at the first instance has considered whether the claim of the assessee is correct and thereafter only has proceeded to determine the amount by adopting the procedure under Rule 8D". Lastly, High Court holds that the ITAT committed an error in not only allowing the appeal of the assessee, but also directed the AO to accept the figure mentioned by the assessee. Relies on Bombay High Court decision in Godrej & Boyce Manufacturing Co. Ltd., remits matter back to AO to compute Section 14A disallowance in accordance with law.

LD/69/31, [ITAT Delhi: ITA No.264/Del/2009], Kay Jay Auto Limited Vs. The Asst. Commissioner of Income Tax, 30/06/2020

Assesse an auto parts manufacturer had claimed depreciation of farmhouse for AY 05-06 by claiming that farmhouse was being used for business meetings with buyers, staff conferences etc., and thus used for business purposes. Revenue argued that use of farmhouse on few occasions for business purposes, would not convert the character of the same into office. Delhi ITAT allowed depreciation claim and held that an asset cannot be segregated and depreciation be disallowed once an asset becomes a part of the block of assets. As per ITAT, user test of an asset is to be satisfied at the time the purchased machinery becomes part of the block of assets for the first time. Depreciation on farmhouse was allowed in past years as well from 2001-02 and therefore the same cannot be disallowed in the subject year as per ITAT.

Transfer Pricing

LD/69/32, [ITAT Delhi: ITA No.7167/Del./2019], DE Diamond Electric India Pvt. Ltd. Vs. The Asst. Commissioner of Income Tax, 23/07/2020

AO had disallowed ₹ 3.66 Crores of royalty paid by assessee to its AE under section 40A(2)(b) noting that it was excessive royalty payment. AO had noted that agreement between parties was not registered, which was rejected by ITAT observing that unregistered agreement cannot be a ground for invoking provisions of Section 40A(2)(b). AO only compared royalty expenses of preceding AY and made no efforts in identifying FMV of such expenses during relevant period. ITAT rejected assessee's plea that similar royalty expenses were subjected to TP proceedings in AY 2013-14 and was accepted by Revenue and so no disallowance should be made in this subject AY for similar royalty expenses.

LD/69/33, [ITAT Mumbai: 1110/MUM/2017], Regus Business Centre Pvt. Ltd. Vs. The Income Tax Officer, 16/07/2020

Loans granted by assessee to its domestic associated enterprises were deemed to be international transactions and section 92B(2) was invoked by the Revenue for AY 2012-13. ITAT rejected such invocation of 92B(2) by observing that for subsection (2) to get attracted, the primary condition would be that at least one of the entities with which the assessee has entered into transaction should be non-resident. ITAT observed that the authorities below in the present case have erred in invoking deeming fiction solely on the premise that since shareholders of overseas holding company are holding shares of the assessee and AEs, 'in substance' the transaction between the assessee and the domestic group entities would fall within the ambit of "deemed international transaction. As per ITAT, except for common shareholding, no material had been relied on by Revenue to substantiate that the transaction between the entities was influenced by the overseas holding company.

GST

LD/69/34, [2020-TIOL-1274-HC-AHM-GST] Material Recycling Association of India Vs. UOI, 24/07/2020

Section 13(8)(b) r.w. Section 2(13) of the IGST Act, 2017 which provides for place of supply of services in case of intermediary services to be the location of the service provider and thereby resulting into the levy of CGST & SGST in cases where the recipient of services is located outside India, cannot be said to be ultra vires or unconstitutional in any manner.

LD/69/35, [2020-TIOL-1273-HC-AHM-GST], VKC Footsteps India Pvt Ltd. Vs. Union of India and 2 Other(s), 24/07/2020

Hon'ble Court read down formula prescribed in Rule 89(5) of the CGST Rules, to the extent, it restricted the refund of input tax credit only to "inputs" and not in respect of "input services" as contrary to section 54(3) of the CGST Act and directed the authorities to allow refund also in respect of input services.

Service Tax

LD/69/36, State Bank of Bikaner Jaipur Vs. CCE&ST, [Final Order No.50737/2020, 05/08/2020]

The Indian Bank cannot be held as the recipient of services in respect of charges deducted by the foreign banks from the inward remittances made from abroad i.e. importers bank, on account of the exporter in India agreeing to bear the same and consequently, they are not liable to pay service tax under reverse charge mechanism.

LD/69/37, [2020-TIOL-1277-HC-MAD-ST], M/s Navin Housing and Properties Pvt. Ltd Vs. The Designated Committee Under Sabka Vishwas Legacy Disputes Resolution Scheme 2019, 27/07/2020

When two SCNs relate to the identical transactions and in respect of the same periods and demands, the dispute raised under one SCN can be settled by utilising a deposit made under a such other SCN.

LD/69/38, [Gujarat High Court: Civil Application 12626 of 2018], Linde Engineering India Private Limited Vs. The Union of India, 16/07/2020

Assessee rendered consulting engineering services' to Parent Company Linde AG. Revenue rejecting benefit of 'export of service' and raised a demand of 62 Crores on the assessee against such service. High Court held that Revenue did not have any jurisdiction to invoke provisions of Finance Act, 1994 r/w Service Tax Rules, 1994 to bring services rendered by assessee to its Parent Company within the purview of levy of service tax. High Court analysed Rule 6A of the Service Tax Rules, 1994, r/w Section 65B(44), and observed that the Revenue assumed the jurisdiction on mere misinterpretation of the aforesaid provisions, as by no stretch of imagination, it can be said that the rendering of services by the Assessee to its Parent Company located outside India was service rendered to its other establishment so as to deem it as a distinct person.

Excise

LD/69/39, [Gauhati High Court: WP(C) 2844/2020], SC Johnson products Private Limited Vs. The Union of India & Ors., 23/07/2020

Assessee had filed a writ petition stating that consideration was required to be given by the Revenue to exemption/refund applications of assessee since it is a pending 'refund application', which as per Supreme Court's order is required to be decided by authorities as per terms of subsequent notification/industrial policies, which were assailed before respective High Court. High court allowed the petition and also directed the Revenue to not to encash the bank guarantee given by assessee towards excise duty payable of 100%, without arriving at a decision on the said applications.

Customs

LD/69/40, [Madras High Court: W.P.No.21207 of 2018], Ruchi Soya Industries Limited Vs. The Union of India, 14/07/2020

Assessee is an importer of Crude Vegetable Oils. Refund of enhanced amount of duty including the differential amount of IGST (paid under protest), allowed by Madras High Court. IGST was incorrectly realized by Customs Department relying upon Notification issued by Customs Department dated 01/03/2018. Assessee argued that said notification was updated on 02/03/2018 and came to be published in the Official Gazette on 06/03/2018, hence, same cannot have any application on transaction of the petitioner carried out prior to the said date. Madras High Court relied on Division Bench ratio in assessee's own case and noted absence of any Revenue's appeal before Supreme Court in this matter.

Legal Update

Disciplinary Case

Failure of Auditor to report the non-compliance* of disclosure requirements *of Schedule VI of* Companies Act, 1956 and *AS-18 by the Company. Held, Respondent-Auditor guilty of professional misconduct within the meaning of Clauses(5) (7) and (8) of the Part I of Second Schedule to the Chartered Accountants Act, 1949

Held:

In the instant case, the Committee noted that disclosures as required by AS-18 were not given by the Company. The Respondent being the statutory auditor of the Company did not point out the same in his audit report. The Respondent on the one side admitted the contravention of Section 227 of the Companies Act, 1956 before the Regional Director, Western Region, Ministry of Corporate Affairs, Mumbai but on the other hand had pleaded not guilty before the Committee by stating that he had given partial disclosure with respect to items under question. The Respondent appears to have adopted two different approaches before the MCA and before the Committee for the same set of allegations. The Respondent has made a meek attempt to defend his mistakes rather than accepting them on record. The Committee noted that the Respondent has failed to discharge his duties in a professional manner and committed mistakes which were quite apparent as per records. In view of the above, the Committee is of the view that the Respondent failed to report the non-compliance with the requirements of Schedule VI of AS-18 by the Company and accordingly held the Respondent guilty of professional misconduct falling within the meaning of Clauses (5), (7) & (8) of Part I of Second Schedule to the Chartered Accountants Act, 1949.