Legal Decisions[1]

Income-tax Act

LD/62/29

Eruditus Education (P.) Ltd., In re September 20, 2013 (AAR)

Section 9 of the Income-tax Act, 1961 read with Articles 5 & 12 of the Agreement for Avoidance of the Double Taxation and prevention of fiscal evasion between India and Singapore - Income - Deemed to Accrue or Arise in India

Where according to Programme Partnership Agreement, a Singapore company has to provide high quality executive education programmes to Indian corporate and other participant in form of training, in-class and on-line teaching and applicant has to assists in the marketing, organising, managing and facilitating conduct of the programme, payment made by applicant would not be 'Fees for Technical Services'

The applicant M/s. Eruditus Education Private Limited is a private limited company incorporated and registered in India and is in the business of providing high quality executive education programmes to Indian corporate and other participants. The applicant entered into a Programme Partnership Agreement with INSEAD, a tax resident company at Singapore which is in the business of providing various management education programmes globally. As per the Programme Partnership Agreement INSEAD is obliged to conduct teaching intervention as per the agreed terms while Eruditus, the applicant, shall assist in the marketing, organising, managing and facilitating a conduct of the programme. Upon successful completion of the programme, the Indian participants will be awarded a certificate by INSEAD.

The applicant seeks ruling from the Authority for Advance Rulings on the questions that whether the payments made by the applicant to INSEAD for various services under the terms of the programme partnership agreement is in the nature of "Fees for Technical Services".

The Authority for Advance Rulings held as follows:

The services rendered by INSEAD involve expertise in or possession of special skill or knowledge that

[1] *Readers are invited to send their comments on the selection of cases and their utility at eboard@icai.in.*

are technical in nature. The case of the applicant will fall in the exclusive clause of Article 12.5(c) of the Agreement for avoidance of the Double Taxation and prevention of fiscal evasion between India and Singapore (India-Singapore Tax Treaty) which reads that 'Fees for Technical Services' does not include payment for teaching in or by educational institutions

In this case, there is no dispute about the teaching conducted by INSEAD for the applicant. There is also no dispute about the status of INSEAD being an education institution.

As per Section 90(2) of the Act where the Central Government has entered into an agreement with the Government of any country outside India or specific territory outside India, as the case may be, under sub-section (1) for granting relief of tax, or as the case may be, avoidance of double taxation, then, in relation to the assessee to whom such agreement applies, the provisions of this Act shall apply to the extent they are more beneficial to the assessee. It is a settled position in law now that tax treaty shall override the provision of the Act to the extent the same is beneficial to the applicant. In this case the applicant opted for the provisions of the Tax Treaty as it is found more beneficial to it and there is any reason for not allowing it. The payments made by the applicant to INSEAD for services rendered under the terms of Agreement are not in the nature of "Fees for Technical Services" as it falls under the exclusive clause of Article 12.5(c) of the Treaty though the payment for the service may be fees for technical services under the provision of Section 9(1)(vii) of the Act.

Further, based on the facts stated, the recipient (INSEAD) does not have a Permanent Establishment in India and within Article 5(1) or 5(8) of the India-Singapore Tax Treaty.

LD/62/30

CIT, Allahabad

vs.

Chandra Narain Chaudhri

August 29, 2013 (ALL)

[Assessment Year 2005-06]

Section 50C read with Section 55A of the Income Tax Act, 1961 – Capital Gains - Full Value Consideration in Certain Cases

Whenever assessee claims that value adopted or assessed or assessable by Stamp Valuation Authority under sub section (1) of Section 50-C exceeds fair market value of property as on date of transfer, AO may refer valuation of capital asset to a DVO or he may rely on report of registered valuer under Section 55-A; in any event, AO should record sufficient reasons that has nexus with assessee's objection/claim and also with department's objection against valuation of approved valuer

In proceedings under Section 143(2), the assessee disclosed the sale of capital asset being a property ₹25,00,000 for which he also filed a report of the approved valuer. The revenue asserted that the purchaser had paid stamp duty on the valuation of the property fixed by the stamp valuation authority appointed by the State Government, according to which, the valuation of the property was ₹78,48,000. The capital gain was accordingly worked out on the basis of valuation fixed by the stamp valuation authority under Section 50C(2).

The assessee requested to accept the valuation shown by him in his reply dated 8.12.2009, on the basis of indexation of the value of property, on the ground that the building was under the tenancy of the father of the purchaser since 1967. The assessee filed two valuation report – one for valuation as on 1.4.1981 at ₹3,90,280, and the other for valuation as in October 2004 at ₹33,77,186. The AO did not accept the report of the approved valuer submitted by the assessee as fair market value and found that the value adopted by the stamp duty authority has to be taken as fair market value as on October 2004, and accordingly computed the long term capital gain.

In appeal before the CIT (A), the assessee submitted additional evidence under Rule 46-A on 13.08.2010, wherein he submitted another valuation report dated 3.12.2009, from the same approved valuer suggesting that the actual distress sale value of the property is ₹17,30,713 as against the valuation of the property inclusive of land and building at ₹33,77,185.

The question, for consideration is as to whether if the assessee claims before the AO that the value adopted or assessed or assessable by Stamp Valuation Authority under sub-section (1) of Section 50C exceeds the fair market value of the property as on the date of transfer, the AO should refer the valuation of the capital asset to a Valuation Officer under Section 50C(2) ; and whether in the facts and circumstances, if the assessee has filed a report of the approved valuer under Section 12-A of the Wealth-tax Act 1957, and to which no objection was filed by the Income-tax Department at any stage, it is necessary for the AO to refer the valuation of the

capital assets to the Valuation Officer under Section 50-C(2)?

The Allahabad High Court held as follows:

Section 50-C is a rule of evidence in assessing the valuation of property for calculating the capital gain. The deeming provision under Section 50C(1) is rebuttable. It is well known that an immovable property may have various attributes, charges, encumbrances, limitations and conditions. In the present case, it is stated that the property was under the tenancy of father of the purchaser since 1969 and thus the assessee being landlord of the property, offered it for sale to the tenant, which could not have attracted fair market value, as a willing purchaser may have offered for a property in vacant condition. The Stamp Valuation Authority does not take into consideration the attributes of the property for determining the fair market value in the condition the property is offered for sale and is purchased. He is required to value the property in accordance with the circle rates fixed by the Collector. The object of the valuation by the Stamp Valuation Authority is to secure revenue on such sale and not to determine the true, correct and fair market value on which it may be purchased by a willing purchaser subject to and taking into consideration its situation, condition and other attributes such as it occupation by tenant, any charge or legal encumbrances.

The question as to whether the assessee filed any objections before the Stamp Valuation Authority to dispute the valuation, or filed appeal or revision or made reference before any authority, court or the High Court under sub section (2) (b) of Section 50C is not of any relevance, as the AO himself observed that the assessee did not dispute the stamp valuation before the Stamp Valuation Authority. There may be several reasons for the purchaser not to file such objection. A purchaser may not go into litigation, and pay stamp duty, as fixed by the Stamp Valuation Authority, which may be over and above the fair market value of the property, as on the date of transfer, though the amount so determined has not been actually received by owner of the property. Whenever the assessee claims before the AO that the value adopted or assessed or assessable by the Stamp Valuation Authority under sub section (1) of Section 50-C exceeds the fair market value of the property as on the date of transfer, the AO may refer the valuation of the capital asset to a DVO and for that purpose, the procedure prescribed under the Wealth-tax Act

are to be applied. In case of any such claim, the AO may rely on the report of registered valuer under Section 55-A and in such case it will not be necessary for him to refer the matter to the DVO. However, in any event, the AO has to record sufficient reasons. He has to record reasons for accepting the report of the approved valuer submitted by the assessee along with his claim/ objection under Section 50-C(2). If he does not accept the report, he has to record the reason for referring the matter to the DVO. The reasons in either case must have nexus with the objection/ claim made by the assessee and the objection, which may be raised by the department against the valuation determined in the report of the approved valuer.

In the present case, CIT (A) has correctly observed in his order that the provisions of Section 50C(2) are essentially to be read in conjunction with the provisions of Section 50C(1). He also found that in the present case both ingredients of provisions of Section 50C(2) are present, which made it necessary for the AO to refer the matter for valuation to DVO in accordance with provisions of Section 55-A of the Income Tax Act. The ITAT in allowing the appeal committed serious error of law in finding that in such circumstances and facts of the case, the value of the capital asset as determined by the approved valuer for the month of October 2004 at ₹33,77,186 has to be taken as the sale consideration and similarly the value taken by the approved valuer as on 1.4.1981 has to be taken for the purposes of arriving at indexed cost of acquisition. The ITAT failed to consider that the AO did not record any finding either on the validity of the claim/objection filed by the assessee nor did he record any finding on the sufficiency of valuation of the approved valuer submitted by the assessee.

In the present case, the assessee has submitted three different valuation reports of the approved valuer. The first report was based on the valuation as on 1.4.1981; the second report was based on the valuation as on October 2004 and the third report by the same approved valuer was based on distress sale value of the property. The third valuation report was prepared during the proceedings before AO. The assessee however did not choose it to file the same before AO in remand proceedings, and filed it as an additional evidence in appeal, which was rejected by the CIT (A) after considering the report of AO on remand.

Whenever objection is taken or claim is made before AO, that the value adopted or assessed or assessabe by the Stamp Valuation Authority under sub-section (1) of Section 50-C exceeds the fair market value of the property on the date of transfer, the AO has to apply his mind on the validity of the objection of the assessee. He may either accept the valuation of the property on the basis of the report of the approved valuer filed by the assessee, or invite objection from the department and refer the question of valuation of the capital asset to DVO in accordance with Section 55-A . In all these events, the AO has to record valid reasons, which are justifiable in law. He is not required to adopt an evasive approach of applying deeming provision without deciding the objection or to refer the matter to the DVO under Section 55-A as a matter of course, without considering the report of approved valuer submitted by the assessee. In all such cases, the reasons recorded by the AO may be questioned by the assessee or the department as the case may be.

The questions of law are decided in favour of the revenue and against the assessee.

LD/62/31

CIT

vs.

Intezar Ali

July 26, 2013 (ALL)

[Assessment Year 2008-09]

Section 68 read with Section 2(14) of the Income-tax Act, 1961 – Cash Credits

Where assessee seller of land, as an honest citizen, not only made a complaint to the registering authority that the sale deed had been registered at a value much below the amount, which he has actually received, he deposited the entire amount in the bank and voluntarily filed return, No addition could be made under section 68

On receipt of certain information that the assessee had deposited an amount of ₹1,08,32,752 in bank account, enquiries were made. The assessee stated that he had sold agricultural land for a sum of ₹1,20,00,000. The purchasers denied to have purchased the land for ₹1,20,00,000. They stated that they had purchased the land only for ₹22 lacs. The sale deed was executed on the sale value of ₹22 lacs. The surplus amount of ₹97,80,000 was suspected to be income from undisclosed sources. The assessee produced the witness to the sale deed, who proved that the assessee had received

₹1,08,32,752/- and which he deposited in his bank account. The Bank Manager deposed that the assessee had deposited the entire amount in his bank on the day of registration. The assessee also produced the evidence of the land rates in the area and claimed exemption of the agricultural land, which was not capital asset within the definition of Section 2(14)(iii)(a)(b) and was, therefore, not chargeable for capital gains tax. He also produced the evidence by way of report of Tehsildar showing that the agricultural land outside the local limit of Nagar Palika/Town Area. The Income Tax Officer did not disbelieve the evidence that the amount was received by sale consideration. He, however, relying only on the report of the Stamp Valuing Authority took cognizance of the complaint and treated the amount to be undisclosed income.

The Allahabad High Court held as follows:

The assessee as an honest citizen not only made a complaint to the registering authority that the sale deed has been registered at a value much below the amount, which he has actually received, he deposited the entire amount in the bank and voluntarily filed return. There was no material whatsoever or any circumstance, which could have suggested that this amount was received by him from any other source.

The deposition of witness of the sale deed, the Bank Manager and the evidence filed with regard to valuation of the property was more than sufficient to discharge the burden, which the A.O. had unreasonably placed on the assessee. The A.O. in disbelieving the evidence has not given any reasons whatsoever to discard the statement of the witnesses, deposit of the entire sale consideration in bank and the deposition of the Bank Manager.

The assessee had not only deposited the entire amount in the bank but also informed the registering authority of the deficiency of the stamp in the sale deed.

We further notice the observations made in the order of the Tribunal that in the case of one of the purchaser, the A.O. had accepted that he was the owner of the money i.e. ₹97,80,000/- and accordingly addition of ₹77,80,000/- was made in his hand on substantial basis as his income during the year for which a copy of the assessment order was filed on record. The income tax appeal is dismissed.

LD/62/32

CIT

vs.

Chhabil Dass Agarwal

August 8, 2013 (SC)

[Assessment Years 1995-96 and 1996-97]

Section 148, of the Income-tax Act, 1961 read with Article 226 of the Constitution of India – Income Escaping Assessment – Issue of Notice

Where efficacious alternate remedy is available to an assessee under the Income-tax Act against the order passed by the assessing authority under Section 148, in exercise of writ jurisdiction under Article 226, High Court cannot interfere with the order passed by the Assessing Authority

Notices were issued on the assessee under Section 148 for re-assessment of order passed by the assessing authority. The consequential demand notices were also issued thereon. The assessee filed writ petition challenging notices before the High Court.

The Revenue submitted that that the Writ Court was not justified in entertaining the Writ Petition since the assessee has invoked its jurisdiction under Article 226 of the Constitution of India despite the availability of an equally efficacious alternate remedy under the Act and therefore, the Writ Court ought not to have interfered with the notices issued under Section 148, the re-assessment order passed by the assessing authority and the consequential demand notices issued thereon.

The Supreme Court held as follows:

It is settled law that non-entertainment of petitions under writ jurisdiction by the High Court when an efficacious alternative remedy is available is a rule of self-imposed limitation. It is essentially a rule of policy, convenience and discretion rather than a rule of law. Undoubtedly, it is within the discretion of the High Court to grant relief under Article 226 despite the existence of an alternative remedy. However, the High Court must not interfere if there is an adequate efficacious alternative remedy available to the petitioner and he has approached the High Court without availing the same unless he has made out an exceptional case warranting such interference or there exist sufficient grounds to invoke the extraordinary jurisdiction under Article 226.

The Constitution Benches of this Court have held that though Article 226 confers a very wide power in the matter of issuing writs on the High Court, the remedy of writ absolutely discretionary in character. If the High Court is satisfied that the aggrieved party can have an adequate or suitable relief elsewhere, it can refuse to exercise its jurisdiction. The Court, in extraordinary circumstances, may exercise the power if it comes to the conclusion that there has been a breach of principles of natural justice or procedure required for decision has not been adopted.

Thus, while it can be said that this Court has recogniserted some exceptions to the rule of alternative remedy, i.e., where the statutory authority has not acted in accordance with the provisions of the enactment in question, or in defiance of the fundamental principles of judicial procedure, or has resorted to invoke the provisions which are repealed, or when an order has been passed in total violation of the principles of natural justice, the proposition laid down in *Thansingh Nathmal vs. Supdt. of Taxes. AIR 1964 SC 1419, Titagarh Paper Mills Co. Ltd. Vs. State of Orissa, (1983) 2 SCC 433* and other similar judgments that the High Court will not entertain a petition under Article 226 of the Constitution if an effective alternative remedy is available to the aggrieved person or the statute under which the action complained of has been taken itself contains a mechanism for redressal of grievance still holds the field. Therefore, when a statutory forum is created by law for redressal of grievances, a writ petition should not be entertained ignoring the statutory dispensation.

In the instant case, the Act provides complete machinery for the assessment/re-assessment of tax, imposition of penalty and for obtaining relief in respect of any improper orders passed by the Revenue Authorities, and the assessee could not be permitted to abandon that machinery and to invoke the jurisdiction of the High Court under Article 226 of the Constitution when he had adequate remedy opens to him by an appeal to the Commissioner of Income Tax (Appeals). The remedy under the statute, however, must be effective and not a mere formality with no substantial relief. In *Ram and Shyam Co. vs. State of Haryana, (1985) 3 SCC 267* this Court has noticed that if an appeal is from "Caesar to Caesar's wife" the existence of alternative remedy would be a mirage and an exercise in futility. In the instant case, neither has the assessee-writ petitioner described the available alternate remedy under the Act as ineffectual and non-efficacious while invoking the writ jurisdiction of the High Court nor has the High Court ascribed cogent and satisfactory reasons to have exercised its jurisdiction in the facts of instant case.

In light of the same, it is to be held that the Writ Court ought not to have entertained the Writ Petition filed by the assessee, wherein he has only questioned the correctness or otherwise of the notices issued under Section 148 of the Act, the re-assessment orders passed and the consequential demand notices issued thereon.

Note: Judgment and Order passed by the High Court of Sikkim in Writ Petition No. 44 of 2009, dated 5-10-2010, set aside.

LD/62/33

Hyosung Corporation, Korea, In re
August 7, 2013 (AAR)

Section 245R read with Section 245Q of the Income-tax Act, 1961 – Authority for Advance Rulings – Procedure on Receipt of Application

Where the question raised in the application for advance ruling is pending adjudication before the assessing authority, applications are not admitted for adjudication

The applicant company filed application for advance ruling in terms of Section 245Q (1). In response to the notice issued the respondent Revenue has filed its objection (in the nature of preliminary objection) taking the stand that in view of the bar provided in section 245R(2), the application needs to be rejected in each case. It has been specifically pointed out with reference to the dates of filing of return the date of filing of application before this Authority and the relevant assessment year that before filing of the application the return of income had been filed and the question(s) raised/involved were pending before the Income-tax Authority.

The Authority for Advance Rulings held as follows:

Where a return has been filed by the applicant for advance ruling and notice under Section 143(2) was issued, the matter shall be treated to be pending before the AO, so that any issue in respect of such return cannot be entertained for advance ruling under Section 245R(2).

The jurisdictional bar on entertaining an application on advance ruling is relatable to the aspect whether the question which can be either a question of law or a question of fact is pending before any income-tax Authority or Appellate Tribunal except in the case of resident applicant falling in sub-clause (iii) of clause (b) of Section 245N or any Court. What is of seminal importance is the crucial issue as to whether the question raised is pending before the Income-tax Authority, the Appellate Tribunal or a Court. Even when a return is filed but the question is not pending adjudication, there is no jurisdictional bar in admitting the application. It is only when the question posed for advance ruling is pending determination then the jurisdictional bar operates. It is not necessary that all the questions or disputes are aspects which need determination and should be pending. The bar operates only in respect of the question pending before the Authority or the Tribunal or Court. To put it differently there may be several questions pending for adjudication by the Authority or the Tribunal or the Court. But the question which is specifically raised in the application for advance ruling cannot be segregated and it cannot be said that because the other questions are not pending, the application can be entertained for the purpose of giving ruling.

It needs to be emphatically stated that mere filling of a return does not attract the bar, unless the question raised in the application for advance ruling is in issue in the return filed, be it on the question of taxability/ non-taxability of any income, rate at which it is to be taxed, whether any expenditure/exemption is allowable or not and relatable to inclusion or exclusion of any income/expenditure.

Mere filing of return before filing of the application under Section 245Q(1) of the Income-tax Act, 1961 does not necessarily mean the question raised in the application is already pending before the Income-tax Authority.

In these instant cases notices under Section 143(2) were already issued before filing of the application before the AAR. The transaction on those where rulings of the AAR were sought, were admittedly shown in the return of income-tax filed before the date of application.

When notice under Section 143(2) is issued, all the informations available in the return and claims thereon are subject to adjudication by the AO and several issues emerge for adjudication by the AO. Some of them relate to computation of total income, computation of exemptions and exclusions, acceptance or non-acceptance of any item of expenditure. Ultimately the assessment is made in determining the gross total income, the net/chargeable income and determination of tax liability. They are all intrinsically linked and cannot be separated. With issue of notice u/s.143 (2), particulars of income, claims of the assessee in the return are pending for adjudication before the AO. It has therefore, to be held that the question raised in the application for advance ruling is pending adjudication before the assessing authority and the bar created under the proviso to section 245R (2) clearly operates. Therefore, these applications are not admitted for adjudication and stand rejected.

LD/62/34

MAK Data P. Ltd.

vs.

CIT-II

October 30, 2013 (SC)

[Assessment Year 2004-05]

Section 271(1)(c) of the Income-tax Act,1961 – Penalty – For Concealment of Income

Voluntary disclosure does not release an assessee from the mischief of penal proceedings; the law does not provide that when an assessee makes a voluntary disclosure of his concealed income, he had to be absolved from penalty

On the basis of search conducted in the sister concern of the assessee show-cause notice was issued where the Assessing Officer sought specific information regarding the documents pertaining to share applications found in the course of survey, particularly, bank transfer deeds signed by persons, who had applied for the shares.

In the reply to show-cause, the assessee made an offer to surrender a sum of ₹40.74 lakh with a view to avoid litigation and buy peace and to make an amicable settlement of the dispute. The Assesssessing Officer brought to tax a sum of ₹40,74,000 as "income from other sources". The department initiated penalty proceedings for concealment of income and not furnishing true particulars of its income under Section 271(1)(c).

The Supreme Court held as follows:

One has to properly understand or appreciate the scope of Explanation 1 to Section 271(1)(c).

The AO shall not be carried away by the plea of the assessee like "voluntary disclosure",

"buy peace", "avoid litigation", "amicable settlement", etc. to explain away its conduct. The question is whether the assessee has offered any explanation for concealment of particulars of income or furnishing inaccurate particulars of income. Explanation to Section 271(1) raises a presumption of concealment, when a difference is noticed by the AO, between reported and assessed income. The burden is then on the assessee to show otherwise, by cogent and reliable evidence. When the initial onus placed by the explanation, has been discharged by him, the onus shifts on the Revenue to show that the amount in question constituted the income and not otherwise.

Assessee has only stated that he had surrendered the additional sum of ₹40,74,000 with a view to avoid litigation, buy peace and to channelise the energy and resources towards productive work and to make amicable settlement with the income tax department. Statute does not recognise those types of defences under the Explanation 1 to Section 271(1)(c) of the Act. It is trite law that the voluntary disclosure does not release the Appellant-assessee from the mischief of penal proceedings. The law does not provide that when an assessee makes a voluntary disclosure of his concealed income, he had to be absolved from penalty.

The surrender of income in this case is not voluntary in the sense that the offer of surrender was made in view of detection made by the AO in the search conducted in the sister concern of the assessee. In that situation, it cannot be said that the surrender of income was voluntary. AO during the course of assessment proceedings has noticed that certain documents comprising of share application forms, bank statements, memorandum of association of companies, affidavits, copies of Income Tax Returns and assessment orders and blank share transfer deeds duly signed, have been impounded in the course of survey proceedings under Section 133A conducted on 16.12.2003, in the case of a sister concern of the assessee.

The survey was conducted more than 10 months before the assessee filed its return of income. Had it been the intention of the assessee to make full and true disclosure of its income, it would have filed the return declaring an income inclusive of the amount which was surrendered later during the course of the assessment proceedings. Consequently, it is clear that the assessee had no intention to declare its true income. It is the statutory duty of the assessee to record all its transactions in the books of account, to explain the source of payments made by it and to declare its true income in the return of income filed by it from year to year. The AO has recorded a categorical finding that he was satisfied that the assessee had concealed true particulars of income and is liable for penalty proceedings under Section 271 read with Section 274 of the Income Tax Act, 1961.

The AO has to satisfy whether the penalty proceedings be initiated or not during the course of the assessment proceedings and the AO is not required to record his satisfaction in a particular manner or reduce it into writing.

The principle laid down by this Court has been correctly followed by the Revenue and we find no illegality in the department initiating penalty proceedings in the instant case.

Note: Judgment and Order passed by the Delhi High Court in ITA No. 415 of 2012, upheld.

Companies Act

LD/62/35

Store One Retail India Ltd.

vs.

Century 21 Infrastructure Ltd.

August 13, 2013 (DEL)

Section 34 read with Section 7 of the Companies Act, 1956 – Memorandum – Effect of Registration

Where separate corporate entities were formed to carry out different aspects of the same business and it was not shown that the amount paid to one was transferred by it to the other, indicating inter-mingling or dovetailing of the finances of the two companies, winding up petition against the other group company was not maintainable

The petitioner, Store-One Retail entered into a term sheet with the respondent-company, Century 21 Infrastructure under which the respondent would provide the petitioner a chargeable area of approximately 56,250 sq. ft. in a mall. The petitioner was to be the anchor tenant in the mall and according to the term sheet the mall was to commence operations in October, 2008.

The cheque pursuant to the term sheet was to be drawn in favour of Town Planners, which was a company belonging to the same group as the respondent and was its marketing arm. The term sheet was signed by one Piramyd Retail and Town Planners. It was not signed by the respondent, i.e., Century Infrastructure. It is to be noted that the name of the developer, as per the term sheet, was Century Infrastructure.

Since no action was taken by the respondent pursuant to the term sheet in the construction of the mall, the petitioner sent a notice cancelling the term sheet and asking for the refund and subsequently filed the present petition under Section 433.

The only basis for the argument of the petitioner is the fact that Town Planners is the marketing arm of the respondent and therefore the payment to the former amounts to payment to the latter. This argument is sought to be supported by reference to the statement

of the General Manager (Marketing) of Century Infrastructure acknowledging that payment was made to "our director".

The High Court of Delhi held as follows:

It would be improper and unsafe to draw the conclusion, merely from the statement of the General Manager (Marketing) of Century Infrastructure, that both the companies are one and the same. It must be remembered that it is not uncommon or unusual for businessmen to form separate corporate entities to carry out different aspects of the same business. Such a practice, driven by business exigencies must be recognised and given effect to, so long as there is no motive of evasion of lawful liabilities. Employees working in such companies may have a sense of affinity or of belonging to the same group and that is perhaps the reason why the General Manager (Marketing) of Infrastructure referred to the director of Town Planners as "our director". This does not, per se and without anything more, necessarily mean that both the companies are one and the same. It was not also shown that the amount paid to Town Planners was transferred by it to the respondent, indicating inter-mingling or dovetailing of the finances of the two companies. Transfer of funds might have perhaps indicated the existence of a principal-agent relationship. There is no other material to hold that the corporate veil must be lifted and Century Infrastructure is seen through the prism of Town Planners or vice versa.

Therefore, the company petition for winding up of Century Infrastructure was not maintainable. ■