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# THE NEWSLETTER

## Clarification with respect to Direct Tax Dispute Resolution Scheme, 2016

**T**he Direct Tax Dispute Resolution Scheme, 2016 (“**Scheme**”) was introduced with effect from 01.06.2016 to provide an opportunity to taxpayers to settle their cases pending with Commissioner of Income Tax (Appeal) (“**CIT(A)**”) by making payment of the prescribed tax, interest or penalty amount. The basic objective of the Scheme is to reduce the pending litigation in direct tax matters. Declaration under the Scheme can be made upto 31.12.2016. The provisions of the Scheme and the framework of the rules and forms prescribed therein contemplate, *inter-alia*, that as a pre-condition for an eligible taxpayer to avail the benefits of the Scheme, there should be an appeal pending before CIT(A) on 29.02.2016. However, when one refers to the provisions of the Scheme, it can be observed that there is no clarity with respect to appeals which were pending before CIT(A) as on 29.12.2016, but got disposed of subsequently on or before the last day on which declaration could be filed. In this regard, the Central Government *vide* Circular no. 33 of 2016 dated 12.09.2016 has clarified that in case where the appeal was pending before CIT(A) as on 29.02.2016 and the CIT(A) has already disposed of the same before a declaration could be made, in such case the declaration made by the assessee under the Scheme cannot be filed. It has also been clarified that where the assessee has expressed their intention to avail the Scheme in cases where the appeal is pending before CIT(A), CIT(A) shall not dispose of the said appeal.

## CITs to take Lenient View on Issues Pending in Assessment if Issues are Identical with IDS Declaration

**C**ircular no. 17 of 2016 dated 20.05.2016 relating to the Income Declaration Scheme, 2016 (“**Scheme**”) clarifies that a person shall be eligible to make declaration under the Scheme for assessment years other than the assessment years for which notice under Section- 142(1)/143(2)/148 of the Income Tax Act, 1961 (“**Act**”) has been served on or before 31.05.2016. Further, Section 273A of the Act, *inter-alia* provides that the Principal Commissioner or Commissioner on his own motion or on receiving an application, shall reduce or waive the amount of penalty imposed or imposable if he is satisfied that the assessee has co-operated in any enquiry relating to the assessment of his income for the relevant assessment year and has either paid or made satisfactory arrangements for the payment of any tax or interest payable in consequence to the assessment order passed under the Act, in respect of the relevant assessment year. In this respect *vide* Circular no. 34 of 2016, Central Board of Direct Taxes (“**CBDT**”) has clarified that where a declarati-



father to maintain a minor child as that of the mother. Therefore, the Court decided that keeping in mind that the husband did not object to the award of maintenance to the two children and the obligation of both husband and wife to provide for maintenance of children, award given by the learned judge of Family Court to the wife was correct and did not call for any interference .

### **Dishonour of Security Cheque is covered under Section 138 of Negotiable Instruments Act, 1881**

**T**he Hon'ble Supreme Court ("Court") in the case of *Sampelly Satyanarayana Rao v. Indian Renewable Energy Development Agency Ltd.* [S.L.P. (CRL.) No. 5410 of 2014] held that to determine the applicability of the Section 138 of Negotiable Instruments Act, 1881 ("Act"), the crucial question to be answered is, whether the cheque represents discharge of existing enforceable debt or liability, or whether it represents advance payment without there being subsisting debt or liability. The Court held that the former is covered under the Act, however the latter is not. The Court in this case had to consider whether dishonour of a post dated cheque given for repayment of loan instalment that was also described as security in the Agreement under an agreement of loan ("Agreement") between the appellant and respondent was covered under Section 138 of the Act. The Court observed that though the word 'security' was used in the Agreement, the said expression referred to the cheques given towards repayment of instalments. It was undisputed that the loan was duly disbursed on 28.02.2002 which was prior to the date of the cheque. Once the loan was disbursed and instalments had fallen due on the date of the cheque as per the Agreement, dishonour of such cheques would fall under Section 138 of the Act, the cheque undoubtedly represents the payment of outstanding liability. Therefore the Court held that, dishonour of the security cheque given for discharge of existing liability is covered by Section 138 of the Act.



### **CBEC issues Draft Rules for the Goods and Service Tax**

**G**oods and Service Tax ("GST") is a single indirect tax regime, which will subsume most of the Central and State taxes such as Excise duty, Service tax, value added tax (VAT), central sales tax (CST). On 08.09.2016, the One hundred and First Constitution Amendment Bill, 2016' received the assent of the President and became The Constitution (One Hundred and First Amendment)

Act (“**Act**”), after 50% State legislative assemblies ratified the bill. The Act has paved the way for setting up of the GST council to decide the tax rates, exemptions etc. In the first meeting of GST Council held on 22.09.2016 and 23.09.2016 the Centre and States agreed upon two important issues. Revenue threshold limit for GST exemption was fixed at Rs. 20,00,000/- for all states.

However, for north-eastern states the limit was fixed at Rs. 10,00,000/-. Another major issue dealt in the meeting was regarding the dual control over small traders. The Centre and States have come to a consensus that the States will get exclusive control over the traders having revenue up to Rs. 1,50,000,00/- and for traders above that will be regulated either by the Central Government or the State Government. However, due to lack of expertise among the States to handle the service providers, the Centre will get control over all the service tax registered dealers. Simultaneously, the Central Board of Excise and Customs (“**CBEC**”) has come out with draft rules (“**Rules**”) for registration, refund, return, payment and invoice which have been approved by the GST Council in its second meeting held on 30.09.2016. As per the Rules, upon the application for the registration, if the department official fail to take any action within stipulated time-frame, the application for grant of registration shall be deemed to have been approved. Further, the Rules provide that, the day on which GST comes into effect, person registered under an earlier law shall be granted registration on provisional basis which shall be valid for a period of six (6) months from the date of issue of provisional registration certificate and such person shall be required to apply for permanent registration by filing FORM GST REG 20 electronically within six (6) months from the date of issue of provisional registration certificate or period extended by CBEC. Person registered under any of the earlier laws, who is not liable to be registered under GST may file an application electronically for cancellation of registration granted provisionally. Central Board of Excise and Customs has also issued draft format of GST tax audit report and Input Tax Credit mismatch report. The contentious issue of tax rates would be taken up in the next meeting to be held on 18-20 October, 2016.

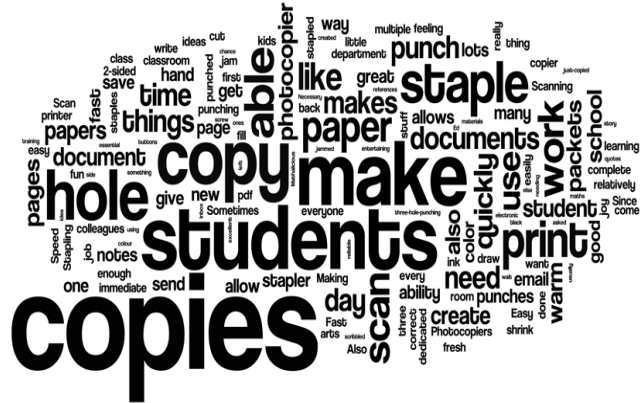


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### **Reproduction of Original Literary Work by Photocopy Shops is not Copyright Infringement**

**T**he Hon’ble Delhi High Court (“**Court**”) in the case of *Chancellor, Masters & Scholars of the University of Oxford & Ors. v. Rameshwari Photocopy Services & Anr* held that the educational exception under Section 52(1)(i) of the Copyright Act, 1957 (“**Act**”) cover the acts related to creation of course packs by Delhi University for their students. In the instant case, five renowned

publishers instituted a suit for the grant of permanent injunction against the defendants for photocopying, reproduction and distribution of substantial extracts of plaintiff's publications in form of compiled course packs/ anthologies for sale. The Court had to consider the question whether the making of course packs by the defendants amounted to infringement of copyright of the plaintiffs. The Court recognized that copyright is a statutory right and photocopying of original literary work is an exclusive right of the owner of the copyright and thus the making of photocopies of the said copyright by the defendants would constitute infringement under Act. However, the Court added further that there are certain acts that are not to be considered as infringement of copyright under the Act. According to Section 52(1)(i) of the Act the reproduction of a work by a "teacher/ pupil in the course of instruction" would not constitute infringement under the Act. The first question before the Court was whether the interpretation of the said Section was restricted to an individual teacher and an individual pupil or whether it would extend to an institution and its students. In this respect the Court held that such a restricted interpretation could not be taken because education system in India has been institutionalized and therefore, the law had to reflect the realities of the education system of the country. The second question raised before the Court was to interpret the phrase 'course of instruction. The Court held that the phrase course of instruction included the studies which a student has to do post lecture so that he/she can answer the questions in the examination. Finally, the Court concluded that defendant's act of photocopying substantial extracts from plaintiff's compilation was similar to a student copying the same for private use whether by hand or photocopying. Both these acts were covered as exceptions to copyright infringement under the Act.



## The Indian Judiciary: A Force to Reckon with

The Indian judicial system can boast of many landmark judgments that have served society at large. Of these judgments, one recently attracted eyeballs from the global audience to have served social change by protecting judicial independence and questioning legislative authority of the state. A Delhi High Court judgment of 2013, ***Delhi High Court Bar Association and Anr v. Govt. of NCT of Delhi Anr.*** [WP (C) No. 4770/2012)] penned down by Justice Gita Mittal has been included in Yale Law School's prestigious publication 'Global Constitutionalism 2015' and is a rare international recognition to a judgment by an Indian judge. Many Indian judges have worked relentlessly to answer many questions





on judiciary's role in conceptualizing the obligation of state to support or to provide services to its citizens. And this is precisely what was done when Justice Mittal struck down the Court Fees (Delhi Amendment) Act, 2012.

This judgment, which found its way to the publication along with only five other judgments from the Supreme Court of Canada, Supreme Court of the United States and European Court of Human Rights, helps us understand the protectionist role played by the judiciary in our heterogeneous society. And it is these instances that have gone on to make the Supreme Court an institution on whose legitimacy there seems to be a national consensus.

## **Territorial Jurisdiction in Matters relating to Trademark Infringement**

***-By Adv. Ritu Soni, Partner***

***Co-authored by Adv. Saloni Purohit, Associate***

Generally in civil matters territorial jurisdiction is decided on the basis of Section 20 of the Civil Procedure Code, 1908 ("CPC") which states that a person may institute a suit in the District Court within whose jurisdiction the defendant either (i) actually and voluntarily resides (ii) or carries on business (iii) or personally works for gain or (iv) where the cause of action has wholly or in part arisen. However, Section 134 of the Trademarks Act, 1999 ("Act") which deals with territorial jurisdiction in respect of matters pertaining to trademark infringement, takes a visible departure from general rule relating to territorial jurisdiction under the provisions of Section 20 of CPC. Section 134 of the Act states that a suit for infringement of a trademark, takes a visible departure from general rule relating to territorial jurisdiction under the provisions of Section 20 of CPC. Section 134 of the Act states that a suit for infringement of a trademark shall not be instituted in a court lower than the District Court within whose jurisdiction the person instituting the suit either (i) resides or (ii) carries on business or (iii) personally works for gain.

Some of the concerns which arise on account of Section 134 of the Act were whether Section 134 of the Act overrides Section 20 of CPC, whether cause of action has no role to play in determination of territorial jurisdiction in the matters of trademark infringement and passing off, whether jurisdiction also lies in the courts of the place where sub-ordinate/branch office of the plaintiff is located. In other words "Can Section 20 of CPC be read into Section 134 of the Act or is Section 134 independent of the existence of Section 20, CPC?" The said concern has been under discussion for quite some time in recent past and its answer was essential for multinational corporation(s) or body corporate(s) which have a number of branch or subordinate offices.

In the event plaintiff in a trademark infringement case is a company or a corporation or any other body corporate which has one principal place of business or a registered office and other subordinate office(s) at various other locations, the confusion which persists is whether to approach the court within whose territorial limits the registered office of the plaintiff is situated or the plaintiff is also entitled to approach a court within whose jurisdiction either of its branch office(s) is situated.

The aforementioned concern has now been settled by the Hon'ble Apex Court in the landmark judgment of *Indian Performing Rights Society Limited v. Sanjay Dalia and Another* [Civil Appeal No. 106433-106434 of 2010] which was decided on 01.07.2015. The Hon'ble Supreme Court in the present case finally concluded by stating that Section 134 of the Act must be interpreted in a purposive manner and that there is no doubt that a suit may be filed by the plaintiff, at the place where the plaintiff resides or carries on business or personally works for gain in accordance with Section 134, however, in the event, the plaintiff resides or carries on business at the place where the cause of action, wholly or in part, has also arisen, he must then bring the suit at that place. The Hon'ble court here was of the opinion that giving a literal interpretation to the issue in hand would be likely to cause mischief and accordingly the bench applied the Heydon's Rule of Mischief while giving the final order in favor of the defendants.

It is interesting to note that in India, different High Courts have taken different positions with respect to territorial jurisdiction in trademark infringement cases. Before understanding the different positions taken by the courts in the present context, it is worthwhile to understand the basics of jurisdiction. Within the territory of India, four (4) High Courts have original jurisdiction, viz. the Hon'ble High Courts at Delhi, Bombay, Madras and Calcutta. Out of these four (4) High Courts, three (3) of them are considered as Chartered High Courts, viz. Hon'ble High Court of Bombay, Madras and Calcutta. These Chartered High Courts are governed by the Letters Patent. Post ratio laid down by the Hon'ble Apex Court in the Indian Performing Rights Society case (supra), the Hon'ble High Court of Bombay made an interesting observation *Veritas Exports v. Bank of Baroda* on 16.06.2016 [Suit No.1942 of 2007], wherein the court held that the plaintiff's suit is maintainable before the Hon'ble High Court of Bombay in the event it carries on business within the territorial limits of the said Chartered High Court irrespective of the cause of action arising therein. It further observed that by virtue of Section 120, CPC, Section 20 of CPC is not applicable on Chartered High Courts, thereby meaning that the issue relating to jurisdiction in case of Chartered High Court(s) needs to be resolved with the help of Letters Patent. As far as applicability of the aforesaid judgment pronounced by the Hon'ble Supreme Court is concerned, it shall be applicable on all High Courts and District Courts within the territory of India but not on the Chartered High Courts. We all are aware that any judgment pronounced by the Hon'ble Supreme Court of India becomes the 'law of the land' in accordance with Article 141 of the Constitution of India, 1950, however, since the judgment laid down by the Apex Court in the aforesaid verdict takes into consideration the applicability of Section 20 of CPC, hence, the

same would not apply on Chartered High Courts to the extent that it prescribes the applicability of Section 20, CPC in trademark infringement cases. It is because of the fact that Section 20 of CPC is itself inapplicable on Chartered High Courts.

It may be stated here that Clause 12 of the Letters Patent is akin to Section 20 of CPC, however, the origin of cause of action is not a factor to ascertain the jurisdiction vested in a Chartered High Court, since Clause 12 of the Letters Patent does not take into consideration the existence of cause of action, and, therefore, only the place where the plaintiff carries on business or personally works for gain is the relevant and deciding factor in zeroing on the territorial jurisdiction of the said Chartered High Court.

Hence, the present scenario with regard to the issue of territorial jurisdiction in trademark infringement cases is different for Chartered High Courts and other High Courts and Districts Courts within the country and thus, for determining as to courts of which place would hold jurisdiction for a matter of trademark infringement, it is imperative to examine various factors *viz.* place(s) where the cause of action has arisen, place of residence of defendant and plaintiff and place(s) where the principle and branch office of the defendant and plaintiff.



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