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THE NEWSLETTER

UPDATE YOURSELF

Can Corporate Insolvency Under the Insolvency and Bankruptcy Code, 2016 be Triggered by a Time-Barred Debt?

Section 238A of the Code was inserted by the Insolvency and Bankruptcy Code (Second Amendment) Act 2018 ("**Amendment Act**") w.e.f. 06.06.2018, applying the Limitation Act, 1963 ("**Limitation Act**") to the proceedings or appeals before the Adjudicating Authority, the National Company Law Appellate Tribunal, the Debt Recovery Tribunal or the Debt Recovery Appellate Tribunal, as the case may be. Thus, an important question arises whether the Amendment Act making the Limitation Act applicable to an application for initiation of corporate insolvency resolution process under Section 7 or Section 9 of the Code ("**Application**") will apply retrospectively. This question was settled by the Hon'ble Supreme Court ("**SC**") in the case of ***B.K. Educational Services Pvt. Ltd. vs. Parag Gupta and Associates (Civil Appeal No. 23988/2017, decided on 11.10.2018)***. In the said case, **(i)** the SC observed that on a reading of the Insolvency and Bankruptcy Code 2016 ("**Code**") together with its cognate legislation, the Companies Act 2013, it is clear that the Limitation Act will apply to an Application; **(ii)** the SC observed that as reflected in the Insolvency Law Committee Report of March 2018, the Legislature did not contemplate enabling a creditor to trigger insolvency by a stale or time-barred claim; **(iii)** the argument of Section 238A of the Amendment Act being clarificatory of the law and being procedural in nature must be held to be retrospective was affirmed by the SC by relying upon a recent decision of this court in ***SBI vs. Ramakrishnan [Civil Appeal No(s). 3595/2018]*** wherein it was held that amendment made to Section 14 of the Code, in which moratorium prescribed was held not to apply to guarantors, was held to be clarificatory and therefore retrospective in nature. In view of these observations, the SC held that the Limitation Act is applicable to an Application from the inception of the Code; thus Article 137 of the Limitation Act gets attracted and therefore if the default has occurred over 3 years prior to the date of filing of an Application, the Application would be barred under Article 137 of the Limitation Act, save and except in those cases where the delay may be condoned as per Section 5 of the Limitation Act.

Disallowance of Transitional Credit on Capital-Goods 'In-Transit' Constitutionally Valid

In the case of ***RSPL Ltd. vs. Union of India [(2018) 98 taxmann.com 441 (Gujarat), decided on 16.10.2018]***, the question before the Hon'ble High court of Gujarat ("**Court**") was that whether not allowing the credit of excise duty paid on capital goods which were in transit as on 01.07.2017 under GST law is violat-

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ive of Article 14 and 19(1)(g) of the Constitution of India? Before the introduction of GST, a manufacturer was entitled to take CENVAT credit of duty paid on inputs as well as on capital goods utilized in the manufacturing process, subject to the conditions and restrictions provided in the CENVAT Credit Rules, 2004. With the introduction of GST, such facility enabling the manufacturers to take credit of the duties paid on inputs as well as capital goods continued with certain modifications. The Court noted that Section 140(5) of the CGST Act allows a registered person, credit of eligible duties and tax in respect of inputs or input services which were received on or after the appointed day but on which the tax was paid earlier. However, when it comes to the question of taking credit of the duty paid on the capital goods in transit and received on or after 01.07.2017, no facility is provided to enable the assessee to claim credit of the excise duty paid on such capital goods. This is where the grievance of the petitioner was. The Court held that legislature has made a clear and conscious demarcation between capital goods and inputs when it comes to availing credit of the duties paid on the goods which are in transit and we don't find that the distinction is in any manner artificial or arbitrary. Further, the Court noted that Article 14 as is well-known, prohibits class legislation but not reasonable classification. To bring in the element of discrimination in terms of Article 14 of the Constitution, the onus would be on the petitioner to establish that the persons or things treated differently form a homogeneous class. In the present case, the source of the petitioner's grievance or dissatisfaction is that the inputs and capital goods are treated differently. Court observed that the inputs and capital goods form different and distinct classes, the question of sub-classification or artificial demarcation would not arise. Based on these observations and relying upon ***Godrej & Boyce Mfg. Company Prvt. Limited vs. Commissioner of Sales Tax & Ors., reported in [1992] 3 SCC 624, State of Gujarat vs. Reliance Industries Limited, reported in [2017] 16 SCC 28, ALD Automotive Pvt. Ltd. vs. The Commercial Tax Officer dated 12.10.2018***, Court held that we do not find that the statute in any manner violates Article 14 or 19(1)(g) of the Constitution.

Income from Letting Out Terrace for Installation of Mobile Tower is Income from House Property

In the matter of ***Kohinoor Industrial Premises Co-Operative Society Limited vs. ITO [(2018) 98 taxmann.com 365 (Mumbai Trib.), decided on 05.10.2018]***, the Hon'ble ITAT Mumbai ('**ITAT**') held that Income earned by the Assessee from letting out space on terrace for installation of mobile tower/antenna was taxable as 'income from house property'. The facts of the case are such that the Assessee offered income earned from letting out space on terrace for installation of mobile tower as 'income from house property'. The Assessing Officer ("**AO**") observed that terrace could not be termed as house property as it was a common amenity for the members. He further observed that conveyance was not executed in favour of the Assessee society, accordingly, the Assessee could not be considered as owner of the terrace. He also observed that Annual letting value of the terrace was not ascertainable. Accordingly, he concluded that the said income shall be treated as 'income from other sources'. On appeal, the Hon'ble CIT(A) upheld the order of the AO stating that income received by the Assessee is in the nature of compensation received for providing facilities and services to cellular

operators on the terrace of the building. On second appeal, the Hon'ble ITAT observed that terrace of the building cannot be considered as distinct and separate but certainly is a part of the house property. As regards the observation of the CIT (Appeals) that the rental income received by the assessee is in the nature of compensation for providing services and facility to cellular operators, the Hon'ble ITAT observed that the department has failed to bring on record any material to demonstrate that in addition to letting-out space on the terrace for installation and operation of antenna, the Assessee has provided any other service or facilities to the cellular operators. Further, in no other assessment year, the Assessee's claim of offering such income as house property income has been disturbed by the Assessing Officer. Therefore, there being no material difference in facts and applying the rule of consistency, the Assessee's claim for treating the income as house property income should be considered. Accordingly, the Hon'ble ITAT after considering all materials on record, held that letting-out space on the terrace of the house property for installation and operation of mobile tower/antenna amounts to letting-out a part of the house property itself and consequently, income from said letting out shall be taxable as house property income.

Conditional Gifts are Incomplete until Conditions are Complied With

The Hon'ble Supreme Court ("**Court**"), in a recent case of ***Sarojini Amma vs. Velayudhan Pillai Sreekumar [Civil Appeal No. 10785 of 2018, decided on 26.10.2018]***, examined as to whether a document styled as gift deed but admittedly executed for consideration, part of which has been paid and the balance promised to be paid, can be treated as a formal document or an instrument of gift. In the present case, the appellant had executed a gift deed in favour of the respondent. The gift deed clearly stated that the gift would take effect after death of the appellant and her husband, and that the condition was that the respondent would look after them. Later, the appellant executed a deed of cancellation. The respondent challenged the cancellation of the gift deed before the lower court and aggrieved by the said decisions of lower court, the respondent approached the Hon'ble High Court of Kerala which has set aside the earlier concurrent findings and dismissed the suit. The appellant challenging the decision of the Hon'ble High Court of Kerala filled this appeal before the Court. The Court after referring to the relevant provisions and judicial pronouncements, noted that there is no provision in law which states that ownership in property cannot be gifted without transfer of possession of such property. However, the conditions precedent of a gift as defined in Section 122 of the Transfer of Property Act, 1882 must be satisfied. A conditional gift only becomes complete on compliance of the conditions mentioned in the gift deed. The Court further noted that the gift deed was executed for a consideration and was in any case subject to the conditions that the respondent would look after the appellant and her husband, and also, the gift would take effect only after the death of the appellant. The Court held that the conditional gift of the property in question had not been completed and the appellant was well within her rights to cancel the deed.

Amount Paid on Encashment of Bank Guarantee is Allowable as a Revenue Expenditure

In the matter of ***Principal Commissioner of Income Tax-4 vs. Green Delhi BQS Ltd. [(2018) 99 taxmann.com 38 (Delhi), decided on 05.10.2018]***, the Hon'ble Delhi High **Court ("Court")** held that where Assessee could not perform its part of concessionaire agreement entered with Delhi Transport Corporation ("**DTC**") and DTC encashed the bank guarantee furnish-

ed by it, the amount so paid in this regard shall be allowed as a deduction under Section 37(1) of the Income-tax Act, 1961 ("**Act**"). The facts of the case were that the Assessee had entered into a Concessionaire Agreement ("**Agreement**") with DTC for setting up 400 bus shelters on build, operate and transfer basis. As per the Agreement, two bank guarantees of Rs. 1 crore and Rs. 1.5 crores were required to be furnished by the Assessee to the DTC as performance security for construction; and for operation and maintenance of the bus shelters and payment of concessionaire fee, respectively. The Assessee had actually furnished bank guarantee of Rs. 2 crores to the DTC as performance security. On account of Assessee's failure to perform as per the Agreement, DTC invoked the bank guarantee.

The said action of encashment was challenged by the Assessee before the Hon'ble Court. However, by order dated 26th March, 2009, DTC was permitted and allowed to encash the bank guarantee. On account of the said encashment, the Assessee claimed an expenditure of Rs. 2,08,92,603/- as capital loss suffered by the it for failure to perform its part of the Agreement with the DTC which was disallowed by the Assessing Officer. The disallowance was upheld by the CIT (Appeals). However, the Tribunal by the impugned order has reversed the findings and held that the addition was not justified as the loss suffered was revenue expenditure. On departmental appeal to the Court, the Hon'ble Court observed that whether expenditure is capital or revenue in nature has to be looked at from a commercial point of view. In the instant case, there was failure on the part of assessee to perform its part of the Agreement including operation and maintenance of bus shelters, thus, any expenditure or payment of the said nature would necessarily be revenue in character. Hence, the Court after examining the case from all angles, upheld the findings of the Tribunal and held that the amount paid by the Assessee to DTC on account of encashment of bank guarantee was a revenue expenditure allowable as a deduction under section 37(1) of the Act.

Home Buyer Ought Not to be Allowed to Reap Benefits of their Own Delay in Taking Possession

The Hon'ble Supreme Court of India ("**SC**") in the case of ***M/s. Suptertech vs. Rajni Goyal [Civil Appeal Nos. 6649-50 of 2018 decided on 23.10.2018]*** has held that 'purchaser ought not to be allowed to reap the benefits of her own delay in taking possession'. Consequently,

while upholding compensation to a disgruntled home buyer, a bench comprising Justice Abhay Manohar Sapre and Justice Indu Malhotra reduced the time period for computation of the amount, noting the delay on the part of the buyer in taking possession. The dispute concerned a project named 'Capetown' developed by a builder in Noida. A flat was allotted by the builder to one Ms. Rajni Goyal in May, 2012, with the allotment letter stating that possession would be handed over in October, 2013. Further, the allotment letter allowed extension upto a maximum period of 6 months due to unforeseen circumstances. However, the builder handed over a pre--possession letter to Ms. Goyal in October 2015, for completion of formalities, before possession could be handed over. With the pre-possession letter, she was called upon to pay Rs. 1,235,656/- towards the balance cost of the flat and several other charges. She, however, failed to pay the charges. Ms. Goyal then, after over 15 months, in March, 2017, filed a Consumer Complaint before the National Consum

-er Disputes Redressal Commission ("**Commission**"). She had challenged the pre--possession letter on the ground that on the date of issuance of the letter, the builder had not obtained the Occupancy Certificate. She had also challenged the various charges demanded by the builder in the letter.
Partly allowing the complaint, the Commission had approved payment of a few charges but had ordered payment of compensation to Ms. Goyal in view of delay in handing over of the possession of the flat. It had, therefore, directed the builder to pay compensation at the rate of 8% per annum from November, 2013 (after expiry of scheduled date of handing over possession) till the date possession was actually offered to Ms. Goyal. When the matter came before the SC, it was observed by the SC that the Full Occupancy Certificate was obtained by the builder in April 2016, and that Ms. Goyal could not have had any further grievance after that. Therefore, the SC directed the period of compensation to be computed from May, 2014 to April, 2016, despite the fact that she approached the Commission in March, 2017.

Re-assessment of Income Without Application of Mind is Invalid

In the case of ***Urvish B. Mehta vs. Income Tax Officer [ITA. No. 2259/MUM/2016, decided on 10.10.2018]***, the question of law before the Hon'ble Income Tax Appellate Tribunal ("**ITAT**") was whether the Assessing Officer ("**AO**") was right in reopening assessment under section 147 of the Income Tax Act, 1961 ("**Act**") without any independent application of mind and without establishing any link between the information/materials received by him and the Assessee. In the instant case, the AO gathered information from the Sales Tax Department of Mumbai's website that Sales Tax Department carried out enquiries in respect of thirteen parties ("**parties**") who were engaged in issuing bogus bills on commission basis. On the basis of the said information, the AO came to the conclusion that Assessee has not purchased any actual goods or services from the parties as they were only engaged in issuing bogus bills. Accordingly, the case of the Assessee was reopened under section 147 of the Act. The Assessee's argument before the Hon'ble ITAT was that the receipt of information from the website of the Sales Tax Department is not enough for reopening of the assessment. It is evident that from the reasons recorded by the AO that he has not applied his mind independently on the material in his possession, to show that he had reasons to belief that Assessee has escaped income. The AO should have carried independent enquiry before issuing of notice under section 148 of the Act, which has not been done by him. Thus, the reopening of assessment completed under section 143(3) of the Act is not a valid and deserved to be quashed. On the other hand, the Department's argument was that the assessment was reopened on the basis of the material gathered from Sales Tax Department. Therefore, the AO had sufficient and independent material before him to form belief that income of the assessee has escaped assessment. After hearing submissions of both sides, the Hon'ble ITAT observed that AO acted merely on the basis of the statements of the parties alleged that Assessee has escaped income, without carrying on any further independent enquiry before issuing notice under section 148 of the Act. Thus, AO failed to independently apply his mind on the material received by him. On the said basis, the Hon'ble ITAT held that reopening of assessment is not initiated validly and is void ab-initio. Accordingly, we quash the reopening of assessment.

Quick Takeaways

- In the advance ruling application filed before the Authority For Advance Rulings, Andhra Pradesh by ***Maruti Ispat & Energy (P.) Ltd., In re [[2018] 99 taxmann.com 103 (AAR- ANDHRA PRADESH) dated 09.10.2018]*** the authority held that the Foundations and Sheds are to be treated as Civil Structures and thus GST credit is not allowed.
- CBIC has issued ***Circular No. 72/46/2018-GST dated 26.10.2018*** to clarify the procedure in respect of return of time expired drugs or medicines.
- CBIC has issued ***Circular No. 71/45/2018-GST dated 26.10.2018*** to clarify issues under GST related to casual taxable person and recovery of excess Input Tax Credit distributed by an Input Service distributor.
- In the case of ***Imarti Lakdi Vyapari Sansthan Jodhpur vs. The State Of Rajasthan D.B. Civil [Writ Petition No. 1451/2018, dated 29.10.2018]*** it was held by the Hon'ble Rajasthan HC that levy under Section 17 of the Rajasthan Agriculture Produce Marketing Act, 1961 is a 'Fee' and not a cess. Therefore, the same is not abolished after the rollout of Goods and Services Tax (GST).
- In the case of ***Shri Anil Khandelwal vs. ITO [5(3), Indore dated 12.10.2018]*** ruled that assessee cannot be penalized merely based on wrong statement given by payee.
- The Competition Commission of India (***"CCI"***) has notified amendment to the ***CCI (Procedure in regard to the transaction of business relating to combinations) Regulation, 2011 vide Notification F. No. CCI/CD/Amend/Comb.Regl./2018 dated 09.10.2018***. A new regulation 16A has been inserted whereby the Commission on request of the parties to the combination allow withdrawal and re-filing of the notice given under regulation 5 or regulation 8 of the said regulation.
- MCA vide its ***General Circular No.10/2018 dated 29.10.2018*** has relaxed the additional fees payable by companies on e-forms AOC-4, AOC (CFS) AOC-4 XBRL and e-Form MGT-7 up-to 31.12.2018, wherever additional fee is applicable for the financial year ended 31.03.2018.
- In the case of ***Suzuki Parasrampuria Suitings (P.) Ltd. vs. Official Liquidator of Mahendra Petrochemicals Ltd. [[2018] 99 taxmann.com 29 (SC) dated 08.10.2018]*** the Apex Court dismissed the appeal as the appellant, who was not a banking/financial company, etc. claimed before company Court to be substituted as financial creditor but before Apex Court made a volte face claiming to be adjudged as transferee of actionable claim.
- RBI vide ***Press Release: 2018-2019/796 dated 05.10.2018*** has proposed an easier investment route for foreign institutional investors (FIIs) wanting to invest long term funds in the debt market. FIIs voluntarily committing to retain a minimum required percentage of their investments for a period of time in India can apply for a new Voluntary Retention Route' (VRR)'.
- In the case of ***Koninklijke Philips Electronics N.V. vs. Deputy Commissioner of Income-tax (IT)-1(1), Kolkata [2018] 99 taxmann.com 23 (Kolkata - Trib.) dated 25.10.2018*** it was held that the sum received under Research & Development Cooperation agreement couldn't be classified as royalty.
- CBDT has made amendment *vide* ***Notification No. 72/2018 dated 23.10.2018*** in the Rule 47 of the Income Tax Rules, 1962, which deals with the manner (including Form 36) in which appeal shall be filed before the Income Tax Appellate Tribunal.
- The New Delhi bench of Income Tax Appellate Authority (ITAT) in ***DCIT vs. NDC Telecommunications India Pvt. Ltd [ITA No.3011/Del/2015 dated 16.10.2018]*** ruled that assessment cannot be made on dead entity.
- In ***Parsvnath Developers Limited and Another vs. Rail Land Development Authority [ARB.P. 724/2018 & IA 14999/2018 dated 31.10.2018]***, the Hon'ble Delhi High Court has held that courts cannot consider the question of viability of a claim as under Order 2 Rule 2 of the Code of Civil Procedure, 1908, while hearing a petition u/s 11 of the Arbitration and Conciliation Act, 1996.

KNOWLEDGE CENTRE

FAQs on Companies Act, 2013 ("Act")

Q. 1. Is it required for every company to appoint a company secretary?
Ans. Every listed company, every public company having paid-up share capital of Rs. 10 crores or more and every company having paid-up share capital of Rs. 5 crores or more, are required to appoint a company secretary.

Q. 2. What are the different kinds of shares a company can issue?
Ans. A company limited by shares can issue following two types of shares: (i) equity shares with voting rights (or differential rights as to dividend, voting or otherwise); and (ii) preference shares.

Q. 3. What is the meaning of preference shares?
Ans. Preference shares are those shares which carries preferential right in comparison to equity shares with respect to: (i) payment of dividend; and (ii) repayment of capital in winding up of a company. However, unlike equity shares, the preference shareholders have right to participate only in those matters of company which would effect rights of preference shareholders.

Q. 4. What are different modes for a private company to increase its subscribed share capital?
Ans. Pursuant to Section 62 of the Act, a company can issue shares by way of: (i) right issue to its existing shareholders in proportion to their existing shareholding; (ii) employees' stock option to its employees; and (iii) to any person (including existing shareholders and employees) by preferential allotment.

Q. 5. In how many companies an individual can act as a director?
Ans. An individual cannot hold office as a director in more than 20 companies at the same time. Additionally, the maximum number of directorship in public companies cannot exceed 10 at the same time.

Q. 6. Can a company issue shares at discount?
Ans. Except sweat equity shares, a company cannot issue shares at discount. Any issue of shares at discount should be considered as void.

Q. 7. What is the meaning of financial year that a company needs to follow?
Ans. In relation to a company, financial year means a period starting from April 1 and ending on March 31 of subsequent following year. Where a company has been incorporated on/ after January 1, the financial for such company will end on March 31 of subsequent following year. Further, if any Indian company is holding/ subsidiary/ associate of a foreign company (which is required to follow a different financial year for consolidation of its accounts outside India), the Regional Director on an application of such Indian company allow any period as its financial year which is similar of foreign company.

Q. 8. What are the types of resolution for which MGT-14 is required to file?
Ans. A broad list of different types of resolutions which are required to be filed under MGT-14 is given under Section 117 of the Act, which includes special resolutions. Further, MGT-14 is also required to be filed for those matters for which the relevant sections specify the same.

Q. 9. Can a company gives interest free loan to any person?
Ans. As per Section 186(7) of the Act, a company cannot provide interest free loan to any person. Further, the interest rate for the same shall be not less than the prevailing yield of 1 year, 3 year, 5 year or 10 year Government Security closest to the tenor of the loan.

Q. 10. Whether any loan provided by any company to another company, would be considered as deposit under Section 73 of the Act.
Ans. Any loan provided by any company to another company would not be considered as deposit under Section 73 of the Act.

Editorial

Taxability of Grant, Subsidy or Any Assistance
- *By Girija M Singh, Chartered Accountant*

Often we hear that fate of our country, India lies in growth of its economy. Indian government in order to promote the growth of industries provides assistance in various forms. Assistance are given in forms like capital investment subsidy, production subsidy, cash assistance, export subsidy, duty drawback etc. For the sake of brevity, all forms of assistance are hereinafter referred to as the '***subsidy***'. A common question of litigation over a period of time has been that whether receipt of subsidy in the hands of an Assessee is taxable as income or not.

There was no provision in the Income-tax Act, 1961 (hereinafter, referred as the "***Act***") prior to the Finance Act, 2015 which explicitly dealt with taxability of subsidies. However, litigation in this regard was settled on the basis of various judicial pronouncements. In this write-up, analysis is done regarding taxation of subsidies under the Act in two parts (a) Position prior to the Finance Act, 2015 and (b) Position after the Finance Act, 2015.

Position prior to the Finance Act, 2015

Through a plethora of cases adjudicated and settled upon by the various High Courts and the Hon'ble Supreme Court of India, a principle was drawn to examine whether the receipt of subsidy in the hands of an Assessee would be taxable under the Act or not. The principle was that the taxability of subsidy shall be determined by analysing whether the subsidy is a capital receipt or revenue receipt in the hands of the Assessee. Simple logic behind the said principle was that generally revenue receipts are chargeable to tax, on the other hand capital receipts are not unless specifically made taxable under the Act. Principle of examining nature of subsidy receipt in the hands of Assessee has evolved from various landmark judgments like **Sahney Steel & Press Works Ltd. (1997) 228 ITR 253 (SC) and Ponni Sugars and Chemicals Ltd. (2008) 306 ITR 392 (SC).** The underlying principle is to examine '*purpose*' for which subsidy is granted. Subsidies are given for various purposes like for promoting construction of new industries, expansion of existing industries or support for working capital requirements etc. For instance, if the object of the subsidy scheme was to enable the assessee to run the business more profitably or to meet day to day business expenditure then the receipt shall be treated as a revenue receipt. On the other hand, if the object of the assistance under the subsidy scheme was to enable the assessee to set up a new unit or to expand the existing unit then the receipt shall be a capital receipt not chargeable to tax. Therefore, the taxability of subsidies was determined using the 'purpose test'. It should be noted that prior to Finance Act, 2015 ("**FA 2015**"), the purpose for which subsidy was given was relevant and not the point of time of receiving the subsidy or the form in which the same was received.

Position after the Finance Act, 2015

An amendment was made in the definition of income u/s 2(24) of the Act by the FA 2015. A new sub-clause (xviii) was inserted to the said section which came into force w.e.f. 01.04.2016 and shall accordingly apply to A.Y. 2016-17. As per the amendment, assistance of any sort (by whatever name called) given by the Central Government or a State Government or any authority or body or agency, shall be considered as income of the Assessee except where the assistance is taken into account for determination of actual cost of asset in accordance with the provision of Explanation 10 to Section 43(1) of the Act. The sub-clause (xviii) to Section 2(24) of the Act as inserted by FA 2015 was amended by the Finance Act, 2016, where one more exception was inserted that the subsidy or grant received by the Central Government for the purpose of the corpus of a trust/institution established by the Central or State Government, shall not be considered as income.

Important point to note here is that under Section 2(24)(xviii) of the Act, there is no distinction in the nature/kinds of assistances to consider the same as income of an Assessee. Therefore, all sorts of subsidy received by an assessee from the specified persons, irrespective of its nature as capital or revenue shall be taxable as income of the assessee unless the same falls in the exclusion category. The impact of the aforesaid amendment shall be that principle laid down by the Apex Court in ***Sahney Steel and Ponni Sugars (supra)*** laying down the 'purpose test' to classify it as capital or revenue receipt, shall no more hold good for subsidies received on or after 01.04.2015.

The amendment under Section 2(24)(xviii) of the Act, has been made in order to align the provision of Income Computation and Disclosure Standard-VII, Governments Grants ("***ICDS-VII***", in short) with the provisions of the Act. ICDS-VII is applicable w.e.f. A.Y. 2017-18 and hence, from the said A.Y., for computing income under the Act, the government grants shall be recognised and dealt with as per the provisions of the said ICDS.

Recognition of Government Grants

As per ICDS-VII, government grants shall not be recognised until (a) there is reasonable assurance that the person in receipt of the government grant shall comply with the conditions attached to them and (b) the grants shall be received.

It should be noted in order to align the recognition principles laid in various Income Computation and Disclosure Standards with the provisions of the Act, Section 145B of the Act is inserted vide the Finance Act, 2018. As per clause (3) of Section 145B of the Act, income referred in sub-clause (xviii) of Section 2(24) of the Act shall be deemed to be the income of the previous year in which it is received, if it is not charged to income tax in any earlier previous year. Therefore, Section 145B(3) of the Act provides that subsidy should be deemed to be the income of the previous year in which it is received which may have not accrued.

It should be noted that Assessee would recognize receipt of subsidy in the books of accounts as per Accounting Standard-12, Accounting of Government Grants ("***AS-12***", in short) or Indian Accounting Standard-20, Accounting for Government Grants and Disclosure of Government Assistance ("***Ind-AS 20***", in short) as applicable. Government grants available to an Assessee are recognized in books of accounts as per AS-12, when (a) there is reasonable assurance that the Assessee will comply with the conditions attached to it ***and*** (ii) where such benefits have been earned by the Assessee ***and*** it is reasonably certain that the ultimate collection will be made. Therefore, mere receipt of government grant is not sufficient. Further, AS-12 provide for postponement of government grant beyond the date of actual receipt where condition attached to the grant are not fulfilled. Similar provisions are in Ind-AS 20.

Since, ICDSs are applicable only for the purpose of computation of taxable income whereas Accounting Standards are applicable for the purpose of maintenance of books of accounts, therefore, it should not be surprising, if the recognition of subsidy by an Assessee in its books of account does not match with the recognition under the provisions of the Act read with ICDS-VII.

Treatment of Government Grants

Under the provisions of the Act, only Explanation 10 to Section 43 of the Act discusses about treatment of subsidy, where a portion of the cost of an asset acquired by an assessee has been met directly or indirectly, in the form of a subsidy or grant or reimbursement (by whatever name called) by the specified persons, then so much of the cost as is relatable to such subsidy or grant or reimbursement shall not be included in the actual cost of the asset to the assessee. Implication of said treatment is that assessee would not be allowed depreciation on cost of the asset which has been met by way of the subsidy/grant amount received.

However, under ICDS-VII, Para 5 to 10 deals with treatment of Government Grants under various circumstances, Like, how the government grants would be treated if it relates to depreciable assets, non-depreciable assets, compensation for expenses/losses, grant in form of non-monetary assets, given at concessional rate etc. Apart from ICDS-VII, AS-12 and Ind-AS 20 has also given methods for the treatment of Government Grants.

Since, ICDSs are applicable only for the purpose of computing taxable income whereas Accounting Standards or Indian Accounting Standard are applicable for the purpose of maintenance of books of accounts, therefore treatment of government grant under while computation of taxable income may not match with the treatment in books of accounts.

Conclusion:

It is to be appreciated that the evergreen litigation concerning the taxability of subsidy has been dealt by the Finance Act, 2015, by amending the definition of income u/s 2(24)(xviii) of the Act with effect from 01.04.2016 (A.Y. 2016-17). Therefore, no more the principle of determining the '*purpose'* for which subsidy is given to the Assessee holds good. With these strict provisions, is the Government, really giving benefit in form of assistance/subsidies or it is just like another source of tax collection for the government.

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