

Swift e-Bulletin

Edition 1/20-21

Week – July 20th to 25th

Introduction

We welcome you to our weekly newsletter!

As part of our knowledge sharing and growth, we're excited to launch our inaugural edition of 'Swift e-Bulletin' - weekly newsletter, which is specifically designed to cover all regulatory updates and critical judgement passed during the week. We hope that you will find great value in its content and that it will assist you in keeping updated with latest development in the corporate world. We want this newsletter to be valuable for you so, please share your feedback and suggestions to help us improve.

In the wake of COVID-19, we all are witnessing many relaxations, exemptions and amendments to the various legislations by regulatory authorities to ease out the operations during this time of crisis.

Further, the Reserve Bank of India ("RBI"), the Ministry of Corporate Affairs ("MCA") and the Securities and Exchange Board of India ("SEBI") have been at the front foot in bringing significant regulatory changes in recent times. With a constant endeavour to cover all regulatory updates at one place, we have prepared a comprehensive summary for quick reference of such updates issued during the week of July 20, 2020 to July 25, 2020.

Thank you,
Swift Team

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REGULATORY UPDATES

MCA UPDATES

1. **MCA introduces the Companies (Indian Accounting Standards) Amendment Rules 2020 via Notification Dated July 24, 2020:**

The Ministry of Corporate Affairs has notified the Companies (Indian Accounting Standards) Amendment Rules, 2020. The said notification amend the Companies (Indian Accounting Standards) Rules, 2015. Amendments have been made to IndAS 1 related to Presentation of Financial Statements, IndAS 8 related to Accounting Policies, Changes in Accounting Estimates and Errors, IndAS 10 related to Events after Reporting Period, IndAS 34 related to Interim Financial Reporting and IndAS 37 related to Provisions Contingent Liabilities and Contingent Assets, IndAS 103 related to Business Combinations, IndAS 107 related to Financial Instruments: Disclosures, IndAS 109 related to Financial Instruments, IndAS 116 related to Leases. To read more in detail click on the link below:

Link: http://www.mca.gov.in/Ministry/pdf/Rule_24072020.pdf (Yet to be published in the official gazette)

SEBI UPDATES

1. **SEBI introduces framework to enable verification of upfront collection of margins from clients in cash and derivatives segments vide circular dated July 20, 2020:**

In order to align and streamline the risk management framework of both cash and derivatives segments, with respect to collection of margins from the client and reporting of short-collection/non-collection of margins in Cash and Derivatives segments, SEBI has directed Stock Exchanges/ Clearing Corporations to adopt the framework to enable verification of upfront collection of margins from clients in cash and derivatives segments. SEBI has prescribed this framework with an objective to enable uniform verification of upfront collection of margins from clients by Trading Members / Clearing Members and levy of penalty across segments with effect from December 01, 2020. To read in detail, click on the Link below:

Link:https://www.sebi.gov.in/legal/circulars/jul-2020/framework-to-enable-verification-of-upfront-collection-of-margins-from-clients-in-cash-and-derivatives-segments_47101.html

2. SEBI introduces review of Stress Testing Methodology for positions with early pay in vide circular dated July 21, 2020:

SEBI had prescribed norms related to Stress Testing Methodology for Commodity Derivatives vide its circular dated July 11, 2018. In consultation with the Clearing Corporations (CCs), to address the concern regarding High Stress Loss Figures on positions with early pay-in, a new clause has been added at the end of the Part B (Methodology) under the annexure to the aforesaid circular dated July 11, 2018 as mentioned below

While calculating the residual losses as per 'd' and 'f' as per the circular dated July 11, 2018, for positions on which early pay-in are given by the clients/brokers, and margin exemption are granted on such positions, CCs are permitted to consider the 'Margin Exemption Granted' or 'Value of Early Paid-in Goods', whichever is lower, as margins supporting those positions. To read the circular, click on the Link below:

Link:https://www.sebi.gov.in/legal/circulars/jul-2020/review-of-stress-testing-methodology-for-positions-with-early-pay-in_47103.html

3. SEBI Press Release dated July 21, 2020:

On review of the COVID-19 pandemic related situation, SEBI has decided that the regulatory measures introduced on March 20, 2020 with respect to various regulatory measures keeping in view the objective of ensuring orderly trading and settlement, effective risk management, price discovery and maintenance of market integrity dated March 20, 2020, shall continue to be in force till August 27, 2020. To view the Press Release, please click on the Link Below:

Link:https://www.sebi.gov.in/media/press-releases/jul-2020/regulatory-measures-to-continue_47108.html

4. SEBI introduces changes in transaction in Corporate Bonds/Commercial Papers through RFQ platform and enhancing transparency pertaining to debt schemes vide circular dated July 22, 2020:

In order to enhance transparency and disclosure pertaining to debt schemes and investments by mutual funds in Corporate Bonds / Commercial Papers and increase the liquidity on exchange platform, SEBI, based on the recommendation of Mutual Fund Advisory Committee (MFAC), among other changes, has decided that with effect from October 01, 2020, the mutual funds will undertake at least 10 per cent of their total secondary markets trades by value in the corporate bonds by placing/seeking quotes through one-to-many mode on the Request for Quote (RFQ) platform of stock exchanges. All transactions in Corporate Bonds and

Commercial Papers where in Mutual Fund is on both sides of the trade shall be executed through RFQ platform of stock exchanges in one-to-one mode. Any transaction entered by mutual fund in Corporate Bonds in one to many mode and gets executed with another mutual fund shall also be counted for the aforesaid 10% requirement. To read all the modifications prescribed by SEBI in detail, click on the Link below:

Link:https://www.sebi.gov.in/legal/circulars/jul-2020/circular-on-transaction-in-corporate-bonds-commercial-papers-through-rfq-platform-and-enhancing-transparency-pertaining-to-debt-schemes_47116.html

5. **SEBI introduces amendment in the SEBI (Prohibition of Insider Trading Regulations) 2015 by allowing Offer for Sale (OFS) and Rights Entitlements (RE) transactions during trading window closure period vide circular dated July 23, 2020:**

Clause 4 (3) (b) of Schedule B read with Regulation 9 of PIT Regulations, inter-alia, states that trading window restrictions shall not apply in respect of transactions mentioned therein or transactions undertaken through such other mechanism as may be specified by the Board from time to time. It has been decided that in addition to the transactions mentioned in Clause 4 (3) (b) of Schedule B mentioned above, trading window restrictions shall not apply in respect of OFS and RE transactions carried out in accordance with the framework specified by the Board from time to time. To read in detail, click on the Link below:

Link:https://www.sebi.gov.in/legal/circulars/jul-2020/allowing-offer-for-sale-ofs-and-rights-entitlements-re-transactions-during-trading-window-closure-period_47120.html

6. **SEBI introduces new mechanism and form of reporting to Stock Exchanges regarding violations under Securities and Exchange Board of India (Prohibition of Insider Trading) Regulations, 2015 relating to the Code of Conduct (CoC) vide circular dated July 23, 2020:**

In terms of clause 13 of Schedule B (in case of listed companies) and clause 11 of Schedule C (in case of intermediaries and fiduciaries) read with Regulation 9 of the PIT Regulations, the listed companies, intermediaries and fiduciaries shall promptly inform the Stock Exchange(s) where the concerned securities are traded, regarding violations relating to CoC under PIT Regulations in such form and manner as may be specified by the Board from time to time. The format of reporting has been suitably modified and placed at Annexure A in the circular. Also the money so collected from such violations shall be remitted to the Board for credit to the Investor Protection and Education Fund (IPEF) administered by the Board

under the Securities and Exchange Board of India Act, 1992. To read in detail and check out the Annexure, click on the Link below:

Link:<https://www.sebi.gov.in/legal/circulars/jul-2020/reporting-to-stock-exchanges-regarding-violations-under-securities-and-exchange-board-of-india-prohibition-of-insider-trading-regulations-2015-relating-to-the-code-of-conduct-coc-47121.html>

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CORPORATE / BUSINESS NEWS

1. **Parliamentary Committee on Data Protection Bill to now meet on July 27:**

Parliamentary Committee on Data Protection Bill to now meet on July 27 The Joint Parliamentary Committee on the Personal Data Protection Bill will meet on July 27, 2020 as virtual meetings are still not allowed. Representatives from the Ministry of Home Affairs, Ministry of Electronics and Information Technology, UIDAI, National Crime Records Bureau (NCRB), National Investigation Agency (NIA) and Narcotics Control Board (NCB) are scheduled to depose before the members in the first meeting after a break of four months caused by the COVID-19 pandemic.

Read more at: <https://www.medianama.com/2020/07/223-jpc-pdp-bill-meeting-postponed/>

2. **GVR Infra resolution plan gets nod**

The Special Bench of National Company Law Tribunal (NCLT), Chennai has approved a ₹368.50-Crore resolution plan submitted by UV Asset Reconstruction Company Limited and WL Structures Private Limited for Chennai-based GVR Infra Projects Limited.

Read more at:
<https://www.thehindu.com/business/gvr-infra-resolution-plan-gets-nod/article32154054.ece>

3. **New e-Commerce rules to strengthen Consumer Rights**

It comes as a huge relief for shoppers with the new Consumer Protection Rules of 2020 for e-commerce which says platforms can't charge cancellation fees, if a consumer chooses to cancel an order after confirming the purchase. Otherwise, e-tailers should also pay similar charges, if they cancel the purchase order unilaterally for any reason, according to the new guidelines are expected to be notified this week through a gazette notification. According to e-commerce executives, this will give 'better-defined' legal power to consumers to go to court in case of disputes related to e-commerce, including on counterfeit products. The new proposals also clarify on liabilities of the platform in a marketplace model and in inventory model. In a marketplace model, third-party sellers list and sell goods while in the inventory model, the platform stocks goods and sell online.

Read more at:
<https://timesofindia.indiatimes.com/business/india-business/new-e-commerce-rules-to-strengthen-consumer-rights/articleshow/77071205.cms>

4. **Government is looking to privatize more than half of its state-owned banks to reduce the number of government owned lenders to just five as part of an overhaul of the banking industry**

India is looking to privatize more than half of its state-owned banks to reduce the number of government-owned lenders to just five as part of an overhaul of the banking industry, government and banking sources said. The first part of the plan would be to sell majority stakes in Bank of India, Central Bank of India, Indian Overseas Bank, UCO Bank, Bank of Maharashtra and Punjab & Sind Bank, leading to an effective privatization of these state-owned lenders, a government official said.

Read more at:

http://timesofindia.indiatimes.com/articleshow/77069820.cms?utm_source=contentofinterest&utm_medium=text&utm_campaign=cppst

5. **MSME promoters undergoing insolvency proceedings may be able to retain control of company**

Promoters of Medium, Small and Micro Enterprises (MSMEs) will be able to retain control of their companies, even as they undergo insolvency proceedings, under a special insolvency framework for MSMEs, according to government officials. Finance and Corporate Affairs Minister Nirmala Sitharaman had recently said the Corporate Affairs Ministry was finalizing a special resolution framework for MSMEs under Section 240(A) of the Insolvency and Bankruptcy Code (IBC). The proposed framework for MSMEs will follow a “debtor in control” model for insolvency proceedings, while ordinarily the corporate insolvency resolution process follows a “creditor in control” system.

Read more at:

<https://indianexpress.com/article/business/companies/msme-promoters-undergoing-insolvency-proceedings-may-be-able-to-retain-control-of-company-6512555/>

6. **Government to revamp FTA strategy to ensure economic benefit:**

Discussions have begun at the highest level leading the deliberations on a revamped strategy on Free Trade Agreements (FTAs), coinciding the External Affairs minister’s statement that FTAs haven’t helped India build capacity. The government is recalibrating its strategy on entering into free trade agreements (FTAs) in a bid to ensure that the treaties provide economic and strategic benefits. Separately, the focus is on alliances with “peaceful” countries, especially those with which India does not have a significant trade deficit. The finance ministry also has concerns over loss of revenue due to the trade agreements.

Read more at:

<https://timesofindia.indiatimes.com/business/india-business/government-to-revamp-fta-strategy-to-ensure-economic-benefits/articleshow/77097882.cms>

7. Green shoots visible, government open to taking more actions:

Speaking at the 2020 India Ideas Summit, Nirmala Sitharaman said that the ₹20.97 lakh crore stimulus package announced by the government to fight the economic impact of Covid-19 pandemic was having a positive impact on the ground on various sectors including on MSMEs. Indian industry together with the government will ensure a good speedy and sustainable recovery post unlock, the minister said. "The green shoots are [visible] based on high-frequency indicators. We will watch them as we go along. It's not as if we concluded that the economy has green shoots and therefore we will not take any more steps. We have kept all options absolutely open. The government is willing to participate with everybody and see what best has to be done. Interventions can happen even in the future depending on how the industry responds," Sitharaman said.

Read more at:

https://timesofindia.indiatimes.com/business/india-business/govt-open-to-announcing-more-measures-to-boost-growth-says-fm/articleshow/77089401.cms?utm_source=contentofinterest&utm_medium=ext&utm_campaign=cppst

8. Two labour codes finalized by labour ministry may be tabled in monsoon session

The labour ministry has finalized two labour codes that will give flexibility to the state governments on rules related to hiring, retrenchment and fixing work hours in factories and establishments while imposing curbs on workers to form unions.

Read more at:

<https://economictimes.indiatimes.com/news/politics-and-nation/two-labour-codes-finalised-by-labour-ministry-may-be-tabled-in-monsoon-session/articleshow/77073665.cms?from=mdr>

9. DHFL moves SAT against SEBI for action during resolution process

Dewan Housing Finance Corp (DHFL) has moved to Securities Appellate Tribunal (SAT) against markets regulator Securities and Exchange Board of India (SEBI) for taking action against it during resolution proceedings. The regulator had earlier imposed a penalty of ₹ 20 lakh on DHFL for not complying with norms, while issuing non-convertible debentures (NCDs) in 2016-17. In an interim order last

week, the court has put a stay on recovery by SEBI during the pendency of the appeal.

Read more at:

<https://www.financialexpress.com/industry/dhfl-moves-sat-against-sebi-for-action-during-resolution-process/2030164/>

10. NFRA bars ex-Deloitte CEO for 7 years, slaps ₹25 Lakh fine for his role in IL&FS fraud:

The National Financial Reporting Authority, the audit regulator has de-barred Udayan Sen, for seven years and slapped a penalty of ₹ 25 Lakh for his role in the audit of fraud hit IL&FS Financial Services Ltd (IFIN). Sen, a former CEO of Deloitte India was the main engagement partner for Deloitte Haskins and Sells that was the auditor of IFIN.

Read more at:

<https://economictimes.indiatimes.com/industry/services/consultancy/-/audit/nfra-bars-ex-deloitte-ceo-for-7-years-slaps-rs-25l-fine-for-his-role-in-ilfs-fraud/articleshow/77107746.cms>

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JUDGEMENTS/ORDERS

NCLT

The Mumbai Bench of the National Company Law Tribunal (NCLT) has allowed restoration of M/s RGB Nirman Private Limited (“Company”) struck off from the Registrar of Companies (RoC) on petition filed by the Company under section 252 of the Companies Act 2013, subject to payment of costs of INR 40,000 within 7 days of receipt of the order.

Read more at

<https://nclt.gov.in/sites/default/files/July-final-orders-pdf/CP%20955%20of%202020%20Kishore%20Rajendra%20Bakliwal%20%28RGB%20NIRMAN%20PVT%20LTD.%29%20NCLT%20Mumbai%20on%2020.07.2020.pdf>

NCLAT

The Appellant M/s MTS Logistics Private Limited and Appellant Parvesh Kumar Jain filed Company Appeal (AT) No. 402 of 2018 and Company Appeal (AT) No. 407 of 2018 respectively, against the impugned order passed by National Company Law Tribunal, New Delhi, Bench (“NCLT”). The NCLT heard both the Appeals together and disposed of by common Judgment.

As per NCLT order. Parvesh Kumar Jain and M/s MTS Logistics Private Limited are jointly and severally liable for Compensation of ₹ 20 Lakh to Mr. Brijesh Uppal. The NCLT also directed Registrar of Companies to initiate action under section 188 of the Companies Act 2013. Being aggrieved with order of NCLT, M/s MTS Logistics Private Limited and Parvesh Kumar Jain have filed Appeals to National Company Law Appellate Tribunal, New Delhi.

The Learned Counsel for M/s MTS Logistics Private Limited and Parvesh Kumar Jain submitted that NCLT ignored various facts and circumstance. The National Company Law Appellate Tribunal, New Delhi, is of the view that NCLT not taken into consideration various circumstances and found that the appellant is not guilty of Section 188 of the Companies Act. 2013.

Read more at

<https://nclat.nic.in/Useradmin/upload/6459112695f16c5527f56c.pdf>

SEBI

1. Securities and Exchange Board of India' s adjudicating officer imposed penalty of ₹ 2.5 Lakh on Divya Fashion for failure of Regulation 29(2) read with Regulation 29(3) of the SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 2011. In the matter, Filatex Fashions Limited, Divya Fashion failed to comply with the Regulation 29(2) read with Regulation 29(3) of the SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 2011 regarding disclosure to stock exchange regarding change in shareholding from the last disclosure and such change exceeds two per cent of total shareholding.

Read more at

https://www.sebi.gov.in/enforcement/orders/jul-2020/adjudication-order-in-respect-of-divya-fashion-in-the-matter-of-filatex-fashions-limited_47107.html

2. Securities and Exchange Board of India' s adjudicating officer in the matter of PS IT Infrastructure and Services Ltd, Securities and Exchange Board of India ("SEBI"), initiated adjudication proceedings under Section 15A (b) and 15HB of the SEBI Act 1992 for the violations of various provisions of the SEBI (Prohibition of Insider Trading) Regulations, 1992 read with the SEBI (Prohibition of Insider Trading) Regulations,2015 regarding failure to make disclosures due to changed shareholding.

Read more at

<https://www.sebi.gov.in/enforcement/orders/jul-2020/adjudication-order-in-the-matter-of-ps-it-infrastructure-and-services-ltd-47110.html>

HIGH COURT

- a) **The petitioner seek appointment of a sole arbitrator to adjudicate the disputes between the parties arising out of the work order**

M/s. Hamdard Laboratories (India).....Petitioner

versus

M/s Sterling Electro Enterprises.....Respondent

The petitioner issued a tender inviting bids for carrying out electrical installation works at its new manufacturing unit. The respondent's bid was accepted and a contract, being a 'Work Order', was executed between the parties. As per the terms of the Work Order, the electrical work should have been completed in 10 months and ensure supply of the electrical fittings as also their installation. However, the same wasn't Completed due to civil engineering work was pending at the project

site and assumed precedence over electrical installations. Thus, the respondent had to cease its activities at the project site, on the instructions of the petitioner.

Upon request made by the petitioner to resume work, the respondent informed the petitioner of its unwillingness to work for the same rate as per Work Order. Instead, the respondent requested the petitioner to revisit the agreement and sought a cost escalation. When the respondent did not accede to this counter offer, the petitioner terminated the Work Order and requested the respondent to take back the electrical fittings lying at the project site under the lock and key of the respondent.

In support of the petition, learned counsel for the petitioner submits that when disputes arose between the parties, the petitioner repeatedly attempted to have the matter amicably resolved, but to no avail. This culminated in the petitioner invoking arbitration, but the respondent's failure to accept the petitioner's request has compelled the petitioner to approach this Court. Accordingly, in the light of the admitted position that the disputes between the parties are required to be adjudicated through arbitration, Hon'ble Ms. Justice Rekha Sharma, former Judge of this Court is appointed as the sole Arbitrator for adjudication of the disputes and differences which have arisen between the parties in relation to the Work Order.

Read at

<http://164.100.69.66/jsearch/>

Judgement Date: July 21, 2020

(a) Delhi High Court Dismissed contempt petition filed by Alchemist Helathcare Ltd

Alchemist healthcare ltd. & anr.Petitioners

versus

Ministry of Corporate Affairs & Ors.....Respondents

The contempt petition preferred by Alchemist Healthcare Ltd. and one of its Directors is founded on the allegations of willful disobedience / violation of the orders passed by the Division Bench in Alchemist Infra Reality Ltd. Vs. Union of India & Ors.

It emerges from the record that on the receipt of the complaints - which raised issues with regard to the affairs of Alchemist Infra Reality Ltd. and its Directors, the Ministry of Corporate Affairs o/o Registrar of Companies in short ROC invoked the provisions of Section 234 (1) & (7) of the Companies Act, 1956 and called upon Infra Realty to furnish information, documents and the explanation sought there-under, failing which, penal action under the relevant provisions of the Act, 1956 was to follow.

There is no doubt in the mind of the court that the instant petition preferred by Healthcare and one of its Directors is a calculative attempt to involve the respondent No.1 to 3 in unnecessary litigation in an overt attempt to overawe them in discharge of their statutory obligations and thereby, draw an undue advantage. Suffice it would be to observe, the serious allegations for the business of Infra Realty being carried on in fraud of its creditors, or otherwise for fraudulent or unlawful purpose - which were sought to be initiated way back in the year 2012, continue to remain at its infancy stage with the courts being clogged with vexatious proceedings.

The contempt petition is dismissed with costs of ₹ 5 Lakh out of which ₹ 2.5 Lakh shall be deposited with Delhi High Court Advocates Welfare Trust and the remaining ₹ 2.5 Lakh /- to be deposited with PM CARES Fund, within four weeks. In the event, the costs are not so deposited, the Registry shall list the matter before Court within one week of the expiry of the time granted.

Read more at

<http://164.100.69.66/jsearch/>

Judgement Date: July 22, 2020

(b) Karnataka High Court denies relief to jeweler Rajesh Exports on letters of credit

Writ Petition

Between

M/s. Rajesh Export Limited ... Petitioner

And

Reserve Bank of India

Canara Bank ... Respondent

Petitioner has filed a writ petition seeking inter alia a Writ of Madamus against Prime Corporate Branch of Canara Bank to defer payments in respect of Letters of Credit issued by the Bank at petitioner's request in the light of pandemic situation prevailing due to the Covid-19.

The petitioner is in the business of import and export of gold and ornaments and it regularly obtained Letter of Credit from Canara Bank from the past 20 years. However, due to the announcement of lockdown in India on March 23, 2020, petitioner's business came to a stand-still. Petitioner approached the beneficiary of Letter of Credit and requested for deferment by 90 days and the beneficiary agreed for it. Post which petitioner requested the Canara Bank to obtain permission from RBI. Canara Bank did not agree, but continued to make payments.

If exports were in progress, petitioner would have received value for goods in Swiss currency. Now, Canara Bank will buy foreign exchange in open market and it will cause huge loss to the petitioner. Due to pandemic, petitioner is not in a position to export and earn foreign exchange at prevalent market price and this will cause loss to the petitioner. Further the RBI has extended time for export of other commodities, but not on gold.

The Hon'ble Justice dismissed the writ petitioned stating, Canara Bank has issued the Letter of Credit at Petitioner's request. Petitioner has received the gold and Letter of Credit have been discounted. Therefore, Canara Bank is duty-bound to honour the Letter of Credits and make payment. Further, Petitioner has not made out a case that it has a legal right over the performance of a legal duty by the Canara Bank against whom the mandamus is sought. Therefore, petitioner is not entitled for a Writ of Mandamus.

SUPREME COURT

(a) The Apex Court held - Onus is on the Assessee not on the Tax authorities to show the project office as Permanent establishment.

**Director of Income Tax-II (International Taxation) New Delhi & ANR. ...Appellants
Versus
M/s Samsung Heavy Industries Co. Ltd. ...Respondent**

Project Office was set-up by the Assessee in Mumbai granted under a "turnkey" contract by ONGC. At the time of filing of the return of income, the assess showed nil profit, as a loss of ₹ 23.5 Lakh had allegedly been incurred in relation to the activities carried out by it in India. ITAI was of the view that Mumbai office was not a mere liaison office, but was involved in the core activity of execution of the project and rejected the argument by stating that, as accounts are in the hands of the Assessee, the mere mode of maintaining accounts alone cannot determine the character of permanent establishment.

The Apex Court pointed out that the onus is on the Assessee and not on the Tax Authorities to first show that the project office at Mumbai is a permanent establishment and that no permanent establishment has been set up within the meaning of Article 5(1) of the DTAA, as the Mumbai Project Office cannot be said to be a fixed place of business through which the core business of the assessee was wholly or partly carried on. It was further argued that, the Mumbai Project Office, on the facts of the present case, would fall within Article 5(4)(e) of the DTAA, in as much as the office is solely an auxiliary office, meant to act as a liaison office between the assessee and ONGC.

Read more at

https://main.sci.gov.in/supremecourt/2014/21524/21524_2014_34_1501_2_3033_Judgement_22-Jul-2020.pdf

- (b) **The Apex Court Held -The compensation received for the loss of agency is a revenue receipt whereas the compensation attributable to a negative / restrictive covenant is a capital receipt**

SHIV RAJ GUPTA ...Appellant

Versus

COMMISSIONER OF INCOME-TAX, DELHI-IV ...Respondent

Appeal was allowed, basis the conclusion derived by the Commissioner of Income-Tax as well as the Tribunal, that the agreement entered into by the assessee with Ranbaxy led to loss of source of business and payment was received under the negative covenant which was treated as a capital receipt till Assessment Year 2003-2004. It is only Vide the Finance Act, 2002 with effect from April 01, 2003 that the said capital receipt is now made taxable and therefore the receipt of ₹ 50 Lakh by the assessee from Ranbaxy was in the nature of capital receipt. In fact, in order to put an end to the litigation, Parliament stepped in to specifically tax such receipts under the non-competition agreement with effect from April 01, 2003. It is well settled that a liability cannot be treated retrospectively – Compensation received under the non-competition agreement became taxable as a capital receipt and not as a revenue receipt by specific legislative mandate vide Section 28(v-a) of the IT Act and that too with effect from April 01, 2003. Hence, the said Section 28(v-a) is amendatory and not clarificatory. If a contract is entered into in the ordinary course of business, any compensation received for its termination (loss of agency) would be a revenue receipt.

Read more at

https://main.sci.gov.in/supremecourt/2015/10183/10183_2015_34_1502_23033_Judgement_22-Jul-2020.pdf

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