Legal Decisions[1]

Income-tax Act

LD/62/47

Endemol India Private Limited, In Re December 13, 2013 (AAR)

Section 9 of the Income-tax Act, 1961 read with Article 12(5) of the India-Netherlands Tax Treaty - Income - Deemed to accrue or arise in India

Where Indian TV program providing company took assistance from its foreign group company in respect of consultancy services such as (a) General Management, (b) International Operations, (c) Legal advisory, (d) Tax Advisory, (e) Controlling and Accounting & 'reporting, (f) Corporate Communications, (g) Human Resources and (h) Corporate Development, Mergers & Acquisitions which did not meet the requirements of 'make available' clause under the India Netherlands DTAA; same is not fees for technical services, neither was it taxable as business profit of foreign company as it has no PE in india and payment was made in foreign

The applicant Indian company EIPL is engaged in the business of providing and distributing television programmes. The applicant EIPL also has a lean organisation in India and requires assistance from group company Endemol Holding to carry out its business efficiently and in a profitable manner and for that purpose entered into a Consultancy Agreement, with Endemol Holding for procuring certain services to the applicant in respect of (a) General Management, (b) International Operations, (c) Legal advisory, (d) Tax Advisory, (e) Controlling and Accounting & 'reporting, (f) Corporate Communications, (g) Human Resources and (h) Corporate Development, Mergers & Acquisitions.

The Authority for Advance Rulings held as follows:

Issue of fees for technical services

The Consultancy Agreement states that the applicant is an operating and subsidiary company of Endemol Holding B.V., a company registered in Netherlands with the main business of producing television programmes and interactive production of high level of complexity relating to production process. The applicant has requested the holding company to provide certain consultancy services, hereinafter referred to as the "services" and the services rendered/ to be rendered are listed out in schedule 1 to the agreement. Article 1 of the Consultancy Agreement under the head "general provision" states that the holding company has considerable expertise, knowledge and expertise in the field of management, production, exploitation and development of formats in television programmes and interactive productions, and has established as one of its tasks to disseminate such experience, knowledge and expertise in other operating companies within the Endemol Group. Operating company is not sufficiently staffed and equipped to carry out certain activities deemed necessary for efficient and profitable conduct of its business and therefore requires assistance from the holding company in relation to the services and the holding company is willing to render the services to the operating company on a regular basis. Article 1 of the consultancy agreement clearly shows that it is the "considerable experience, knowledge and expertise" of the holding company that is to be rendered and for which payments are to be made. It is also made clear that the services that are provided are certain consultancy services as described above. The definition of "Fees for technical Services" in *Explanation* 2 to section 9(1)(vii), contains three elements, namely managerial, technical or consultancy. The consideration paid for the services rendered by the non-resident company in this case is covered by the broad definition of Fees for Technical Services in the Act.

On a plain reading of the definition, consultancy services is clearly included in the Fees for Technical Services. The make available clause as mentioned in clause (b) of article 12(5) also throws light on what services can be included as technical services. These are - technical knowledge, experience, skill, know-how or processes, or the development and transfer of a technical plan or technical design.

The nature of the services listed in the Management Consultancy Agreement requires technical knowledge, experience, skill, know-how or processes. They cannot be termed as merely

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

administrative and support services as tried to be made out by the applicant.

The broad consensus of the interpretation relate to services that require special expertise, skill and knowledge which are not in possession of ordinary person. This being the case the services rendered by Endemol BV to the applicant cannot but be technical in nature. Therefore, the services rendered in this particular case are technical services both under the provision of the Income-tax Act and under the India-Netherlands Tax Treaty subject to fulfillment of requirements of the "make available" clause in the treaty.

The broad consensus of the interpretation of the clause seems to be that requirements of "make available" clause in the tax treaty is met if the technology, knowledge or expertise can be applied independently by the person who obtained the services.

In this case the applicant merely took assistance of the Holding company in its business activities outside India and there is no material to suggest that the technical know-how, skill, knowledge and expertise are transferred to the applicant so as to enable the applicant to apply this technical know-how etc. independently. Therefore, the requirement of the 'make available' clause in the Article 12(5) of the India-Netherlands Tax Treaty is not satisfied in this case and hence the payment for the services rendered by Endemol BV will not come under 'fees for technical services' under the 'Tax Treaty'.

Issue of Business profit

There is no dispute about the profit arising out of the transaction in the hands of Endemol Holding BV. There is also no dispute about the services rendered outside India for which payments were made by the applicant to Endemol Holding. The applicant is an Indian enterprise and for its business activities outside India, the services on Endemol Holding were utilised. There is no material to show that Endemol Holding has any presence in India. Payments for the services were received by Endemol Holding outside India. There is also no material to suggest that the applicant is fully dependent on Endemol Holding BV. In such circumstances the company Endemol Holding BV does not have any PE in India.

Thus, the profits arising out of the transaction for the services rendered by Endemol Holding BV are not taxable in India as Endemol Holding BV does not have PE in India.

LD/62/48

CIT
vs.
Excel Industries Ltd.
October 8, 2013 (SC)
[Assessment Year 2001-02]

Section 28(iv) of the Income-tax Act, 1961 – Value of any benefit of Perquisite

Whether the benefit of an entitlement to make duty free imports of raw materials obtained by the assessee through advance licences and duty entitlement pass book issued against export obligations is income which does not accrue in the year of export but in the year in which the imports are made

The assessee maintains its accounts on a mercantile basis. In its return, the assessee claimed a deduction of ₹12,57,525/- under the head advance licence benefit receivable. The assessee also claimed a deduction in respect of duty entitlement pass book benefit receivable amounting to ₹4,46,46,976/-. These benefits related to entitlement to import duty free raw material under the relevant import and export policy by way of reduction from raw material consumption. According to the assessee, the amounts were excluded from its total income since they could not be said to have accrued until imports were made and the raw material consumed.

The Assessing Officer did not accept the assessee's claim on the ground that the taxability of such benefits is covered by Section 28(iv) which provides that the value of any benefit or perquisite, whether convertible into money or not, arising from a business or a profession is income. According to the Assessing Officer, along with an obligation of export commitment, the assessee gets the benefit of importing raw material duty free.

When exports are made, the obligation of the assessee is fulfilled and the right to receive the benefit becomes vested and absolute, at the end of the year. In the year under consideration, the export obligation had been made and the accounting entries were based on such fulfilment.

The Supreme Court held as follows:

It was submitted that in view of the provisions of Section 28(iv), the value of the benefit obtained by the assessee is its income and is liable to tax under the head "Profits and gains of business or profession".

It follows from various decisions that income accrues when it becomes due but it must also be accompanied by a corresponding liability of the other party to pay the amount. Only then can it be said that for the purposes of taxability that the income is not hypothetical and it has really accrued to the assessee.

In so far as the present case is concerned, even if it is assumed that the assessee was entitled to the benefits under the advance licences as well as under the duty entitlement pass book, there was no corresponding liability on the customs authorities to pass on the benefit of duty free imports to the assessee until the goods are actually imported and made available for clearance. The benefits represent, at best, a hypothetical income which may or may not materialise and its money value is therefore not the income of the assessee.

Applying the three tests laid down by various decisions of this Court, namely, whether the income accrued to the assessee is real or hypothetical; whether there is a corresponding liability of the other party to pass on the benefits of duty free import to the assessee even without any imports having been made; and the probability or improbability of realisation of the benefits by the assessee considered from a realistic and practical point of view (the assessee may not have made imports), it is quite clear that in fact no real income but only hypothetical income had accrued to the assessee and Section 28(iv) would be inapplicable to the facts and circumstances of the case. Essentially, the Assessing Officer is required to be pragmatic and not pedantic.

Secondly, a consistent view has been taken in favour of the assessee on the questions raised, that the benefits under the advance licences or under the duty entitlement pass book do not represent the real income of the assessee.

There is no dispute that in the subsequent accounting year, the assessee did make imports and did derive benefits under the advance licence and the duty entitlement pass book and paid tax thereon.

There was, therefore, no need for the Revenue to continue with this litigation.

Note: Decision of the High Court, *upheld*.

LD/62/49

Chironjilal Sharma HUF
vs.
UOI
November 26, 2013 (SC)

Section 132B read with Section 132 of the

Income-tax Act, 1961 - Search and seizure - Application of assets seized or requisitioned

Where in search, cash seized was in excess of tax liability, appellant would be entitled to interest for the period from expiry of period of six months from the date of order under Section 132(5) to the date of regular assessment order

Search was conducted in the house of the appellant on 31.1.1990 and a cash amount of ₹2,35,000/- was recovered. On 31.5.1990, an order under Section 132(5) came to be passed. The Assessing Officer calculated the tax liability and the cash seized in the search from the appellant's house was appropriated. However, the order of the Assessing Officer was finally set-aside by the Tribunal on 20.2.2004. The revenue accepted the order of the Tribunal. Consequently, the appellant has been refunded the amount of ₹2,35,000/- along with interest from 4.3.1994 (date of last of the regular assessments by the Assessing Officer) until the date of refund.

The appellant (assessee) claims that he is entitled to interest under Section 132B(4)(b) which was holding the field at the relevant time for the period from expiry of period of six month's from the date of order under Section 132(5) to the date of regular assessment order. In other words, the order under Section 132(5) having been passed on 31.5.1990, six months expired on 30.11.1990 and the last of the regular assessments was done on 4.3.1994, the assessee claims interest under Section 132B(4)(b) from 1.12.1990 to 4.3.1994.

The Supreme Court held as follows:

A close look at section 132B and, particularly, clause (b) of Section 132B(4) clearly shows that where the aggregate of the amounts retained under Section 132 exceeds the amounts required to meet the liability under Section 132B(1)(i), the department is liable to pay simple interest at the rate of fifteen percent on expiry of six months from the date of the order under Section 132(5) to the date of the regular assessment or re-assessment or the last of such assessments or reassessments, as the case may be. It is true that in the regular assessment done by the Assessing Officer, the tax liability for the relevant period was found to be higher and, accordingly, the seized cash under Section 132 was appropriated against the assessee's tax liability but the fact of the matter is that the order of the Assessing Officer was over-turned by the Tribunal finally on 20.2.2004. As a matter of fact, the interest for the post assessment period i.e. from 4.3.1994 until refund on the excess amount has already been paid by the department to the assessee. The department denied the payment of interest to the assessee under Section 132B(4)(b), on the ground that the refund of excess amount is governed by Section 240 and Section 132B(4)(b) has no application. But, Section 132B(4)(b) deals with pre-assessment period and there is no conflict between this provision and Section 240 or for that matter 244(A). The former deals with pre-assessment period in the matters of search and seizure and the later deals with post assessment period as per the order in appeal.

The view of the department is not right on the plain reading of Section 132B(4)(b) as indicated above. The appellant is entitled to

the simple interest at the rate of fifteen percent per annum under Section 132B(4)(b) from 1.12.1990 to 4.3.1994.

Note: Decision of the High Court, *set aside*.

LD/62/50

CIT-II, Ahmedabad

vs.

Mastek Ltd.

March 4, 2013 (SC)

Section 260A of the Income-tax Act, 1961 - High Court - Appeal to

High Court has power to frame substantial question(s) of law at the time of hearing of the appeal other than the questions on appeal that has been admitted, if the same involves substantial question

The High Court's power to frame substantial question(s) of law at the time of hearing of the appeal other than the questions on appeal has been admitted remains under Section 260A(4). This power is subject, however, to two conditions, (one) the Court must be satisfied that appeal involves such questions, and (two) the Court has to record reasons therefor.

Note: Decision of the Gujarat High Court in ITA No. 472/2012 dated –8-2012, *upheld*.

LD/62/51

MAK Data (P.) Ltd.

vs.

CIT-II

October 30, 2013 (SC)

[Assessment Year 2004-05]

Section 271(1)(c) read with Section 274 of the Income-tax Act, 1961 - Penalty – For concealment of income

Where 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; since AO has recorded a categorical finding that he was satisfied that the assessee had concealed true particulars of income, penalty proceedings was just

During survey of a sister concern of the assessee, 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 had been impounded. Reply to show-cause notice was filed on 22.11.2006, in which the assessee made an offer to surrender a sum of ₹40.74 lakh stating that the offer of surrender is by way of voluntary disclosure to avoid litigation and buy peace and to make an amicable settlement of the dispute without admitting any concealment whatsoever or any intention to conceal subject to non-initiation of penalty proceedings and prosecution."

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.

The Supreme Court held as follows:

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(l)(c). 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, in our view, 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.

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.

Note: Decision of the High Court, *upheld*.

Service Tax

LD/62/52

British Airways PLC India Branch

vs.

Commissioner of Service Tax, New Delhi

August 2, 2013 (SC)

Section 78, read with sections 76 and 80, of the Finance Act, 1994 - Penalty for suppressing value of taxable service

By virtue of second proviso to Section 78(2), if the penalty is payable under Section 78, penalty cannot be imposed under Section 76

The Tribunal upheld the confirmation of demand of service tax and cess along with interest on account of statutory levy and charges by the Commissioner. The Tribunal also upheld the confirmation of demand of service tax and cess along with interest by the Commissioner with regard to air ticket sold prior to 1.5.2006 and journey undertaken on 1.5.2006 or thereafter.

As per the impugned order, the appellant is required to pay about ₹13 crore towards service tax and ₹16.75 crore towards penalty imposed under Section 76 first, penalty has also been imposed on the appellant under

Section 78. That amount has already been paid by the appellant. Out of ₹13 crore service tax liability, an amount of ₹6 crore has already been deposited. The appellant sought stay on pre-deposit requirement of the balance amount.

The Supreme Court held as follows:

There was no justification to stay the demand of service tax under the impugned order. Prayer for stay to that extent is rejected. The appellant should pay balance ₹7 crore.

As regards penalty under Section 76, two aspects need to be noted, first, penalty has also been imposed on the appellant under Section 78. That amount has already been paid by the appellant. By virtue of second proviso to Section 78(2), if the penalty is payable under Section 78, penalty cannot be imposed under Section 76. Secondly, in the order in original, a specific finding has been recorded that the appellant has not indulged in fraud, collusion or wilful misstatement nor has the appellant contravened the provisions with intent to evade payment of service tax.

Having regard to the above two aspects, until final disposal of appeal, recovery of penalty amount amounting to ₹16.75 crore (imposed under section 76) deserves to be stayed.

Banking Laws

LD/62/53

Standard Chartered Bank

vs.

Dharminder Bhohi

September 13, 2013 (SC)

Section 17 read with Section 13 of the Securitisation and Reconstruction of Financial Assests and Enforcement of Security Interest Act, 2002 read with Section 22 of the Recovery of Debts due to Banks and Financial Institutions Act, 1993 – Right to Appeal

Debt Recovery Appellate Tribunal (DRAT) has limited but special jurisdiction under the special legislation; when the borrower and the auction purchaser have entered into a compromise and the bank was not a party to the compromise, DRAT has no jurisdiction to grant any liberty to the auction purchaser that he is at liberty to file any action against the bank for any omission committed by it

The appellant-bank sanctioned home loan to the respondent No. 1 against mortgage of the property purchased from the developer. Respondent No. 1 failed to pay the instalments, proceeding was initiated in order to sell the said property in public auction. In response to the said notice respondent No. 3 submitted its bid form for purchasing the said property by way of auction. The said auction was challenged before the Debt Recovery Tribunal (DRT) and then before the DRAT for technical reasons. In the mean time, the bank had already taken over possession of the property in question and sold the same into auction for ₹25.60 lakh. The third respondent auction purchaser took the stand that if the borrower was still interested to retain his property, he had to purchase it from her. The DRT granted 15 days time to the borrower to pay the entire amount to the bank and the developer and ₹1 lakh as compensation to the auction purchaser. The borrower preferred appeal before the DRAT which passed interim order. The appeal was adjourned from time to time. Ultimately, the DRAT passed an order that the borrower needed not pay the penal interest. Since the borrower should pay the auction purchaser ₹5 lakh as costs and that the bank should return the amount deposited by the auction purchaser along with the normal interest at the rate of 9 % per annum simple without prejudice to his right against the bank. The DRAT also granted liberty to the third respondent to initiate any action against the bank for any omission made by it. Aggrieved by the aforesaid order, the bank preferred writ petition. The High Court observed that there was no error in the same as the money was lying with the bank and held that there was no reason to exercise extraordinary writ jurisdiction under Article 226 of the Constitution of India.

The Supreme Court held as follows:

The speedy disposal of the application and the appeal are fundament objects of the enactment of the SARFAESI Act as the "time factor" has inextricable nexus with the sustenance of economy.

The primary object of the DRT Act was to facilitate creation of special machinery for speedy recovery of the dues of banks and financial institutions. This is the reason why the DRT Act not only provides for establishment of the Tribunals and the Appellate Tribunals with the jurisdiction, powers and authority to make summary adjudication of applications made by banks or financial institutions and specifies the modes of recovery of the amount determined by

the Tribunal or the Appellate Tribunal but also bars the jurisdiction of all courts except the Supreme Court and the High Courts in relation to the matters specified in Section 17.

In *Official Liquidator, Uttar Pradesh and Uttarakhand vs. Allahabad Bank, [2013] 4 SCC 381*, though in a different context, this Court observed that the Recovery of Debts due to Banks and Financial Institutions Act, 1993 (RDB Act) has been enacted in the backdrop that the banks and financial institutions had been experiencing considerable difficulties in recovering loans and enforcement of securities charged with them and the procedure for recovery of debts due to the banks and financial institutions which were being followed had resulted in a significant portion of the funds being blocked. Emphasis has been laid on blocking of funds in unproductive assets, the value of which deteriorates with the passage of time. That apart, the purpose of the RDB Act, as is evincible, is to provide for establishment of Tribunals and Appellate Tribunals for expeditious adjudication and recovery of debts due to banks and financial institutions and for matters connected therewith or incidental thereto. Section 17 of the RDB Act deals with jurisdiction, powers and authority of the Tribunals. It confers jurisdiction on the Tribunal to entertain and decide applications from the banks and financial institutions for recovery of debts due to such banks and financial institutions.

The intention of this legislation is for speedy recovery of dues to the bank. In this backdrop, the tribunals are expected to act in quite promptitude regard being had to the nature of the lis and see to it that an ingenious litigant does not take recourse to dilatory tactics. It may be aptly noted that an action taken by the bank under SARFAESI Act is subject to assail before the DRT and a further appeal to the DRAT. Neither the DRT nor the appellate tribunal can afford to sit over matters as that would fundamentally frustrate the purpose of the legislation.

In the case at hand, the DRAT should not keep on adjourning the matter and finally dispose it by passing an extremely laconic order. It is really perplexing. A tribunal dealing with an appeal should not allow adjournments for the asking. It should be kept uppermost in mind of the Presiding Officer of the tribunal that grant of an adjournment should be an exception and not to be granted in a routine and mechanical matter. In the case at hand, such a delineation by the DRAT only indicates its apathy and indifference to the role ascribed to it under the enactment and the trust bestowed on it by the legislature. A curative step is warranted and the Chairman and the members of the DRAT shall endeavour to remain alive to the obligations as expected of them by such special legislations, namely, the SARFAESI Act and the RDB Act.

Be it noted, the principal purpose is to see that recovery of dues which is essential function of any banking institution does not get halted because of procrastinated delineation by the tribunal. It is worthy to note that the legislature by its wisdom under Section 22 of the RDB Act has provided that the DRT and the appellate tribunal shall not be bound by the procedure laid down by the Code of Civil Procedure, but shall be guided by the principles of natural justice and subject to the rules framed. They have been conferred powers to regulate their own procedure as given to them. It is so, for the very purpose of

their establishment is to expedite disposal of the applications and the appeals preferred before them. They have the character of specialised institutions with expertise and conferred jurisdiction to decide the lis in speedy manner so that the larger public interest, that is, the economy of the country does not suffer. But, a pregnant one, in the case at hand the DRAT did not dispose of the appeal for four and a half years. It can only say that apart from the curative step the tribunal as well as the DRAT has to rise to the occasion, for delay in adjudication of these type of litigations brings a long term disaster. A cute slumber shall not do.

Section 17 of the SARFAESI Act allows any person, including a borrower, aggrieved by any of the measures referred to in sub-section (4) of section 13 taken by secured creditor to submit an application to the DRT having jurisdiction in the manner within 45 days from the date of such measures have been taken. Sub-section (3) of Section 17 empowers the DRT to question the action taken by the secured creditor and the transaction entered into by virtue of Section 13(4) of the SARFAESI Act. It has been held in *Authorised Officer, Indian Overseas Bank vs. Ashok Saw Mill, [2009] 8 SCC 366* that the legislature by virtue of incorporation of sub-section (3) in Section 17 has gone to the extent of vesting the DRAT with authority to set aside a transaction including sale and to restore possession to the borrower in appropriate cases. Section 18 of the SARFAESI Act makes provision for an appeal to the appellate authority from any order made by the Debts Recovery Tribunal. The Debts Recovery Tribunal, needless to say, has the same jurisdiction as conferred under Section 17 of the RDB Act.

The legislature has brought in this provision by way of substitution by Act 30 of 2004 with effect from 11.11.2004 to confer jurisdiction on the DRT and DRAT to entertain a plea of the borrower for grant of compensation and costs.

Section 19 makes it quite clear that the tribunal has been given power under the statute to pass such other orders and give such directions to give effect to its orders or to prevent abuse of its process or to secure the ends of justice. Thus, the tribunal is required to function within the statutory parameters. The tribunal does not have any inherent powers and it is limpid that Section 19(25) confers limited powers.

The principles that have been culled out by the Constitution Bench in the case of *Union of India vs. R. Gandhi, President, Madras Bar Association, [2010] 11 SCC 1*, it is perceptible that a tribunal is established under a statute to adjudicate upon disputes arising under the said statute. The tribunal under the RDB Act has been established with a specific purpose. Its duty is to see that the disputes are disposed of quickly regard being had to the larger public interest. It is also graphically clear that the role of the tribunal has not been fettered by technicalities. The tribunal is required to bestow attention and give priority to the real controversy before it arising out of the special legislations. As has been stated earlier, it is really free from the shackles of procedural law and only guided by fair play and principles of natural justice and the regulations formed by it. The procedure of tribunals has been elaborately stated in Section 19 of the RDB Act.

Section 34 of the RDB Act provides that the said Act would have overriding effect. With the sacrosanct purpose, the tribunals have been established is to put the controversy to rest between the banks and the borrowers and any third party who has acquired any interest. They have been conferred jurisdiction by special legislations to exercise a particular power in a particular manner as provided under the Act. It cannot assume the role of a court of different nature which really can grant "liberty to initiate any action against the bank". It is only required to decide the lis that comes within its own domain. If it does not fall within its sphere of jurisdiction it is required to say so. Taking note of a submission made at the behest of the auction purchaser and then proceed to say that he is at liberty to file any action against the bank for any omission committed by it has no sanction of law. The said observation is wholly bereft of jurisdiction, and indubitably is totally unwarranted in the obtaining factual matrix. Therefore, the liberty could not be given to the auction purchaser to file action against the bank for any omission committed by it.

The High Court could not declined to interfere with the grant of liberty by the DRAT. Such grant of liberty was not within the domain of the tribunal regard being had to its limited jurisdiction under such special legislation and further, especially, when the bank was not a party to the compromise.

DRAT is required to adjudicate the *lis* in an apposite manner. It is hearing an appeal from an order passed by the DRT. It cannot afford to pass a laconic order.

Note: Judgment of High Court of Delhi in Writ Petition (C) No. 4694 of 2010, dated 16-7-2010, *Set aside*. ■