Legal Decisions[1]

Income Tax

LD/67/58

Magna Credit & Financial Services Limited

Vs.

Deputy Commissioner of Income Tax

20th September, 2018

Sale and lease back transaction held to be entered only to claim 100% depreciation benefit; Sale existed only on paper; Concealment penalty upheld.

The assessee was the owner of Air Pollution Controller 2 nos., Solid waste controller and Waste heat recovery which were purchased from New Shorrock Mills (a division of Mafatlal Industries Limited), and they entered into a lease transaction with the said M/s. Mafatlal Industries Limited by lease agreement dated 25.03.1996, by which, the above-mentioned assets were leased out for a period of 3 years to M/s. Mafatlal Industries limited. The assessee had claimed 100% depreciation on machinery worth ₹ 25 lakhs in AYs 1996-97 and 1997-98.

During the assessment proceedings, O disallowed the said claim of depreciation and initiated penalty proceedings under section 271(1)(c). CIT(A) affirmed AO's order and confirmed the penalty. ITAT also ruled in favour of Revenue by confirming the penalty, aggrieved by which, the assessee preferred an appeal before Madras High Court.

High Court noted ITAT's finding that concerned machinery being incapable of commercial purchase and sale in the open market, already being an integral part of the factory of the vendor-lessee, and further that the assessee had earlier also indulged in similar bogus sale and lease back transaction with A.T.V.Projects India Limited, Bombay in 1993 and had subsequently availed of VDIS in 1997, by withdrawing this depreciation. Further, certain machineries referred to in the lease agreement could not be detached as they were part of the bigger system of machinery being used by New Sharrock Mills which made it clear that the assets were permanently fixed as an integral part of the factory which cannot be used by anyone else other than New Sharrock Mills. High Court, therefore, remarked that assets were not capable of being sold and sale exists only on paper and not in the real sense.

High Court observed that the AO had rightly examined that the transaction was not in the nature of a normal sale and leaseback but a hurriedly planned act towards the end of the financial year to claim 100% depreciation benefit and in that process, the Assessee has prepared extensive documentation which have questionable authenticity. Further, High Court also noted that when the assets were part of an integral factory they could not have been sold out to the assessee and leased out to a different concern. High Court placed reliance on ruling in case of Goyal M.G.Gases (P) Ltd [(2014) 42 taxmann.com 491 (Delhi)], wherein it was held that it was difficult to believe that the assessee would have known true nature of the transaction and that it was of the bonafide view that it actually "owned" and "leased" computers on which it claimed depreciation..

High Court thus affirmed levying of penalty and ruled in favour of the Revenue.

LD/67/59

Commissioner of Income Tax

Vs.

M/s Ansal Properties and Industries

18th September, 2018

Assessee had 40% development rights in one property, against which assessee had received an amount from a buyer, which was shown as a security deposit; Addition of this deposit under 'suppressed sales" upheld by the High Court.

The assessee had entered into an agreement with the owner of a property for its development into a commercial complex. During a legal case filed by the assessee on the owners of this property, the owners sold the property to a third party. The legal case was decided in the favour of assessee and it was decided between the owners and assessee that assessee's share in commercial complex to be built was to be 40% and that for owners would be 60%. Subsequently in 1995 the assessee entered into

[1]*Contributed by CA. Sahil Garud, Disciplinary Directorate and ICAI's Editorial Board Secretariat. Readers are invited to send their comments on the selection of cases and their utility at eboard@icai.in. For full judgement, write to eboard@icai.in.*

an agreement with one Verka Investments Pvt. Ltd. (hereinafter called as VIPL) whereby VIPL acquired assessee's right of 40% in built-up area along with the obligation to develop and constitute commercial complex for a total consideration of ₹ 42 crores.

On 10.02.2000, a search was carried out on Ansal Group of companies wherein a 'Note' was found which was related to the tax provision with respect to the concerned property deal. It was stated in the note that the terms of the agreement were to defer income tax liability and after receiving 95.23% of the total consideration as the deposit, it was not refundable irrespective of the completion of the building and the amount was to be taxable in the year it was received. In the block assessment proceedings, AO noted that the proposed arrangement of receiving deposit was aimed to defer the tax liability.

It was observed that the assessee had already received an amount of ₹40 crores in the year 1995-96 and the remaining amount of ₹ 2 crores was also received as interest-free inter-corporate deposit. AO thus made an addition of 42 crores in the hands of the assessee. CIT(A) also ruled in favour of the Revenue holding that the sale transaction was complete and the assessee was not entitled to postpone the tax liability. ITAT, however, ruled in favour of the assessee holding that no fresh material justifying addition was seized and the concerned 'Note' could not be relied on as an agreement.

Aggrieved, Revenue filed an appeal before Delhi High Court.

High Court observed that in course of survey proceedings under section 133A the statements of directors of VIPL revealed that ₹ 42 crores paid to the assessee was against sale consideration.

High Court noted that the proposed arrangement was planned from tax point of view to deferring tax liability that was otherwise to accrue. As per High Court the device of 'security deposit' was created to enable the assessee to successfully convey and postpone its tax liability which otherwise accrued in the order of execution in successive assessment years but for the seizure of notes which let the cat out of the bag, as it were. High Court held that security deposit was a mere camouflage or a device to postpone tax liability towards an uncertain date, at the convenience of the assessee. High Court thus held that the sum of ₹ 42 crores brought to tax by the AO in the entire circumstances of the case was reasonable given the materials seized, the survey conducted and the statements recorded during the course of assessment proceedings.

LD/67/60

Supernova System Private Limited

Vs.

Chief Commissioner of Income Tax-2

17th September, 2018

For the purposes of Section 276C, compounding fees should be levied @ 100% of 'tax sought to be evaded' and not @ 100% of income addition to being made'.

During the course of regular assessment, it was found that the assessee had claimed deduction for provision of income-tax of ₹ 8.70 lakhs. The AO disallowed the same and made the addition of ₹ 8.70 lakhs and raising a demand of ₹ 2.61 lakhs on it. Further, penalty proceedings were also initiated under section 271(1)(c) at the rate of 100% of the tax sought to be evaded. Subsequently, a prosecution u/s 276C(1) was also initiated. The assessee applied to the Chief Commissioner for compounding of offence, against which a compounding fee of ₹ 10.49 lakhs was determined by the department. The base taken by Revenue was 'income sought to be avoided' rather than 'tax sought to be avoided while calculating the compounding fees. Since the revenue rejected assessee's application to restrict the compounding fees to ₹ 2.61 lakhs, the assessee filed a writ petition before the Gujarat High Court.

High Court analysed provisions of Section 276C pertaining to a willful attempt to evade tax, etc. and Section 279 pertaining to the prosecution to be at the instance of the Commissioner. Further, High Court perused guideline/circular of CBDT dated 23.12.2014 for compounding of offence. The said circular mentioned compounding fee to be at 100% of the amount sought to be evaded, and High Court noted that the statutory provisions in relation to which this compounding fee is prescribed need to be analysed.

High Court noted that subsection (1) of Section 276C, as noted, prescribes punishment for a person who willfully attempts in any manner to

evade any tax, penalty or interest chargeable under the Act. High Court stated that as per this section the punishment prescribed is linked to the amount sought to be evaded, and thus it has a relation to the aspect of evasion of tax, penalty or interest. High Court observed that when the CBDT circular refers to the amount sought to be evaded, it must be seen and understood in light of the provisions of Section 276C(1) and it must be understood as the amount of tax sought to be evaded.

High Court thus held that the compounding fee must restrict to the amount of tax sought to be evaded, i.e. to ₹ 2.71 lakhs. Since the assessee had paid ₹ 10.49 lakhs, High Court directed the Revenue to refund the amount in excess of ₹ 2.71 lakhs to the assessee.

High Court thus ruled in favour of the assessee.

LD/67/61

Assistant Commissioner of Income Tax

Vs.

M/s Golden Line Studio Private Limited

31st August, 2018

Assessing Officer's fair market value calculation of Preference shares based on NAV, rejected by ITAT; Addition of premium received on issue of redeemable preference shares deleted.

The assessee is engaged in the business of film production in the field of providing visual effects and animation facilities. During the course of assessment proceedings, the Assessing Officer noticed that the assessee has issued 6,10,825/- noncumulative, non-convertible redeemable preference shares on 1.4.2010 having a face value of ₹ 10/- each at a price of ₹ 500/-. Thus, the assessee has collected ₹ 490/- as share premium. The above said preference shares are redeemable at ₹ 750/- each after the expiry of five years from the date of issue. The shares were allotted to assessee's holding company Sahara India Commercial Corporation Limited.

AO noted that the fair market value of unquoted shares based on the balance-sheet of the assessee was ₹ 38 per share and therefore the reasonable premium would be ₹ 28 per share. Therefore an addition of ₹ 28.22 crores as the excess premium was made by the AO. The CIT(A) ruled in favour of the assessee, aggrieved by which the Revenue filed an appeal before Mumbai ITAT.

ITAT noted that the preference shares and equity shares stand on a different footing as the equity shareholders are the real owners of the company and preference shareholders are not. ITAT observed that the preference shareholders get preference over the equity shareholders on payment of dividend and repayment of equity and therefore the Net asset value of the company really represented the value of equity shares and not that of preference shares. Thus, the net asset value of the company cannot be linked or compared to the Preference shares. Further, AO had not drawn any support from provisions of Income Tax Act to hold that premium exceeding ₹ 28 was alleged excess premium. ITAT observed that the Revenue had suspected the nature of receipt of amount only for the reason that the value of share, by net asset value method (NAV) stood at ₹38/-, however the Revenue failed to understand that this value was related to 'equity shares' and cannot be adopted for 'preference shares'.

ITAT further noted that concerned funds on share allotment were received in earlier years and not in the concerned financial year, and thus Revenue was mistaken to invoke Section 68 for making the addition.

ITAT directed to delete the addition and thus ruled in favour of the assessee.

LD/67/62

M/s Vaani Estates Private Limited

Vs.

The Income Tax Officer, Chennai

27th August, 2018

Since investor's source of investment was genuine and there is no possibility of generation and use of unaccounted money, addition under section 56(2)(viib) deleted in respect of shares allotted at huge share premium.

The assessee a private limited is engaged in real estate business. Initially, the assessee had only two shareholders Mrs. Sasikala Raghupathy and her husband Mr. B.G. Raghupathy each holding 5000 shares. On the demise of Mr. B. G. Raghupathy, the shares devolved on their daughter Mrs. Vani Raghupathy.

Subsequently, the company proposed to acquire a land of approximately 23.09 crores, for which Mrs. Sasikala Raghupathy introduced an amount of 23.32 crores into the company, against which she was allotted 10,100 shares having face value of ₹10/- at a premium of ₹23.31 crores. The AO invoked the provisions of Section 56(2)(viib) holding that 10,100 shares were allotted to Mrs. Sasikala at an unrealistic premium of ₹23.31 crores. CIT(A) upheld the order of Assessing Officer, aggrieved by which the assessee filed an appeal before the Chennai ITAT.

ITAT observed from the Finance Minister speech of Finance Bill 2012 that provisions of Section 56(2)(viia) were introduced only to curb generation and use of unaccounted money. The only shareholder apart from Mrs Sasikala in the company was the daughter Miss Vaani, who was a new entrant in her parents' business and had no scope of possessing undisclosed cash. Further, as per ITAT, the benefit of such investment at an unrealistic share premium only passed on to her daughter because there were only two shareholders in the assessee company. ITAT stated that had Mrs. Sasikala Raghupathy gifted the money to her daughter Mrs. Vani and thereafter if the daughter would have brought the same into the assessee-company for allotment of equity shares at face value, invoking of the provisions of Section 56(2)(viib) would not have aroused and the same would have been also out of purview of taxation owing to the relationship of mother and daughter.

ITAT noted that in this case, the investor's source of investment was genuine and not in dispute. ITAT referred to Supreme Court ruling in the case Allied Motors Pvt. Ltd., wherein it was held that the Finance Minister's Budget speech explaining the provisions were relevant in construing the provisions. ITAT referred to various principles of interpretation of the Statute and stated that a harmonious reading of provisions of Section 56(2)(vi), (viib) and (x) would suggest that Section 56(2)(viib) had no implication in this case.

Thus, ITAT held that the provisions of Section 56(2)(viib), could not be invoked because by virtue of cash being brought into the assessee company by Mrs. Sasikala for allotment of equity shares with unrealistic premium the benefit only passed on to her daughter Mrs. Vani.

Thus, ITAT ruled in favour of the assessee and directed the deletion of the addition made under section 56(2)(viib).

LD/67/63

Nortrans Marine Services Private Limited

Vs.

Assistant Commissioner of Income Tax

06th August, 2018

Settlement amount receipt remaining with assessee-agent, received after agency-termination, held to be taxable as business income

The assessee was the agent of two foreign shipping lines and was providing agency services to both the companies in accordance with the agreements executed by the Principal and the Agent. The shipping lines intended to terminate the agency due to some disputes, and a Memorandum of Understanding [MoU] was arrived at for effecting termination. The Shipping Companies together raised a claim of ₹45 crores. against the assessee. The outstanding balance in the assessee's books of accounts for these Principals' account as on 31.03.2005 was ₹ 31.07 crores. The Principals filed suit before the Courts in London, but subsequently settled the issue for ₹25.99 crore.

The assessee offered ₹1.90 crore as income for taxation, after deduction of the legal cost of principals paid on the basis of the Court order and expenses/professional fees paid by the assessee. The AO noted that settlement was entered into in February 2006 and balance payments as per the settlement was made on 31.03.2006, reckoning the payment made by the agent in August 2005 also. The AO, added on the legal cost and local expenses of Principals as also the legal expenses incurred by the assessee in computing the taxable income. Thus, a total amount of ₹4.91 crores was brought to tax. CIT(A) held that the entire amount received on cessation of liability is taxable for the assessment year 2006-07. However, the AO was directed to allow the legitimate expenses of ₹ 7.05 lakhs incurred after verifying the same. ITAT also upheld the order of the CIT(A).

Aggrieved, the assessee appealed before the Kerala High Court.

High Court observed that the amount remaining in the account, after the settlement of the dues to the Principals is not held by the assessee in a fiduciary capacity. As per the High Court, when the Principal's dues are settled by the Court order or by settlement and the expenses too are deducted, what remains in

the account is not something which is retained in a fiduciary capacity and is income at the hands of the assessee.

High Court observed that admittedly the entire amounts from the customers of the principals were credited to the agent-assessee, who maintained a running account for the Principals. There is no determination of the commission and admittedly after the expenses incurred on behalf of the Principal are met and the amounts due to the Principal are transferred what the assessee gets to enrich its coffers is the income obtained by the agent-assessee. High Court held that the amounts left in the account after deduction of expenses would be income taxable especially since on settlement of the suit claims, the right if at all available to the Principals to such amounts, stands extinguished. Further, High Court noted that there is no question of any further liability arising from the litigation initiated by the Principals, since the same has been settled and amounts due to the Principals were satisfied. Thus, there was no question of holding of amounts by the assessee towards any possible future claims.

High Court noted that Section 28(ii)(c) talks about taxing of compensation or other payment due to or received by any person, by whatever name called, holding an agency in India for any part of the activities relating to the business of any other person, at or in connection with the termination of the agency. Further Section 2(24) states that income includes any sum chargeable to income-tax under clauses (ii) and (iii) of Section 28.

Therefore, the High Court held that the amounts waived by the Principal in accordance with a settlement arrived at with their agent were 'income' for the assessee. High Court thus ruled in favour of the Revenue.

Service Tax

LD/67/64

EIH Limited

Vs.

C.C.E., Delhi-I

14th September, 2018

Supply of Aircraft/Helicopter on chartered basis is taxable as 'supply of tangible goods for use

The assessee has a unit of Maidens Hotels for providing Renting of Immovable Property Services, Mandap Keeper Service, Dry Cleaning Services, Business Auxiliary Services & Internet cafe services and has been accordingly registered. Further, the assessee was also registered for providing Aircraft Operator services. Revenue, after investigations noticed that assessee was supplying Aircraft/ Helicopter Service to different service receivers and this service fell under the category of 'supply of tangible goods'. The assessee did not have any Service Tax Registration for it and also thus had not paid any service tax on the said activity. The Revenue thus issued notice demanding service tax for the period of May 2008 to May 2010, along with interest and penalties.

As per assessee, this service fell under the category of Transport of passengers by air service, which was not taxable during the period of dispute.

CESTAT perused the Departmental Circular D.O.F. No.334/I/2008-TRU dated February 29, 2008, regarding the introduction of the levy of supply of tangible goods. CESTAT observed from one of the invoices of the assessee that the Aircraft was given on hire for use of charterer on the terms and conditions of the permit in favour of the assessee. Aircraft was supplied along with the licensed/trained Pilot and necessary Engineering crew to operate the Aircraft. Thus the effective control and possession still remained with the assessee who was charging the charterer on the basis of actual time consumed during the flight.

CESTAT referred to ruling in case of Global Vectra Helicorp Ltd. vs. Commissioner of Service Tax, Mumbai-II [2015 (2) TMI 974 – CESTAT MUMBAI (LB)], wherein on similar circumstances it was held that such services will be classifiable under the category of supply of tangible goods service. Relying on this ruling, CESTAT upheld the demand of service tax.

Separately, CESTAT held that that the Revenue was not entitled to invoke the extended period of limitation. CESTAT observed that onus heavily rests upon the Revenue to prove suppression of facts, before invoking extended period of limitation, which the Revenue had failed to do.

CESTAT thus partly ruled in favour of the Revenue.

LD/67/65

The Principal Commissioner of Service Tax

Vs.

M/s Shree Chanakya Education Society

05th September, 2018

Bombay High Court upheld CESTAT order which had set aside demand under "Commercial Training or Coaching Centre" for extended limitation period and penalty imposed on the educational charitable trust

The assessee is a Public Charitable Trust rendering services of imparting education and was also exempted from Income Tax. The revenue had filed the present appeal on the ground of whether CESTAT was justified in setting aside the demand for an extended period and consequent penalty under section 78 of Finance Act, 1994. The assessee was under an impression that it was not liable to service tax. Revenue, however, issued a show-cause notice dated to recover the service tax under the head "Commercial Training or Coaching Center" for the period July 01/07/2003 to 31/03/2008 and also sought to impose penalty under section 78.

Relying on the ruling in case of *Great Lakes Institute of Management Ltd [32 STR 305], CESTAT* confirmed that assessee was liable to service tax though it was charitable institutions engaged in rendering educational service. However, CESTAT held that the show-cause notices were beyond the normal limitation period and thus deleted the penalty imposed under section 78. This was on the ground that the issue whether a charitable institution could be brought to tax under the Act was a debatable issue and finally came to be resolved by the Tribunal in *Sri Chaitanya Educational Committee (SCEC) vs. Commissioner Customs and Service Tax, Guntur [2016(41) STR 241].* In this case, it was held that even charitable institution rendering the service of commercial training or coaching is chargeable to tax under the Act. Further, it was recognised that this issue was not free from doubt as was evident from reference to the third member. Consequently, the demand in Sri Chaitanya Educational Committee (supra) has restricted to the normal period of limitation and penalty was also deleted.

High Court observed reference of the above issue to a third member in Sri Chaitanya Educational Committee itself evidences that fact that prior to its decision, a party could have a bonafide belief that a charitable institution rendering service of Commercial Training and Coaching is not chargeable to service tax. Thus as per High Court, no fault could be found in the order given by the CESTAT restricting the demand to the normal period of limitation and deletion of penalty u/s 78 of the Act. High Court stated that the case did not give rise to any substantial question of the law, and thus dismissed the Revenue's appeal.

LD/67/66

The Commissioner of Service Tax, Mumbai

Vs.

Zapak Digital Entertainment Limited

05th September, 2018

CENVAT credit of service tax charged by broadcaster held to be allowed to assessee engaged in 'selling space and time for advertisement'; CESTAT order upheld by the High Court

In the present appeal before the High Court, the Revenue had urged the question whether the assessee is entitled to take the input service credit on Agency Commission as well as the Service Tax charged by the media/broadcasters as shown in the said invoices. The assessee is engaged in providing services of "selling spaces and time for advertisement" promoting business by placing advertisements on various forms of media through the advertising agency such as M/s. Optimum Media Solutions (Mudra Radar). The advertising agency facilitates the transaction between the broadcaster and advertiser of such Appellant. The broadcaster raises invoices wherein the name of the assessee as the advertiser or that of the advertising agency is also clearly mentioned. The amount discharged by the broadcaster is paid by the advertising agency and subsequently reimbursed by the advertiser. On the basis of the invoices issued by the broadcaster, the assessee claimed CENVAT credit.

As per the Revenue, the assessee was not entitled to claim CENVAT credit of service tax paid in respect of the invoices raised by the broadcaster in the name of the agency.

CESTAT held that invoices clearly showed that the agency had merely acted as an agent for transfer of money from the broadcaster and assessee was therefore entitled to avail CENVAT credit. High Court observed that the order of CESTAT has rendered a finding of fact that the invoices issued by the broadcaster are in the name of the assessee and held that the advertising agency is merely shown as an agent of the assessee. This finding of fact is not shown to be perverse

High Court thus dismissed the Revenue's appeal stating no substantial question of law arose.

Transfer Pricing

LD/67/67

Jaso Private Limited

Vs.

Deputy Commissioner of Income Tax

28th September, 2018

ITAT rejects assessee's foreign associated enterprise as a tested party; Based on the functional comparison, assessee held to have the least complex functions.

The assessee was engaged in supplying cranes and mechanical equipments to Indian customers and had a well-established distribution and marketing network in the infrastructure industry. The assessee was thus easily able to identify potential purchasers and procure the order for cranes and mechanical equipment. The assessee acquired cranes and allied parts from an associated enterprise (AE) JASO Spain so as to further supply to the clients.

The TPO adopted TNMM as the most appropriate method for benchmarking assessee's international transactions. An adjustment of ₹2.48 crores was made by the TPO. Before DRP, the assessee submitted that that Resale Price Method should be adopted as most appropriate method. TPO rejected assessee's claim to select AE as tested party, however TPO did not reject assessee's contention on selection of Resale Price Method as most appropriate method. DRP rejected Resale Price Method on the ground that assessee was creating intangibles/signed markets for the products and delivering quantitative additions.

Aggrieved, assessee filed an appeal before the ITAT.

ITAT noted that in assessee's TP study, it had itself stated that resale price method is not the most appropriate method and that assessee should be selected as the tested party since its functions were the least complex. Further, assessee also made another contrary submission whereby it stated that its foreign AE should be selected as the tested party, on the ground that the AE had the least complex functions as compared to the assessee. As per ITAT, assessee sought to alter the conclusions drawn from its TP study by making submissions before the TPO.

ITAT observed that the assessee takes the marketing risk, price risk, credit risk, warranty risk and foreign exchange risk and hence this was not a simple case of marketing intangibles, being the only reason for not adopting Resale price method. Further, the assessee also claimed to perform the function of market research, customer mining, order program from customers, requirement analysis, quality checks, apart from the marketing, price, credit, bad debt, warranty, forex, inventory and manpower risk. As per ITAT, the assessee thus had a complicated work profile, due to which resale price method was not the appropriate method. ITAT stated that even if RPM is taken as the most appropriate method, adjustments would have to be made for these various risks being taken by the assessee. ITAT thus rejected selection of resale price method as the most appropriate method.

Separately, ITAT observed that the criterion for selecting the 'tested party' is to select the party which has the least complex functions. AE was a leading manufacturer and supplier of wide range of lifting and transport systems and also provided required technical support, custom designs, drawings, training, and managerial advice and supervises activities of the Indian partner. Further, the AE has a notable presence and leadership in international markets and therefore ITAT noted that these functions when compared with distribution and marketing function of the assessee, leads us to a conclusion that assessee is the party which has the least complex functions. ITAT, therefore, rejected assessee's contention that the assessee's foreign AE should be selected as a tested party.

Disciplinary Case

Summary of a disciplinary case, in the matter of:

CA. ABC, Mumbai

Facts of the case

1. A newspaper cutting dated 31st October, 2010 was received containing allegations against CA. ABC (hereinafter referred to as the "Respondent"). On an overall examination of allegations, the matter was treated as Information within the meaning of Rule 7 of the Chartered Accountants (Procedure of Investigations of Professional and Other Misconduct and Conduct of Cases) Rules, 2007.
2. As per the Information letter dated 10th January, 2011 read with newspaper cuttings, the allegations; the allegations, in brief, are as under:-

- Through newspaper cuttings on record, it was noticed that Police had arrested the Respondent for allegedly duping his clients, namely, Mr. LMO and Ms. KSP for ₹ 65 lakhs.

The matter was enquired into by the Board of Discipline and the Board inter-alia, gave its findings as under:

- The Board noted that in the instant Information case the Respondent along with his Written Statement submitted the copies of the newspaper cuttings sent by the Institute pertaining to his clients Mr. LMO and Mrs.KSP wherein he has been falsely implicated in police case to extract money and malign his image with cheap media publicity. He further submitted that with a view to buy peace of mind, he has settled the matter with his clients vide agreement dated 2nd December, 2010.
- Further, the Board on perusal of the copy of the said agreement available on record noted that the client of the Respondent, Mr. LMO had lent an amount of ₹ 65 lakhs(which according to the Respondent is ₹ 35 lakhs only) to the Respondent for investment purpose. Upon the Respondent's failure to honour his commitment of the handsome return on the amount lent by Mr. LMO due to financial problems in last couple of years due to recessionary trends, the amount (principal and the interest) became non-recoverable. As a result, the dispute arose to the extent of initiation of the legal proceedings before the Metropolitan Magistrate both under IPC and under the Negotiable Instrument Act.
- The Board noted that the dispute that arose has been amicably settled vide agreement dated 2nd December 2010, whereby the Respondent agreed to pay back his client one-time settlement amount of ₹30 lakhs in full and final settlement of all claims besides other terms of settlement.
- On perusal of the above-stated facts related to the case, the Board noted that though the matter in the instant case is civil in nature, the intent and conduct of the Respondent cannot be ignored while considering the chronology of the events related to the instant matter.
- The Board further noted that in the year 2005, when Mr. LMO decided to move to Canada permanently along with his family, the said amount was lent by Mr. LMO to the Respondent. The Respondent paid interest for the first year and, thereafter, for two subsequent years he kept delaying the payment date or paid them with cheques which bounced due to insufficient funds.

Legal Update

Thereafter in the year 2007, Police complaint was made and the Respondent gave his client 20 cheques which all bounced. Thereafter, in the late 2009, an FIR was registered against the Respondent and after investigation he was arrested and was remanded to police custody till 2nd November, 2009.

- The Board noted that although the Respondent has paid back the settlement amount in December 2010, yet has undoubtedly adopted dishonest practice in his dealings with his Clients, Mr. LMO and his wife whereby he firstly failed to honour his commitment of good returns and, thereafter, failed to repay the amount till the time legal recourse was adopted against him.

  Thus, the Board in the light of the above opined that the Respondent's actions were intended to defraud his clients in a manner which is unbecoming of a Chartered Accountant who is required to maintain a high standard of integrity in their dealings with the Society. Thus, the aforestated act of the Respondent has brought disrepute to the profession. Accordingly, the Board held that the Respondent is GUILTY of "Other Misconduct" falling within the meaning of Clause (2) of Part IV of the First Schedule to the Chartered Accountants Act, 1949.

  Upon the consideration of all the material on record, the Board noted that since the conduct of the Respondent has brought disrepute to the profession, the Respondent should be levied with severe punishment. Accordingly, the Board ordered that the name of the Respondent be removed from the Register of Members for a period of 1 (one) month. ■