct Taxes ("**CBDT**") has come up with a draft rule 17CB ("**Draft Rule**") to be inserted in Income Tax Rules, 1962, for the computation of fair market value of total assets and total liability.

As per the Draft Rule, fair market value of total assets shall be the aggregate of the fair market value of all the assets in the balance sheet as reduced by the amount of tax paid as deduction or collection at source or as advance tax payment and amount shown as asset including the unamortized amount of deferred expenditure which does not represent the value of any asset. Further, the Draft Rule states that the total liability of the trust or institution shall be book values of liabilities in the balance sheet on the specified date excluding capital fund or accumulated funds or corpus, reserve or surpluses or excess of income over expenditure, contingent liability, provisions made for meeting liabilities and amount representing provision for taxation. The Draft Rule also provides methods for valuation of shares and securities both quoted and unquoted, immovable properties and business undertaking.

Minutes of 3rd GST Meeting

The third GST council ("**Council**") meeting headed by the Union Finance Minister, Mr. Arun Jaitely was scheduled from 18th – 20th October, 2016, to decide various important issues like rates, compensation to States, administrative control over assessees, etc. But the three (3) days meeting got concluded abruptly one (1) day before the scheduled date, without deciding the rates that will prevail in the GST regime. Nevertheless, the meeting ended with a consensus on the way the States shall be compensated in the new regime. The Council approved the Centre and States proposal of cess over and above GST rates to compensate the States. In the meeting, the

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Council had decided that States would have control over VAT of assessees having annual turnover of Rs 1,50,000,00. And for assessees whose annual turnover is more than Rs.1,50,000,00, the VAT administration of such assessees shall be divided between Centre and States. The proposal of imposing cess over GST has created further vagueness as to whether such cess shall be allowed as input credit or it will be added to the cost of the product.

Establishment of Insolvency and Bankruptcy Board of India

The Ministry of Corporate Affairs, Government of India, vide notification bearing number SO3110 (E) dated 01.01.2016 have established the Insolvency and Bankruptcy Board of India ("**IBBI**"). The head office of IBBI shall remain at New Delhi. At present, the IBBI comprises of four (4) members and is headed by Madhusudhan Sahoo, chairman of IBBI. The IBBI shall act in the capacity of 'insolvency regulator' wherein its chief function will be to regulate the functioning of (i) insolvency professionals; (ii) insolvency professional agencies; and (iii) information utilities under the Insolvency and Bankruptcy Code, 2016 ("**IBC**"). In order to perform the regulatory functions under the IBC, the IBBI has been empowered with legislative, executive as well as quasi-judicial powers. Further, the regulatory functions of IBBI shall entail (i) registration and monitoring of the insolvency professionals, insolvency professional agencies and information utilities and (ii) framing and implementing various regulations and guidelines, from time to time, that may be required in respect of matters pertaining to insolvency and bankruptcy.

Dispute Involving Allegations of Fraud can be Decided under Arbitration Proceedings

Hon'ble Supreme Court of India ("**SC**") in the case titled as ***A. Ayyasamy*** v. ***A. Paramasivam & Ors.*** (Civil Appeal Nos. 8245-8246/ 2016) held that disputes involving allegations of fraud arising out of contracts bearing an arbitration clause shall be referred to arbitration. In the instant case, parties formed a partnership by way of a partnership deed dated 01.04.1994 for running a hotel. While the appellant was entrusted with administration of the hotel, the respondents alleged that the appellant had failed to make regular deposits of money into the common operating bank account of the partnership and had fraudulently siphoned off an amount of Rs.10,00,050/-. In a separate raid conducted by the CBI on premises of the appellant's relative, an amount of Rs.45,00,000/- was seized which was alleged to have been given by the appellant and which formed part of the business of the hotel. The respondents filed a civil suit, seeking the right of the administration of

the hotel. The appellant sought reference Section 8 of the Arbitration & Conciliation Act, 1996 ("**Act**") before the Madras High Court ("**High Court**"). The High Court rejected the appellant's application on the ground that the dispute involved allegations of fraud. Aggrieved by the decision of the High Court, the appellant preferred an appeal before SC. SC observed that when the case of fraud is set up by one of the parties and on that basis one of the parties wants to wriggle out of that arbitration agreement, a strict and meticulous inquiry into the allegations of fraud is needed and only when the court is satisfied that the allegations are of serious and complicated nature and that it would be more appropriate for the court to deal with the subject matter rather than relegating the parties to arbitration, then alone such an application under Section 8 of the Act should be rejected. Every allegation of fraud would need to be weighed on a scale of seriousness and complexity, with an eye that sifts through material to identify veracity of the allegations.

Thus, now this will be an additional factor to be considered by courts while deciding applications for reference to arbitration. The present judgment fortifies the intention of the judiciary to be a partner in arbitral proceedings and offer support, both in an active and passive manner, where questions arise with respect to reference to arbitration.

Visitation Rights to the Parent Paying Maintenance

Delhi High Court ("**Court**") in the case of ***Manpreet Singh Bhatia*** v, ***Sumita Bhatia*** [MAT.APP (F.C) 79/2014] held that when the father was paying maintenance pendent lite under Section 24 of the Hindu Marriage Act, 1955 ("**Act**") for his wife and daughter, he is also entitled to visit his daughter at least on festivals, her birthdays or at regular interval. In the present case, the appellant was aggrieved by the decision of the lower court wherein the lower court directed the appellant to give a monthly amount of Rs.25,000/- towards maintenance of his wife and Rs.25,000/- for the education and maintenance of his daughter. The appellant by way of an appeal before the Court, challenged the maintenance awarded by the lower court. The Court observed that though Section 24 of the Act is not intended to bring about an arithmetical equality between the two spouses, however, it is the duty of the Court in these cases to ensure that the indigent spouse may not suffer at the instance of the affluent spouse. Further, the Court held that *prima facie* it was necessary to determine the income of the rival claimants. While making this determination, only the permanent income of the parties is relevant and not the casual income. In addition to this, the Court said that in a situation where parties did not come out with their exact income,

the Court had no alternative but to make a guess. Therefore, in this case keeping in mind the luxurious lifestyle of the appellant, the Court concluded that the appellant was hiding his true income and held that the wife was entitled to the said maintenance. Along with that, the Court further held that though the case at hand was not about visitation rights however when a parent is paying maintenance for the education of his/her child, he/she shall also entitled to visitation rights.

Speech undermining the Authority of Judiciary amounts to Contempt

The Hon'ble Supreme Court of India in the case of ***Het Ram Beniwal and ors***. v. ***Raghuveer Singh and ors with Bhuramal Swami*** v. ***Raghuveer Singh and ors***. *(*Criminal Appeal No 463 & 464/2006 held that while interpreting the Section 2(c)(i) of the Contempt of Court Act, 1971, which deals with scandalizing or lowering the authority of court amounting to criminal contempt, it has to be borne in mind that the judges can take care of themselves and therefore they need not to be protected. It is the right and interest of the public in due administration of justice that needs to be protected. If any person condemns the judges, then it would lead to destruction of administration of justice and prejudices the right of public to avail justice. In the instant matter, the statements made by the appellants against the Rajasthan High Court order, related to release of a murderer on anticipatory bail, are not only derogatory but they are lowering the authority of court. Also such a criticism cannot be termed as fair and therefore no protection can be granted to an accuse.

E-mails Acknowledgement in Fact Amending the Limitation Act

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The limitation law in India dates back to the year 1963 and was last amended in the year 1999. Founded on the doctrines of '*Interest Republicae Ut Sit Finis Litium*' and '*Vigilantibus Et Non Dormentibus Jura Subvenient*', the Limitation Act, 1963 ("**Act**") prescribes the time limit within which an action must be brought for the legal wrong and if this prescribed period is over or expired, the right of action is barred.

With the advent of internet, several electronic modes of payments such as NEFT, RTGS, net banking etc. have emerged whereas the Act was drafted keeping in mind the then prevailing methods of payments such as cheques, hundies, drafts etc. Ordinarily the Act, prescribes a period of three (3) years for the purpose of recovery of debt. However, certain provisions of the Act provide for the objectives of the law of limitation.

Section 18 of the Act provides that in case an acknowledgement of liability is made in writing before the expiry of the limitation period, then a fresh period of limitation

starts from the time when such acknowledgment is made. The basis of this section is that the bar of limitation should not be allowed to operate in cases where the existence of claim is acknowledged by the persons who are under the liability.

Section 19 of the Act prescribes the condition wherein part payment of a debt can start a fresh period of limitation. In addition to the part-payment, an essential condition for triggering a fresh period of limitation under Section 19 of the Act is that the payment made by the person liable to pay the debt or by his authorized agent shall be reflected through an acknowledgment, whether in handwriting or in writing signed by the person making the payment or by his authorised agent. For the purpose of Section 18 and Section 19 of the Act, an acknowledgment of the subsisting liability or the part-payment, as the case may be, must be made in writing and shall also contain the signature of the person making the acknowledgment. Today, since e-mails have taken place of letters, it is more likely that acknowledgment of liability is made on an e-mail then through a letter. Similarly, payments are regularly being made through electronic modes which do not contain handwriting or writing signed by the person making the payment. All receipts in the online payments are also generated in electronic form. However, in order to attract the applicability of Section 18 or 19 of the Act, a valid acknowledgment must be there, which under the Act shall be in handwriting or writing signed by the person making the acknowledgment or the payment. Accordingly, the issue arises whether e-mail acknowledgments or electronic payment would fulfill the requirement of a signed acknowledgment under Section 18 of the Act. Section 4 of the Information Technology Act, 2000 ("**IT Act**") provides legal recognition to electronic records and brings the electronic records on same footing as the physical written records. Further, Section 5 of the IT Act grants legal recognition to electronic signatures. A combined reading of the provisions of the Act and the IT Act suggests that in case electronic signature of the person are affixed on the acknowledgment, it would be a valid acknowledgment for the purpose of extending limitation under Section 18 and 19 of the Act. At this juncture, it is relevant to understand the meaning of the term 'electronic signature'. Under Section 2(1)(ta) of the IT Act, the term 'electronic signature' is defined as follows:

"***Section 2(1) (ta)*** *"electronic signature" means* ***authentication*** *of any electronic record by a subscriber by means of the* ***electronic technique*** *specified in the Second Schedule and includes digital signature*."

Therefore, any electronic authentication technique not involving 'digital signature certificate' is unlikely to fall within the definition of the term "electronic signature" and accordingly, will not be eligible for legal recognition granted to electronic signatures under the IT Act. Therefore, strictly interpreting the legal provisions as per the letters of the law, an e-mail or electronic payment may not satisfy the requirements of Section 18 or 19 of the Act. This issue was faced by

the Hon'ble Karnataka High Court ("**Court**") in ***Sudarshan Cargo Pvt. Ltd.*** v. ***Techvac Engineering Pvt. Ltd.*** **[**AIR 2014 Kant 6] wherein the Court had the occasion of analyzing whether e-mail/s acknowledging the debt would constitute a valid and legal acknowledgement of debt though not signed as required under Section 18 of the Act. The Court examined the meaning of the term 'signed' and the objects and reasons of enactment of the IT Act. The Court noticed that the IT Act was enacted to facilitate the objective of Model Law on Electronic Commerce adopted by United Nation Commission on International Trade Law in 1996 to which the Republic of India is a signatory. The Model Law provides for equal legal treatment of users of electronic communication and paper based communication. The IT Act, in its preamble also stipulates that the IT Act came into effect to provide legal recognition to legal recognition to transactions by electronic techniques in alteration to the paper based methods. Certain relevant extracts from the judgments are reproduced hereunder:

> "*A harmonious reading of Section 4 together with definition clauses as extracted hereinabove would indicate that on account of digital and new communication systems having taken giant steps and the business community as well as individuals are undisputedly using computers to create, transmit and store information in the electronic form rather than using the traditional paper documents and as such the information so generated, transmitted and received are to be construed as meeting the requirement of section 18 of the Limitation Act, particularly in view of the fact that section 4 contains a non obstante clause. ...*
>
> *For the reasons aforestated and in view of the discussion made herein above, I am of the considered view that point formulated herein above requires to be answered by holding that an acknowledgement of debt by e-mail originating from a person who intends to send or transmit such electronic message to any other person who would be the 'addressee' would constitute a valid acknowledgment of debt and it would satisfy the requirement of Section 18 of the Limitation Act, 1963 when the originator disputes having sent the e-mail to the recipient*."

In view of the spirit of the IT Act and prevalent use of technology, the Court was of the view that an acknowledgement of debt by e-mail would satisfy the requirement of Section 18 of the Act and would renew the period of limitation for the purpose of recovery of debt. Though there is no direct judicial precedent on whether electronic payment would extend the prescribed limitation period as per Section 19 of the Act, in view of the aforesaid judgment, it would not be incorrect to state that Courts are likely to answer this query in positive and liberally interpret Section 19 of the Act in order to promote and facilitate the electronic commerce transaction.

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