Legal Decisions[1]

Income Tax

LD/67/140

PCIT

Vs.

Make My Trip India Pvt. Ltd

29/03/2019

Payment made by Assessee to Banks for providing payment gateway facility, not liable to deduct TDS under section 194H [relating to TDS on commission], deletes Section 40(a)(ia) disallowance for AY 2009-10; Payment gateway charges are in the nature of fees for banking services and not 'commission' or 'brokerage'

The assessee, Make My Trip India Pvt. Ltd, is engaged in the business of selling its travel products to the customers through the website *makemytrip.com.* A customer can log on to the assessee's website, choose from its various travel products displayed there. Once the customer enters into a transaction, payment therefore is made by using the facility of an Internet Payment Gateway, which opens automatically. The payment gateway, which is provided in this case by four banks viz., HDFC, ICICI, Citibank and American Express, electronically transfers the customer data to the credit card issuer through VISA / Master Card, for the approval of the issuer and consequently the amount is debited by the issuer to the cardholder. Instantly the payment gateway website confirms approval to the merchant/e-Commerce website and the transaction gets concluded. The net price after deduction of facility charges by the payment gateway is automatically credited to the bank account of the merchant. The amount retained by the payment gateway facility provider includes the charges for the facility of secured payment gateway and the charges of VISA/Mastercard.

The AO disallowed the payment made by the assessee to the Banks towards charges for providing the payment gateway facility for the AY in question under section 40(a)(ia) of the Act since according to the AO the said payment was in the nature of commission paid to the Banks from which TDS under section 194 H of the Act ought to have been deducted. On Appeal, the CIT(A) concurred with the AO that from the said sums TDS was required to be deducted by the assessee under section 194 H of the Act while making payment. The Tribunal, however, deleted the addition made by the AO under section 40(a)(ia) of the Income Tax Act,1961 being non-deduction of TDS on account of payment gateway charges.

The High Court noted that the Central Government, by notification dated 31st December, 2012 had notified that no TDS shall be made on the specified payments to the banks listed in the Second Schedule to the Reserve Bank of India Act. The High Court further accepted assessee's reliance on *CIT vs. JDS Apparels (P) Ltd [(2015) 370 ITR 454 (Del)]* which held that in a similar kind of transaction, the amount retained by the bank is a fee charged for having rendered banking services and "cannot be treated as a commission or brokerage paid in course of use of any services by a person acting on behalf of another for buying or selling of goods". The HC further rejected Revenue's stand that co-ordinate bench ruling was not applicable as the bank in JDS Apparels case had provided a swiping machine, whereas in the present case the customer was directed to a secure gateway of the bank which provides the facility.

The High Court held that the ITAT had not committed any error in deleting the addition made by the AO under section 40(a)(ia) of the Act on account of non-deduction of TDS from the payment gateway charges paid to the Banks.

LD/67/141

Max Ventures Investments Holdings Pvt. Ltd

Vs.

Income Tax Officer

27/03/2019

Re-assessment initiation under section 147 for AY 2012-13 alleging that the share application money received by assessee co. from its promoter at a premium of 457% over face value added to assessee's income under section 68

[1]*Contributed by CA. Sahil Garud, CA. Mandar Telang, GST & Indirect Taxes Committee, 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.*

During FY 2009-10, the assessee, Max Ventures Investments Holdings Pvt. Ltd, received share application money from its promoter/founder towards fresh allotment of equity shares. Later, the AO re-opened the assessment under section 147 noting that the assessee had taken benefit of share application money but had not allotted the shares even after the expiry of 4 years. Since the assessee could not substantiate the share application money received with the documentary evidences, AO held that the assessee had not taken any step to increase the authorised share capital to meet out the requirement of issue of shares as the present authorised share capital was of ₹ 20 lakhs against share application money of ₹ 87 crores, which was pending for allotment till the year 2015. The AO further noted that the assessee had issued shares at 457 times the face value, while the financials of the assessee company does not support such high valuation. It was held that the income of ₹ 87 crore being receipt of share application money has escaped assessment and should be added to income of the assessee under section 68.

Aggrieved, the assessee preferred a writ petition before the Delhi High Court. High Court relied on the Supreme Court ruling in *CIT vs. Kelvinator [(2010) 320 ITR 561 (SC)]* and *M/s. Phool Chand Bajrang Lal [(1993) 203 ITR 456 (SC)]* and held that when the Revenue gets hold of information or material which tends to or has the potential of undermining its findings (previously made in the assessment proceedings) and have an important bearing, invocation of the power to reassessment is warranted.

High Court noted that though the assessee had sought to explain that the share application amounts were received and later the shareholding rights were transferred by the promoter to his family trust, however, looking at the transaction (i.e. allotment of shares vastly in excess of the authorised capital, in the absence of any SEBI approval and retention of that money by the assessee which did not show any reason for issuing the shares) the other ingredients of Section 68 (i.e. genuineness of the transaction or credit and the credit worthiness of the individual providing the money) were apparently not established.

The Delhi HC, therefore, upheld the AO's reassessment and ruled in Revenue's favour.

LD/67/142

Commissioner of Income Tax

Vs.

Oberon Edifices & Estates (P) Ltd

27/03/2019

Income derived by the assessee by letting out the shops in the mall has to be assessed as income from business and not as income from house property; HC held "..the primary intention of the assessee was commercial exploitation of the property and where it has derived substantial part of its income by such activity, which constitutes its main business, the income so derived would be business income of the assessee."

Oberon Edifices & Estates (P) Ltd ('assessee') is a company engaged in the business of construction and promotion of residential and commercial complexes. The assessee constructed a shopping mall and let out the shop rooms. The assessee offered the income as Income from business during AY 2009-10; The AO treated this amount as income from house property and after deducting municipal taxes and statutory benefit of 30%, computed tax. On appeal, CIT(A) upheld the AO's order whereas, ITAT allowed the assessee's appeal.

Aggrieved, the Revenue preferred an appeal before the Kerala High Court.

The Kerala High Court noted that Section 22 itself indicated that merely because a person is the owner of the property it does not follow that the income there from should be assessed under the head "income from house property". The Court then referred Supreme Court ruling in the case of *Poddar Cement Private Limited* and in that context noted that the assessee was the owner of the shop rooms let out and was entitled to receive the rental charges of the shop rooms leased out.

High Court noted the ITAT's observation that the assessee has exploited immovable property for commercial activities and held that income of the assessee is from exploitation of the immovable property for business purposes and it is essentially business income. High Court distinguished Revenue's reliance on the apex court ruling in

Shambhu Investment on the ground that Supreme Court has not laid down any dictum with regard to charging of income to tax under any particular head. It also distinguished Revenue's reliance on the Supreme Court ruling in *Attukal Shopping Complex* based on the facts and *Raj Dadarkar* as in that case the assessee did not establish that he was engaged in any systematic or organised activity of providing service to the occupiers of the shops/ stalls so as to constitute the receipts from them as a business income.

The High Court noted that the assessee is engaged in a complex set of activities at the shopping mall and the basic purpose is commercial exploitation of the property. High Court, therefore, held that the assessee has earned the income not merely by letting out the shop rooms but also by providing amenities and facilities at the shopping mall. Therefore, the High Court held that in cases where the income received is not from the bare letting out the property but on account of the facilities and services rendered, the operations involved in such letting out is in the nature of business and the income derived there from has to be treated as business income and not income from property. High Court further held that where the assessee company has developed the shopping mall and let out the same by providing a variety of services, facilities and amenities in the mall, it can be found that the primary intention of the assessee was commercial exploitation of the property and where it has derived substantial part of its income by such activity, which constitutes its main business, the income so derived would be business income of the assessee.

High Court upheld the ITAT's order and ruled in favour of the assessee.

LD/67/143

South Indian Bank Ltd.

Vs.

Assistant Commissioner of Income-tax

22/03/2019

ITAT denies special reserve deduction under section 36(1)(viii) to assessee-bank with respect to income from granting loans for purchase/construction of individual houses; held that the assessee who provided loan to purchase or construct individual houses could not be considered as providing long term finance for development of housing

The assessee, South Indian Bank Ltd, had claimed deduction under section 36(1)(vii) on loans advanced to their customers for purchase/ construction of individual houses. The AO disallowed the deduction claimed under section 36(1)(viii) on the ground that construction/ purchase of individual houses does not tantamount to housing development. The CIT(A) upheld the AO's order. Aggrieved, the assessee preferred an appeal before the ITAT.

The ITAT noted that in case of Housing Finance Company, eligible business means the business of providing long-term finance for the construction or purchase of houses in India for residential purposes. Therefore, ITAT noted that housing Finance Company would be entitled to the deduction under sction 36(1)(viii) from income generated out of the business of providing long-term finance for the construction or purchase of houses in India for residential purposes.

It was further noted that a Housing Finance Company will be entitled to the deduction under section 36(1)(viii) from income generated out of the business of providing long-term finance for the construction or purchase of houses in India for residential purposes and a Banking Company will be entitled to the deduction under section 36(1) (viii) from income generated out of the business of providing long-term finance for only Development of Housing in India. The ITAT asserted *"...for the purposes of Section 36(1)(viii) providing long-term finance for the construction or purchase of houses in India for residential purposes and providing long-term finance for only Development of Housing in India are different."*

The ITAT noted that prior to its amendment by the Finance Act, 2009 all Banking Companies were entitled to deduction under section 36(1) (viii) for the profits generated from the business of providing long-term finance for the construction or purchase of houses in India for residential purposes. ITAT referred to Explanatory Circular for Finance (No.2) Act, 2009 which noted the view that National Housing Bank was not entitled to the benefits of Section 36(1)(viii) on the ground

that it is not engaged in the long-term financing for construction or purchase of houses in India for residential purpose.

ITAT noted that the amendment was made to provide that corporations engaged in providing long-term finance (including refinancing) for development of housing in India will be eligible for the benefit under section 36(1) (viii). However, ITAT observed that " *It is true that the Amendment provided the deduction to National Housing Bank. But the amendment also substituted the previous words with words 'Development of Housing' which has to be interpreted in its plain dictionary meaning in absence of any definition given.*" Thus, ITAT held that assessee who provided loan to purchase or construct individual houses could not be considered as providing long term finance for development of housing. ITAT also rejected the assessee's reliance on ruling in *Ernakulam District Co-Op Bank Ltd.* since in that case development of housing was not the issue for adjudication.

However, with regard to providing long term finance for industrial or agricultural development or development of infrastructure facility in India, ITAT upheld CIT(A) order granting deduction under section 36(1)(viii).

LD/67/144

Umesh D. Ganore

Vs.

Principal Commissioner of Income Tax

08/03/2019

High Court denies granting credit of advance tax, self-assessment tax paid by petitioners (prior to filing of declaration under the IDS, 2016), against discharge of petitioners' liability to pay tax, surcharge and penalty under IDS Scheme

The petitioner (individuals) were desirous of taking benefit of the Income Tax Declaration Scheme, 2016(IDS) and made a common declaration of undisclosed income for AY 2011-12 to AY 2014-15. It was contended that he had already paid a sum to the Income Tax Department by way of advance tax, self assessed tax and tax deducted at source. Further the amounts deposited would be sufficient as per the requirements of the said Scheme, even ignoring the Petitioner's main contention of adjustment of advance tax and self assessed tax, since in these years, the petitioner had not claimed the benefit of either advance tax or self-assessment tax. Whereas, the department had taken the view that such adjustment could be made only in relation to the tax deducted at source, if the correlation between such TDS and the declaration of undisclosed income under the Scheme can be established. The Revenue held that the petitioner could not claim the benefit of the declaration in relation to only some AYs covered under such declaration.

Aggrieved, the petitioners preferred an appeal before the Bombay HC.

The HC held that without there being any specific provision in the scheme granting benefit of tax voluntarily paid, or deposited as self assessed tax or by way of advance tax, a declarant under the scheme could not claim set- off of such tax against his liability to pay the tax in terms of the provisions contained in the scheme and in the present case, the assessee was either depositing or paying such tax, the said scheme was nowhere in horizon. It was further held that the scheme makes clear demarcation between an undisclosed income declared under the said scheme and the assessment of the assessee's declared income under the Income Tax Act, 1961. Therefore, in absence of any specific provision in the scheme, granting benefit of the self assessed tax or advance tax under the Act, for the purpose of discharging the assessee's liability under the said scheme, the same cannot be readily presumed.

The Bombay High Court held that nothing contained in the Rules or the formats prescribed therein would indicate any intention on the part of the legislature to grant the benefit of advance tax or self assessed tax for the purpose of the said scheme. In any case, such right had to be recognised under the Act and cannot be interpreted on the strength of prescribed formats for making declaration. High Court reiterated that *"..these provisions provided for two separate compartments between the assessment proceedings under the said Act and declaration of undisclosed income under the said scheme. The self assessed tax and advance tax would be adjusted against an assessee's liabilities*

arising in the assessment under the said Act and cannot be transposed for the purpose of discharging the liability to pay tax, surcharge or penalty by a declarant of undisclosed income under the said scheme."

The High Court acknowledged that the CBDT Circular dated 30.6.2016 clarified the provision in relation to the tax deducted at source, providing that the adjustment under the scheme would be permissible in cases where relation between the income declared under the scheme and the advance tax can be established and such tax has not been claimed in the return of income filed for any assessment year. The High Court expressed dis-agreement with Delhi High Court ruling in *Kumudam Publications Pvt. Ltd vs. CBDT" [393 ITR 599]* wherein the Delhi High Court had ruled that adjustment of advance tax and self assessment tax would be permissible.

Thus, the High Court denied granting credit of advance tax, self-assessment tax paid by the petitioners (prior to filing of declaration under the IDS, 2016), against discharge of petitioners' liability to pay tax, surcharge and penalty under the IDS Scheme.

On the next issue of issue of the segregation of the declaration, High Court ruled that *"...the scheme does not prohibit multiple declarations by the assessee, making separate declarations for different assessment years. Under these circumstances, we do not find any provision under the said scheme requiring competent authority to either accept or reject the declaration in respect of several assessment years in entirety. In other words, if the declaration of the assessee of undisclosed income for the particular assessment year fulfills all requirement of the scheme, there is no reason why such a declarant should not get benefit of such declaration simply because in relation to other assessment years, the declaration may fail for any reason."*

LD/67/145

Sundaram Finance Limited

Vs.

Assistant Commissioner of Income Tax

06/03/2019

Subsidy / remittance received for any business link or services rendered by the Assessee to the UK based company towards subscribing the share capital of the joint venture to be capital receipt in the hands of the Assessee and it cannot be brought to tax as Revenue Receipt

Royal and Sun Alliance Insurance Plc (RSA), a leading UK based Insurance Company entered into an Agreement with the assessee, Sundaram Finance Limited (SFL), to start a new joint venture M/s. Royal Sundaram Alliance Insurance Company Ltd, in the insurance sector. During AY 2002-03 the SFL received a capital subsidy of ₹ 2.11 crore to invest in the equity share capital in the joint venture company known as M/s. Royal Sundaram Alliance Insurance Company Limited. It was contended by the AO that quantum of Insurance business generated through the broad clientele base of the SFL and the utilisation of the SFL's existing branch office network, knowledge, markets, distribution techniques etc., was a driving factor for making such payment. Therefore, the AO treated the same to be revenue receipt and brought the amount to tax. On appeal, CIT(A) ruled in the favour of the assessee. However, ITAT upheld the AO's order.

Aggrieved, the assessee appealed before the Madras High Court.

The Madras High Court noted that the agreement between the two parties in question, clearly stipulated that both the parties intended to set-up a new joint venture company to enter into the insurance sector and since, for making the investment in the share capital, the assessee fell short of money, the UK Company RSA gave the capital subsidy to the assessee company to contribute its share in the share capital of the joint venture company in terms of the Letter of Intent. The High Court further noted that there was no material on record to show that the said capital subsidy received by the assessee company during the year in question was diverted by the assessee company for any other purpose except for being invested in the share capital of the joint venture company.

The Madras High Court rejected the Revenue's contention that the said subsidy or remittance was received for any business link or services rendered by the Assessee to the UK based Company RSA. High Court held it to be capital receipt in the hands

of the Assessee Company and held that it could not be brought to tax as Revenue Receipt especially when in the face of the finding of the Assessing Authority himself that the subsidy or remittance so received from RSA had been invested by the Assessee Company in the share capital of the joint venture Company M/s. Royal Sundaram Alliance Insurance Company Limited.

LD/67/146

Plymex Timber Pvt. Ltd

Vs.

Income Tax Officer

25/02/2019

TCS under section 206C applicable to Timber-traders; assessee-traders' fall within the ambit of 'buyer' and thus TCS (collection of tax at source) provisions contained in Section 206 C are applicable

The assessees had purchased processed/sawn timber from the domestic and international markets. They had contended that they were not forest contractors licensed by the operation of law to enter into the Indian forest and fell down trees. Also, the vendors from whom they purchased the timber, both domestically as well as internationally were also not forest contractors who were licensed to enter into the forest. Moreover, according to it, timber referred to in Section 206C should be confined only to the timber obtained in the Indian forest within the territorial jurisdiction of the country to which the IT-Act applied. Thus, tax collection at source would not apply to timber imported by the assessees from outside India and sold thereafter as a seller within the country, i.e. in the capacity of being a re-seller. The assessees preferred a writ petition before Calcutta High Court on the grounds that the definition of "buyer" as obtained in Section 206C was onerous.

The Calcutta High Court observed that the word "buyer" as obtained in Section 206C(1) had been explained in explanation (aa). Section 206C comes under Chapter XVII of the IT Act. Chapter XVII

dealt with collection and recovery of tax. Moreover, Section 206C required the seller to collect tax at source from the buyer. Since, the assessees were involved in the business of trading in timber, High Court stated that as a trader, the assessees partook two characters. High Court noted that at any given point of time, the assessees bought timber.

The High Court remarked that what, when, whom and how much to tax was the domain of the legislature and a writ court need not interfere therein unless it was substantiated that the statute breached any constitutional provision. High Court further remarked, *"...When the petitioners sell timber to a buyer, it is obliged to collect tax from the buyer. The petitioners come within the explanation of "buyer" as obtaining in Section 206C of the Act of 1961".*

The High Court concluded that Circulars of Central Board for Direct Taxes would no doubt loose force on the statute undergoing subsequent amendments and the words used in Section 206C were clear. It went on to state that there was no need to look into the legislative history or the marginal notes to interpret or understand Section 206C. High Court rejected assessees reliance on *K.P. Varghese*, and held that it had no manner of application in the facts of the present case.

While dismissing the writ petition, the High Court remarked that it could not be said that, it was beyond the legislative competence of the legislature to legislate amendments to Section 206C so as to widen its area of applicability or modulate its applicability to suit the emerging needs of the society.

LD/67/147

Principal Commissioner of Income Tax

Vs.

Ammapet Primary Agricultural Cooperative Bank Ltd.

06/12/2018

High Court upheld Section 80P deduction to co-operative credit society; and held "...for the purpose of being entitled to a relief under section 80P of the Act, all that is required is that the cooperative society should answer the description of a society engaged in carrying on the business of providing credit facilities to its member. Once the description is answered, then automatically, the benefit of Section 80P of the Act would stand attracted subject to the provisions contained in Sub-section (2) of Section 80P of the Act"

The Ammapet Primary Agricultural Cooperative Bank Ltd.(assessee) is a primary agricultural co-operative credit society registered under the provisions of the Tamil Nadu Cooperative Societies Act, 1983 (TNCS Act). The IT returns for AY 2013-14 and AY 2014-15 were processed under section 143(1). Later, the cases were selected for scrutiny and notices under section 143(2) were issued. Before the AO, for deduction under section 80P(2)(a)(i), the assessee relied upon Supreme Court ruling in case of *U.P. Cooperative Cane Union Federation Ltd.* for the proposition that in the absence of definition of the word 'member' in the Act, it must, therefore, be concluded in the context of the provisions of the State Act. For deduction under section 80P(2)(d), the assessee relied upon the decision of the Delhi High Court in the case of M/s. Kribhco. Ultimately, the AO concluded that the facts and circumstances of those cases were entirely different from the case of the assessee, and rejected the contention of the assessee. Thereafter, the AO arrived at tax by disallowing the excess deduction claim under section 80P(2)(d) and by disallowing the entire claim of deduction under section 80P(2)(a)(i), he also levied interest and initiated penalty proceedings under section 271(1)(c). The CIT(A) reversed the order of the AO and ruled in favour of the assessee. On further appeal, the Tribunal upheld the order of CIT(A).

Aggrieved, the Revenue filed an appeal before the Madras High Court.

On the grounds of revenue's reliance on *Citizen Cooperative Society Limited [(2017) 84Taxmann.com 114]*, the Madras High Court noted that in the said case the Apex Court had found that the society carried on certain activities, which were contrary to the provisions of the Andhra Pradesh Mutually Aided Cooperative Societies Act, 1995 and that they accepted deposits from third parties, who were not members in the real sense and were using those deposits to advance gold loans. Therefore, the Supreme Court had pointed out that such an activity of the said society was that of a finance

business and could not be termed as a cooperative society and that the loans, which were disbursed, were without the approval from the Registrar of Mutually Aided Cooperative Societies, Ranga Reddy District. The SC therefore found that the said society was not entitled to deduction under section 80P of the Act. However, Supreme Court had held that the deduction would be available to a cooperative bank if it was a primary agricultural credit society or a primary cooperative agriculture and rural development bank.

The High Court remarked that *"...for the purpose of being entitled to a relief under section 80P of the Act, all that is required is that the cooperative society should answer the description of a society engaged in carrying on the business of providing credit facilities to its member. Once the description is answered, then automatically, the benefit of Section 80P of the Act would stand attracted subject to the provisions contained in Sub-section (2) of Section 80P of the Act."* The High Court further stated that as per Section 80P(4), only cooperative banks were excluded, and as the assessee was a primary agricultural cooperative credit society therefore, it would be entitled to the said benefit.

Thus, the High Court concluded that an 'associate member' is also a 'member' in terms of Section 2(16) of the TNCS Act. It further held *"..the Assessing Officer himself found that the associate members are also admitted as members of the society. In such circumstances, the Assessing Officer fell into an error in not granting any relief to the assessee society, which was rightly granted by the CIT (A) as confirmed by the Tribunal. In addition to that, the Assessing Officer has not pointed out that loans have been disbursed to all and sundry in terms of the provisions of the TNCS Act and in terms of Section 80P(4)(b) of the Act, the society has an area of operation, operates within the taluk and will provide long term credit for agricultural and rural development activities as well. The CIT (A) rightly granted the relief to the assessee as confirmed by the Tribunal."*

The High Court thus rejected Revenue's appeal and ruled in assessee's favour.

Legal Update

GST

LD/67/148

Delhi International Airport Ltd.
Vs.
CGST Delhi
(CESTAT-DEL)
08/02/2019

Tribunal held that recovery of costs towards development of common infrastructure facilities, in terms of obligations imposed under the 'operation, management and development agreement' cannot be taxed under 'renting of immovable property services'.

Facts:

In terms of Operations, Management and Development (OMD) agreement with Airport Authority of India, appellant was entitled to area of 62.5 acres to be developed as 'hospitality district' for commercial development. For Asset Area measuring to 45 acres, appellant entered into 'Development Agreement' with various developers for commercial development in such Asset Area and charged licensee fees as consideration, on which appellant had discharged service tax liability. For developing and providing infrastructure facilities in the remaining area of 'hospitality district' (other than Asset Area) the appellant entered into 'Infrastructure Development and Service Agreement' (IDSA) with each developer. In terms of IDSA agreements, appellant was required to develop common area outside the asset area, provide and maintain infrastructure development facilities in common area. Appellant received 'advance development cost' from various developers for development of such common infrastructure facilities. In present appeal, the issue before the Tribunal was whether said 'advance development cost' received from the developers was chargeable to service tax under 'renting of immovable property services'.

Held:

Hon'ble Tribunal observed that granting of License to the Developer for the Asset Area and Development of Common infrastructure facilities, outside the Asset Area, are two independent and distinct transactions and the same cannot be considered together, so as to constitute a single transaction, as alleged by the revenue. It was noted that in terms of OMD agreement between appellant and AAI, the appellant was entrusted with responsibility to adhere to various regulatory norms and therefore, even while allowing development rights to developers in allocated development area, the appellant had to perform supervisory role to develop facilities as per the approved plans. Since, it was a responsibility of the appellant as a privy to contract under OMD agreement, to be responsible for operation, management and development. Therefore, as the common facilities could not have been developed by any developer for everyone including members of public, only the appellant was responsible to do the same. Tribunal held that by any reasoning, development of common facilities cannot be equated with any leased/rental property and such common facilities were never exclusive right of any developer.

Tribunal also categorically noted that since in terms of IDSA agreement, appellant was not allowed to make any profit/retain any surplus and excess deposit of the Advanced Development Cost was liable to be returned to the developers, no consideration for any purported service has been retained by the appellant. Thus, in light of ratio laid down by the Hon'ble SC in *Union of India Vs. Intercontinental Consultants and Technocrats Pvt. Ltd. 2018-TIOL-76-SC-ST,* the Tribunal held that the costs defrayed/reimbursed to the appellant in terms of IDSA, even in advance cannot be included in gross value under section 67 of Finance Act, 1994.

Further, the Tribunal observed that development of Common Infrastructure facilities outside Asset Area cannot be construed as 'Renting of Immovable Property' or a service in relation to the renting of immovable property. The treatment of reimbursement of cost, of common facilities, as 'Renting Service' by the Adjudicating Authority is not legal because such common facilities were developed by taking advances as a pool of fund, for the infrastructure to be used by common beneficiaries and the account was to be settled as per the Agreement by returning excess, if any, or charging deficit, etc. if any, if the cost of the works exceeded or was less than the amount collected as advance. It is common knowledge that rent/lease rent is never subjected to such accounting on real cost basis. For rent on immovable property service, the expression 'in relation to' has to be read in conjunction with the expression 'rental'. The term 'rental' even in enlarged form of Lease, Rent, Licence, etc., cannot encompass anything done for the development of the common facility/ property. There is difference between anything done in relation to 'renting of immovable property service' and anything done in relation to 'immovable property' per-se, which is in common domain. The latter cannot fall within the ambit of the former.

Further, Tribunal noted that the term 'rent' means letting out or use by another person usually for fixed periodical return. It cannot encompass development and maintenance of common facilities, which was to be defrayed on the basis of actual expense incurred. In present case, there is no right vested in the immovable property to be transferred to the developer; again, for a license, a right is required to be conferred to do or continue to do something upon the immovable property of the granter. Also, the common area is meant for public use and such immovable property is neither the property of DIAL nor the developer. The road network, metro facilities, etc. are for the general/ common use of public and confer any rights, neither on DIAL nor on any developers.

Further, it was found that there is no Service Provider-Service Recipient relationship between the appellant and the Developers, as regards the advance development cost, because common facilities developed belong to none (held in trust) and the benefit is derived by all the developers as well as the public. Since there is only development of common infrastructure facilities involved (as trustee), there is no service flowing from any party to other. Accordingly, the Tribunal set aside the impugned demand and held that since the advanced development cost is not a consideration for any services rendered, Section 67 has been improperly invoked to take gross value as consideration for services that were alleged to be provided.

LD/67/149

Lubrizol Advanced Materials India Pvt. Ltd.

Vs.

Commissioner of Central Excise, Belapur

11/01/2019

When the consideration charged by Indian entity for the services to its overseas ground entities had no nexus with supply of goods by such overseas entities to its customers in India, Tribunal held that the Indian entity cannot be regarded as 'intermediary' and the place of provision of services provided by Indian entity would be outside India.

Facts:

Appellant is engaged in the business of rendering administrative and sales related services to the group entities located outside India. The appellant had entered into various agreements with overseas group entities for promotion of products and solicitation of orders for them from prospective customers located in India. The appellant in terms of Place of Provision of Services Rules, 2012 (POPS Rules, 2012) had considered their services as export of service and accordingly, claimed refund of accumulated Cenvat credit in terms of Rule 5 of the Cenvat Credit Rules, 2004 (CCR, 2004). Revenue contented that w.e.f. 01.10.2014, appellant should be considered as 'intermediary' as the appellant had facilitated supply of goods between its foreign counterpart and purchaser of goods and thus, place of provision of services provided by appellant would be India in terms of Rule 9 of POPS Rules, 2012. Thus, the Revenue rejected refund claim filed by the appellant on the ground that the services provided by the appellant cannot be regarded as 'export of services'. Being aggrieved, the appellant has filed the present appeal.

Held:

Hon'ble Tribunal noted that the service fee charged by the appellant to its overseas group entities for provision of service has no direct nexus with the supply of goods by the overseas group entities to its customers in India. The appellant had provided the service to the overseas entities on principal to principal basis. Further, the Tribunal found that the consideration received by the appellant for providing the services was based upon cost plus markup and is nowhere connected with the main supply of goods. In other words, the main supply may or may not happen and thus, cannot be directly correlated with the service provided by the appellant. Therefore, the Tribunal held that the appellant is not acting as a bridge between the overseas group entities and supplies made to their customers in India and it cannot be said that the appellant has provided intermediary service and should be governed under Rule 9 of POPS Rules, 2012. Thereby, impugned order denying refund benefit to the appellant was set aside.

LD/67/150

E-Square Leisure Pvt Ltd

(AAR Maharashtra)

29/12/2018

AAR held that no GST would be chargeable on interest free security deposits unless such deposits are forfeited by the supplier towards consideration due for supply.

Facts:

The applicant is engaged in providing services of renting of immovable property to business entities

for commercial purpose. The applicant has received interest free security deposits from the lessees. Such security deposit was taken by the applicant on returnable basis and has to be returned on completion of the tenure of lease. The applicant sought ruling from AAR as to whether GST would be applicable on interest free security deposit and on notional interest. Applicant submitted that unlike Excise Law, where notional interest on advances was required to be included in assessable value if the receipt of advance has influenced fixation of price of the goods, under GST law concept for inclusion of notional interest is not prescribed.

Held:

The AAR noted that in terms of definition of the term 'consideration' under section 2(31) of CGST Act, 2017, there should be a close nexus between payment and supply and thus, any payment/exchange/barter etc. would be treated as consideration for supply and will be liable to GST. AAR found that the security deposit taken by the applicant is to secure or to act as guarantee as per the terms of the agreement against the damages to the properties, furniture, equipments, fittings etc. supplied along with premises. Such deposits are collected by the applicant in addition to the rent and returnable on completion of tenure of lease. Accordingly, AAR held that since such returnable deposits cannot be considered as consideration for supply of services, the same will not be liable to GST. AAR further held that at the time of completion of the lease tenure, if the entire deposit or part of it is withheld and not paid back, as a charge against damages etc., then at that stage, the amounts not returned back by the applicant will be liable to GST.

LD/67/151

Kun Motor Co. Pvt. Ltd., Vishnu Mohan

Vs.

The Assistant State Tax Officer and the State of Kerala

(HC-Kerala)

06/12/2018

When the authorised dealer of car arranged for the transportation of new car in a special carriage from Puducherry to Kerala, upon a request from the buyer of the car located in Kerala and the vehicle carrying the car was detained by the Revenue on account of omission to generate e-way bill, HC held such detention to be illegal treating it as intra-state supply and also because the car, registered in the name of buyer before putting into transportation, partakes character of 'used personal effects' and thus, covered under exemption under Rule 138(14) of KGST Rules, 2017.

Facts:

The 1st appellant, a dealer in motor cars in union territory of Puducherry sold a brand new car to 2nd appellant, purchaser from the state of Kerala. The temporary registration was taken in the name of purchaser from Puducherry Motor Vehicles Department as also an insurance cover obtained. The dealer charged IGST to purchaser for sale of car, being inter-state sale. The purchaser requested the dealer to deliver the car to Kerala from Puducherry. The dealer arranged for transportation of car in specially equipped carriage by road. An invoices issued for transportation charges was subject to IGST, being tax for service of transportation of vehicles. The vehicle carrying the said car was detained by the Revenue authorities in the state of Kerala for omission to upload e-way bill, by invoking provisions of Section 129 of KSGST Act, 2017.

Appellants contented that since the car was purchased by the purchaser, delivery effected and temporary registration taken, the car becomes personal effect of the purchaser and thus, in light of the exemption granted by Rule 138(14) of KGST Rules, 2017 read with Annexure, there was no requirement for uploading e-way bill. On the other hand, department contented that in terms of Section 7 and 10 of IGST Act, 2017, the inter-state supply of goods would be completed only when the movement of goods terminates with delivery to recipient. Department further contended that as the transport was of brand new car purchased by the appellant purchaser from the appellant dealer, it cannot be treated as used personal effect. In the writ petition filed by the appellant for interim release of detained goods, Ld. Single Judge hence refused to release the vehicle as an interim measure, other than by resort to Section 129 and directed adjudication by the detaining officer under section 129. Being aggrieved, the appellants filed the present appeal.

Held:

In deciding as to whether supply involved in the present case is in the course of inter-state trade or commerce, Hon'ble HC observed that to determine the place of supply of goods, what is relevant is that

the movement of goods should be occasioned by the transaction of supply, as evident from the words "where the supply involves movement of goods" used in Section 10(1)(a) of IGST Act, 2017. What is discernible is that the transaction of supply itself, should occasion the movement of the goods. When the person residing in one state goes to another state to buy goods for his own use, the supply with respect to such transactions terminates on the individual taking possession of the goods in that other state. The movement of the goods, after such sale is terminated and delivery is effected, whether it be inside the state or to outside that state, would be the prerogative of the purchaser, who owns the goods, in whom the property of such goods vests and such moment would not be occasioned by the sale transaction or the supply thereon.

As regards contentions regarding temporary registration in the name of buyer in Puducherry, HC noted that in *2016 (4) SCC 82 Commissioner of Commercial Taxes, Thiruvananthapuram vs. KTC Automobiles,* it was held that the registration of motor vehicle is post sale event. Accordingly, it was noted that the registration obtained by the appellant buyer in Puducherry and taking insurance cover in his name, establishes that the sale had been completed in Puducherry itself. HC categorically observed that had the vehicle been driven by the appellant purchaser from Puducherry to Kerala, there was no reason to upload e-way bill. Accordingly, it was held that as the sale made by the dealer and the service of transportation of the vehicle are quite distinct transactions; one of supply of goods and one of supply of services, the transport by the appellant dealer cannot be understood as one in the course of sale for the purpose of supply at purchaser's location in Kerala.

As regards next contention of revenue, that whether the brand new car taken for delivery by the 2nd appellant at Puducherry and transported to Kerala can be termed to be a used car and hence a used personal effect, High Court noted that a car on purchase from authorised dealer of manufacturer, with a registration taken is owned by the registered owner and looses its sheen of a brand new car. The minute a car is driven out of dealership, the price dips and it only has second-hand value which is not exigible to tax as per *Notification No. 8/2018-Central Tax (Rate) dated 25.01.2018*; which though levies tax on old and used motor vehicles, confines it to a positive margin on subsequent sale, from the purchase price. High Court further observed that the 2nd appellant purchaser came to the possession of vehicle on its retail sale and had taken out a registration albeit temporary, in his name, as also an insurance, the policy covering his risk as a registered owner of the vehicle. From the moment the vehicle is temporarily registered in the name of purchaser; it is deemed that he is keeping it in his possession for use on the roads and any liability incurred in such use as against third parties would be sole responsibility of registered owner i.e. the purchaser and not that of supplier i.e. authorised dealer of manufacturer.

Accordingly, HC held that the supply of new vehicle by its authorised dealer terminated on it being purchased by the 2nd appellant in Puducherry and the subsequent movement of goods was not occasioned by the reason of transaction of supply. The detention of goods was held to be illegal as the transactions has occasioned intra state sale and the transport is of used personal effects. Consequently, the writ petition was set aside.

LD/67/152

M/S Valmiki Consultants Pvt. Ltd

Vs.

Commissioner of Customs, Central Tax, Hyderabad (CESTAT-HYD)

05/10/2018

Tribunal held that the activity of India entity of providing student referral services to foreign universities falls out of ambit of 'intermediary services' and since such services are consumed by the foreign universities outside India, place of provision of such services would be outside India.

Facts:

The appellant is engaged in providing educational consultancy services for prospective students who aspire to study abroad and assist them in the form of logistical support in getting admission into foreign universities; which includes registration, assistance in getting visa and so on. The appellant was also conducting educational fairs at selective places to canvass for the foreign universities to attract students, who are interested in overseas studies and arranging spot admissions to them by Inviting foreign university delegates to such fairs. Appellant received commission/referral fees from the foreign universities

and no amount was collected by the appellant from students referred to foreign universities. Revenue alleged that appellant rendered 'intermediary services' to foreign universities and thus, place of provision of services rendered by the appellant would be in India in terms of Rule 9(c) of POPS Rules, 2012. Appellant submitted that the issue is no more res integra in light of decisions in *Sunrise Immigration Consultants Pvt. Ltd. Vs. CCE & ST Chandigarh - 2018-TIOL-1849-CESTAT-CHD* and *Study Overseas Global Pvt. Ltd. vs. CST [2017 (3)GSTL 443 (Tri-Del)] 2017-TIOL-2269-CESTAT-DEL.* Further, appellant submitted that they are not facilitating any education services which is the main service being provided by the foreign universities. Thus, the activity does not fall under the ambit of 'intermediary' as appellant is promoting awareness about the universities which is the only service provided by the appellant in the present case.

Held:

Hon'ble tribunal noted that the activity of the appellant is to locate the candidates who wants to study abroad, make a data base and refer the student's name to foreign universities; propagate to the future candidates the advantages of specific universities and studying in them and for rendering these services appellant gets paid by the foreign universities as per contractual agreement. Tribunal noted that in *Sunrise Immigration (Supra),* it was held that nature of service provided by the appellant is the promotion of business of their client, in terms, he gets commission which is covered under Business Auxiliary Service which is not the main service provided by the main service providers namely banks/university. As the appellant did not arrange or facilitate main service i.e. education or loan rendered by colleges/banks, the Tribunal held that in that circumstances, the appellant cannot be called as intermediary. In *Study Overseas Global Pvt Ltd. (Supra),* it was held that mere fact that the appellant has been promoting and marketing foreign universities within India and then getting prospective students enrolled for various courses in those universities does not mean that the services to foreign universities were consumed within India. There is no dispute that service recipients are foreign universities and they are located outside India and payment for such services has been received in foreign currency. Thus the Tribunal held that such services were provided from India and used outside India. Consequently, in the light of the said decisions, in present case, impugned demand was set aside.

Service Tax

LD/67/153

Srijan Realty (P) Ltd

Vs.

Commissioner of Service Tax

08/03/2019

Transaction of obtaining high-tension electric supply converting it to low-tension supply, and supplying it to the occupants, raising bills on such occupants and realising the electricity consumption charges from such occupants, is a service exigible to Service Tax under the Finance Act, 1994

The assessee, Srijan Realty (P) Ltd, operated a commercial complex under the name and style of "Galaxy Mall" at Asansol. The commercial complex has various occupants. It obtained electric supply from India Power Corporation Ltd. through a high-tension supply and supplied electricity to the various occupants and raised bills upon them. The assessee on receipt of electric supply redistributed the same to the occupiers of commercial complex. The assessee had installed sub-meters for the respective occupiers and based on the readings of such submeters, raised bills upon such occupiers.

The assessee contended that, the dominance purpose test should be applied to find out as whether the transaction was exigible to Service Tax or not. It relied upon SC ruling in *Bharat Sanchar Nigam Ltd Vs. Union of India (2006 Volume 2 S.T.R page 161)* and submitted that, applying such test, since, the transaction was eminently one of sale and the 'sale and the so-called service' being indivisible, then, the transaction was to be treated as a sale. Therefore, the Service Tax was not leviable. The Revenue, on the other hand, contended that assessee did not fall under exemptions provided under section 66D(k) and trading or a sale could be done by a person legally permitted to do so and the assessee was not legally authorised to redistribute electricity. Referring to the memorandum of understanding entered into between the assessee and the licensee, the Revenue submitted that the assessee was a consumer therefore, he could not be a trader and it had no approval from any of the State or the Central Authorities, to trade in electricity.

The HC opined that under the definitions as obtaining in Electricity Act, 2003, the assessee could not be said

to be a generating company and it had not claimed itself to be so. It also could not be said that, the assessee was engaged in the supply or trading of electricity as, the definition of 'supply' and 'trading' did not allow assessee to come within the same. It was further held that the activity of the assessee came within definition of 'service', and not within exclusions contained in Section 65B(44) and Negative list under section 66D. The activity of assessee, thus, could not be treated as a trade as it would violate the provisions of Electricity Act, 2003.

HC rejected the contention of the assessee that, its activity comes within the negative list of services defined in Section 66D particularly in view of Section 66D(e) and (k) and remarked *"...If, an activity which does not come within the negative list of services as defined in Section 66D of the Finance Act, 1994, such an activity is to be termed as a service exigible to tax under the Finance Act, 1994".* The High Court further held that the dominant purpose test as laid down in BSNL if at all applied would be against the assessee, in the facts of the case and in addition, the assessee could not take shelter of the ratio laid down in Larsen & Toubro Ltd (2016 Volume 1 Supreme Court Cases page 170).

Thus, the HC dismissed the assessee's writ and concluded that the transaction of obtaining high-tension electric supply converting it to low-tension supply, and supplying it to the occupants, raising bills on such occupants and realising the electricity consumption charges from such occupants, is a service exigible to Service Tax under the Finance Act, 1994.

Transfer Pricing

LD/67/154

Principal Commissioner of Income Tax

Vs.

J.P. Morgan Services India Pvt. Ltd

25.03.2019

HC dismisses Revenue's appeal against ITAT order determining ALP of non-US based AE transactions on the basis of determination contained in MAP in relation to its US-based AE-transactions observing that there was no distinction between the two

The Assessee, J.P. Morgan Services India Pvt Ltd, is a private limited company. In the ITRs filed by the assessee for the AY 2007-08, the question of determination of Arm's Length Price of the transaction entered into by the assessee with its international Associated Enterprises came up for consideration. The Assessee had 96% of its such transactions with its US based associated enterprise. The rest of the transactions were non US based transactions.

In relation to the US based transactions, the Government of India and that of United States of America entered into a Mutually Agreed Procedure for determining the tax to be levied in the two countries in relation to such transactions. This Mutually Agreed Procedure culminated into an order being formally passed in this regard. When it came to the question of determining the Arm's Length Price of assessee's similar transactions, which were non US based, the Tribunal by the impugned judgement, applied the same parameters and determined the Arm's Length Price on the basis of determination contained in MAP in relation to US based transactions.

Aggrieved, the Revenue preferred an appeal before the Bombay HC.

The assessee contended that ITAT had not automatically lifted parameters laid down in the MAP. Assessee further submitted that the MAP itself had been drawn after detailed consideration of the ALP and there was no material difference between the US based transactions and assessee's non US based transactions.

The Bombay HC noted ITAT's observation that there was no distinction between US and non-US based transactions and even orders by the authorities had made no such distinction. The HC opined that *"in absence of any other material on record, it would be doubtful whether the final culmination of the MAP can be projected in the determination of the Arm's Length Price in the mechanism envisaged under the Income Tax Act, 1961, that too, without any other adjustment or consideration."*

HC rejected Revenue's contention that this was the situation for the later assessment year and could not be accepted for the present assessment year. HC concluded that *"MAP has been drawn after the consideration of relevant aspects giving rise to transfer pricing adjustment and the CBDT in the later year agreed that such transfer pricing consideration in relation to US based transactions can be safely adopted for the purpose of the assessee's non-US based transactions..."* and hence HC rejected Revenue's appeal.

Legal Update

Disciplinary Case

Summary of a disciplinary case, in the matter of:

Shri ABC vs CA. XYZ

Facts of the case:

Shri. ABC (hereinafter referred to as the '**Complainant**') made the following allegations against Shri. XYZ, a Chartered Accountant (hereinafter referred to as the '**Respondent**'):-

- That NOP School (hereinafter refer to as "**School**") was established by M/s PKM Educational Society (Regd.) (hereinafter refer to as "**Society**") with the object of promoting education to the children upto secondary level. The Managing Committee of the Society resolved to appoint/engage a manager at a monthly remuneration of ₹ 1000/- per month for devoting one day in a week to promote the School and its interest. Consequently, on recommendation of members of the Governing Body of the Society, the Respondent, along with CA. KBC were appointed as managers at a monthly remuneration of ₹ 1000/- each. The Respondent was involved in execution/administration/management of day to day affairs of the Society and School which was more than giving consultancy.
- That the Respondent used the designation 'Manager' for School. The Respondent being in practice of profession of Chartered Accountancy used the designation other than the Chartered Accountant which is in violation of the provisions of the Chartered Accountants Act, 1949.
- The appointment of the Respondent, as Manager, was terminated by the Society in Managing Committee's meeting held on 01-03-2006. This action was contemplated because of not only his unsatisfactory performance but indulgence in activities against the interest of the School and Society.
- That the Respondent was not a member of the Society in accordance with Memorandum and Rules & Regulations of the Society. The Respondent was neither granted nor enrolled with the membership, nor made any payment of fees. The Assistant Registrar of firms, Societies & Chits, Regional Office Meerut (U.P.) vide its order dated 12-11-2007 relating to registration of Society held that:

  "Shri XYZ and Shri KBC were not the members of the Society and they neither deposited membership fee nor receipts were issued to them under the circumstances, members of the Governing Body constituted by Shri XYZ cannot be considered even member of the General Body".
- In view of the above, the Respondent's assertions that he was a member and/or enrolled as member of the Society was not true and his statement and submission of false and forged documents before the Assistant Registrar of Firms, Societies &

Chits, Regional Office Meerut (U.P.) was nothing but cheating, fraud and breach of trust.

- The Respondent forwarded an impugned document entitled 'List of Members' of General Body as on 07-09-2005 before the Assistant Registrar of Firms, signed by him as Secretary of the Society. It is critical to mention that the impugned paper, displayed some signatures alongwith the Respondent without purpose and designation. The Respondent asserted such signature were as that of Mr. Raj Sharma. The Respondent forged the signatures of Mr. Raj Sharma in order to fabricate a document to be used against the interest of the Society and legitimate Governing Body with a view to occupy and take in possession of the properties of the Society. A FIR for fraudulent forging and fabrication of documents including the one referred above was lodged against the Respondent and his accomplices.

- That the Respondent with fraudulent motives/intentions sneaked into criminal conspiracy with his abettor Shri. KBC in forging and fabricating documents to seize the position of Chairman and Secretary of the Society. In order to accomplish his nefarious designs, the Respondent abetted other persons to become accomplices in his aforesaid designs. The minutes of Extra-Ordinary General Body meeting of the Society held on 31-12-2005 submitted before the Assistant Registrar of Firms by the and/or instance of the Respondent demonstrated the names of the members of the Society attending the meeting. It fraudulently demonstrated names of members like the Respondent, Shri XYZ, Shri DEF, Shri GHI, Shri PQR and Shri TUD who was neither enrolled as members of the Society nor any fees was received. It fraudulently displayed the resignation of Shri OCE as Chairman of the Society. It also displayed the resignation of Shri. ABC, the Complainant. It further falsely and fraudulently adjoined in fabricating the appointment of the Respondent as Chairman of the Society and his accomplices Shri P.C. Gupta as Secretary as well as Shri Vishal Aggarwal as Treasurer. The claim of the Respondent of his succeeding to be a chairman of the Society as well as fabrication of documents was not accepted by the Regional Office of Registrar of firms.

- That the Respondent conspired/abetted his accomplice Shri. KBC, in an effort to enrol them as members of the Society by forging and/or fabricating the respective membership forms. The very same persons were also enrolled as members of the Governing Body. Rule 5 (c) of Rules & Regulations of the Society stipulates mandatory payment of membership fee on enrolment/admission. No fees was received and accounted for in the accounts book. This was clearly held in the order of the Assistant Registrar, minutes of General Body Meeting held on 31-12-2005, submitted by the Respondent depicted that the Respondent was appointed as Chairman and his accomplice Shri KBC as Secretary of the Society in that meeting.

- That the Respondent, on being trapped and exposed with nefarious designs, through an affidavit tried to correct the date of the General Body Meeting of the Society to that of 31-12-2004 instead of 31-12-2005. The impugned minutes of this meeting, depicted that Shri PCE, Chairman and Shri. ABC, resigned. At the same time, the Respondent and CA. KBC were appointed/elected as Chairman and Secretary. Shri DEF took over as Treasurer. However, affidavits bearing forged signatures of Shri PCE and Shri. ABC displayed the depositions of deponents as having resigned from the Chairman and Member(s) respectively w.e.f. 28.12.2005. List of members of the Society as on 07-09-2005 signed by the Respondent is another evidence demonstrating fraud in deposing the aforesaid affidavit with false, fabricated and cheating and forged contents and signatures of the deponent.

- The Respondent was/is a Director of a private limited Company and remained involved in operating and managing

activities/business of the company. He has been operating bank accounts of the company and issuing cheques regularly under his signature. In addition to above, contravention of Code of Ethics on his part is evident as the cheques were dishonoured for want of payment. Thus, these cheques were issued with dishonest intention to defraud the recipient /drawee of the cheques. Furthermore, a criminal litigation was launched against him in the court of Judicial Magistrate, under section 138 of Negotiable Instrument Act read with section 420 & 466 of Indian Penal Code on account of his above said immoral and criminal activities.

The matter was enquired into by the Disciplinary Committee and the Committee, *inter-alia*, gave its findings as under:

- At the outset, the Committee condemns the conduct of the Respondent as he failed to give any regard to the Disciplinary Directorate and the Disciplinary Committee. The Respondent despite having been given numerous opportunities did not bother to file any reply/rebuttal of the allegations at any stage of the proceedings.
- The Committee also noted that various court cases are going on against the Respondent on account of cheating, forgery etc. and on account of same, he has been charge sheeted and currently is in judicial custody. The main crux of the complaint is that the Respondent has designated himself as the Manager of the School/Society whereas he was just appointed as Consultant/Advisor and he along with his accomplice, forged and fabricated the documents and took charge of the affairs of the Society & School.
- The Committee noted that on two letters the Respondent has designated himself as the Manager of the School, portraying wrong facts to outside people.
- On perusal of the Order of the Assistant Registrar of firms, Societies & Chits, Regional Office Meerut (U.P.), it is observed that the Respondent has submitted some documents before the Assistant Registrar of Firms projecting himself as a member of the Society whereas as per the Order, the Respondent was not a member of the Society and not even considered the member of the General Body. Accordingly, the membership made by the Respondent and Shri. KBC and the post of Chairman and Secretary adopted by them was dismissed. An FIR for forging and fabrication of documents was lodged against the Respondent. On the basis of the said FIR, the Respondent was charge sheeted and is in judicial custody. The Respondent failed to submit any reply whatsoever which in turn imply that the Respondent is in agreement of the allegations.

In view of the above, the Committee observed that the Respondent failed to maintain the faith bestowed by the Society on the Chartered Accountant and the said act of the Respondent is unbecoming of Chartered Accountant. As regard the charge that, the Respondent was a Director and involved in day to day affairs of the Company, the Committee noted that the Respondent has been operating bank accounts of the Company and issuing cheques under his signature. The Committee noted that the Respondent had not submitted any reply so as to rebut/negate the said allegation. It is observed that the Respondent was holding full time Certificate of Practice (COP) and the Respondent has not taken prior permission of the Council of ICAI before engaging in the Company. Accordingly, the Committee holds the Respondent guilty of other misconduct falling within the meaning of Clause (2) of Part IV of First Schedule and Clause (11) of Part I of First Schedule to the Chartered Accountants Act, 1949. Pursuant thereto, the Committee, after affording an opportunity of hearing and on considering the facts of the case ordered that the name of the Respondent be removed from the Register of Members for a period of three (3) months.