observes that under development agreements, the builder was allowed to enter into the property as a licensee (not owner) and further a part of such piece of land was declared as excess land under the Urban Land Ceiling & Regulation Act, 1976 at the material time which was later repealed and led to reversion of land that was acquired by the State Government. ITAT analysed the definition of "transfer" under section 2(47)(v) and Sec. 53A of Transfer of Property Act and remarked that since title to a part of such property itself was disputed and vested with the State Government at the time of entering into the development agreements there was no transfer of possession at the material time.

LD/70/06, [ITAT Mumbai: I.T.A. No.4472/Mum/2019], Aditya Balkrishna Shroff Vs. The Income Tax Officer, 17/05/2021

ITAT deleted the addition made on account of forex gains for AY 2013-14 arising from repayment of personal forex loan and held it as a capital receipt not chargeable to tax for the assessee. The assessee had advanced personal loan of USD 2 lakhs [equivalent to approx INR 90 lacs] and received back the said in INR equivalent of ₹1.12 crores. Forex gain of 22 lacs was taxed as Income from Other Sources by the AO. ITAT observed that the said loan was given on capital account and was not given in the course of business of the assessee. ITAT remarked that Revenue decided the head of income without even deciding whether it is in the nature of income or not, and by mixing up the concept of 'income' with the concept of 'gains'.

LD/70/07, [ITAT Visakhapatnam: I.T.A. No. 253/Viz/2020], The Asst. Commissioner of Income Tax Vs. M/s Hirapanna Jewellers, 12/05/2021

ITAT deleted the addition made under section 68 r.w.s. 115BBE wherein tax was levied at 60%, made on account of sales recorded on 08.11.2016 after announcement of demonetisation. ITAT noted that purchase/ sales matched with inflow/ outflow of stock. An amount of 5.72 Crores in cash was deposited by assessee in cash in demonetised notes recording that the same was out of cash sales and advances on 08.11.2016. Revenue had conducted survey on the assessee and had noted that no proper KYC of customers was provided by the assessee and that the one day sale was against past pattern. ITAT found force in assessee's submission that due to demonetisation, the public panicked as the cash available with them in old denomination notes became illegal from 09.11.2016 leading to investment in jewellery.

LD/70/08, [Delhi High Court: W.P.(C) 5234/2021], KBB Nuts P. Ltd. Vs. National Faceless Assessment Centre, 10/05/2021

Assessee's writ petition filed against faceless assessment order passed against the assessee without considering its objections to the draft assessment order, set aside by the High Court. A draft assessment order was passed on 19.04.2021 which was received by the assessee on 20.04.2021, requiring the assessee to respond by 21.04.2021. Assessee filed response on 22.04.2021 and the assessment order was passed on the same day without considering assessee's submission / objections. High Court directed the Revenue to pass fresh assessment order after taking into account assessee's objections of 22.04.2021, and also asked Revenue to grant a personal hearing to the assessee.

LD/70/09, [ITAT Chennai: ITA No. 2074/Chny/2018], The Asst. Commissioner of Income Tax Vs. Ramcharan Tej Konidala, 28/04/2021

ITAT directed deletion of addition which was merely based on chargesheet filed by CBI before special court without any corroborative evidence of payment of on-money by the assessee to Emaar Hills Township P. Ltd. CIT(A) had noted that the conclusion arrived by the AO that assessee has paid on-money for purchase of flat, was not based on any document or independent enquiry carried out during the course of the assessment proceedings. As per ITAT, Revenue failed to bring on record any evidence to prove that findings of fact recorded by Ld. CIT(A) were incorrect.

GST

LD/70/10, [2021-TIOL-1326-HC-MUM-GST] , Dharmendra M Jani Vs. UOI, 16/06/2021

Held: Per Abhay Ahuja, J.

The Ld. Judge recorded a dissenting view to the conclusions drawn by Ujjal Bhuyan, J holding that Section 13(8)(b) of the IGST Act would be

constitutionally valid and operative for all purposes. He held that there is no doubt that the power to stipulate the place of supply as contained in Sections 13 (8)(b) of the IGST Act is pursuant to the provisions of Article 269A (5) read with Article 246A and Article 286 of the Constitution. He further held that just because the import into India has been deemed to be inter-state trade or commerce, that under Article 269A, in no way would take away the power of the Parliament to stipulate any other type of supply to be a supply in the course of inter-State trade or commerce. The legislature keeping in mind the peculiar exigencies of fiscal affairs and underlying concerns of public revenue enacts provisions. Hence, If the Parliament pursuant to powers invested in it by the Constitution has in its wisdom dealt with Intermediary Services as that rendered by Petitioner, that is a matter within the Parliament's domain. As regards to the linking of section 13(8)(b) with Sections 7 and 8 of the IGST Act, the Ld. Judge held that both the sections have different purposes, the former dealing with the place of supply and the latter dealing with the nature of supply (i.e. Inter/ Intra supplies) and that the impugned provision does not in any manner deem an export of service to be a local apply whereas Section 13. The Ld. Judge further observed that the petitioner's supply is admittedly the same is supplied in the course of inter-state trade or commerce pursuant to the provisions of Section 7 of IGST Act. Relying upon the decision in the case of GVK Industries (supra), the court held that it's not a case of extraterritorial legislation as it imposes the levy only when the intermediary service provider is the location in India. It further held that the inter-State levy is on supply within the taxable territory i.e. within the boundaries of India and not extraterritorial in accordance with Article 245 of the constitution of India. As regards the challenge to the Constitutional validity on the ground of Article 14, the Ld. Judge held that "the intermediary" has been specifically defined and does not include a person who renders the service for himself. Therefore, between Petitioner and others, there is no discrimination. Section 13(8)(b) would not be hit by Article 14 and there is a reasonable classification founded on intelligible differentia which has a rational relation/nexus to the object sought to be achieved. As regards the challenge on the ground of Article 19(1)(g), the Ld. The judge expressed unwillingness to accept the contention of the Petitioner that the provision would lead to the closure of Petitioner's business. He stated that if the submission of Petitioner was to be considered, then any tax levied by the Central or State Government would be a restriction to carry on trade under Article 19(1)(g) of the Constitution of India. The Ld. Judge also did not entertain the contention of the Petitioner that there will be double taxation on the ground that in the petitioner's case two distinctly identifiable supplies involved, i.e., (i) supply of services by the intermediary to the overseas supplier of goods and (ii) supply of goods by overseas supplier to the Indian importer, both being subjected to tax differently.

LD/70/11, [2021-TIOL-1297-HC-MUM-GST] Dharmendra M Jani Vs. UOI, 09/06/2021

Per Ujjal Bhuyan, J.: Export of services (as understood in the ordinary common parlance) are treated as inter-state supplies. However, by artificially creating a deeming provision in the form of section 13(8)(b) of the IGST Act, where the location of the recipient of service provided by an intermediary is outside India, the place of supply has been treated as the location of the supplier i.e., in India, the said provision runs contrary to the scheme of the CGST Act as well as the IGST Act by Hence Section 13(8)(b) is is ultra vires the IGST Act besides being unconstitutional.

Per Abhay Ahuja, J: The power to stipulate the place of supply as contained in Sections 13 (8)(b) of the IGST Act is pursuant to the provisions of Article 269A (5) read with Article 246A and Article 286 of the Constitution and hence is constitutionally valid and is a fiscal legislation within the domain of the parliament. The petitioner's supply is admittedly the same is supply in the course of inter-state trade or commerce pursuant to the provisions of Section 7 of IGST Act. The provisions are not violative of Article 14 and Article 19(1)(g) of the Constitution of India and do not suffer from extra-territorial jurisdiction.

LD/70/12, [2021-TIOL-179-SC-GST], M/s Radha Krishan Industries vs. State of Himachal Pradesh and Ors, 20/04/2021

The power to order a provisional attachment of the property of the taxable person including a bank account is draconian in nature and the conditions which are prescribed by the statute for a valid exercise of the power must be strictly fulfilled. The exercise of the power for ordering a provisional attachment must be preceded by the

formation of an opinion by the Commissioner that "it is necessary so to do" for the purpose of protecting the interest of the government revenue. Before ordering a provisional attachment the Commissioner must form an opinion on the basis of tangible material that the assessee is likely to defeat the demand if any, and that therefore, it is necessary so to do for the purpose of protecting the interest of the government revenue. The expression "necessary so to do for protecting the government revenue" implicates that the interests of the government revenue cannot be protected without ordering a provisional attachment. Where the taxable person sets up the plea that the extent of the attachment is excessive or where the taxable person offers an alternative form of security, these are also matters which ought to be determined by the Commissioner in the exercise of powers under Rule 159(5). No appeal under section 107 of the Act can lie against the order of provisional attachment and hence writ can be entertained. Under the provisions of Rule 159(5), the person whose property is attached is entitled to dual procedural safeguards – (i) An entitlement to submit objections and (ii) An opportunity of being heard. The Commissioner is duty-bound to deal with the objections to the attachment by passing a reasoned order. Initiation of proceedings under section 62, 63, 64, 6, 73, or 74 is a must for invoking powers under section 83 and once the final order under section 74(9) is passed the proceedings under Section 74 are no longer pending as a result of which the provisional attachment must come to an end. Once the first order of provisional attachment was withdrawn by the department, passing of the subsequent order of the same nature on the same ground and without there being any change in the circumstances is not permissible

Disciplinary Case

Misuse of digital signatures by Respondent on E-form 32 -- Held, Respondent is guilty of Professional misconduct under Clause (2) of Part IV of First Schedule and Clause (7) of Part I the Second Schedule to the Chartered Accountants Act 1949.

Held:

In the instant case, the charge against the Respondent is that he had certified Form 32 wherein Mr. X and Mr. Y were shown as having been appointed as Directors and two existing directors (Complainant & another) were removed from the Directorship of the company. On perusal of said Form -32 the Committee observed that form was digitally signed by the Complainant and verified by the Respondent. The Complainant had lodged Complaint with TCSSA to have the name of the person who got the certificate in his name. The Committee further noted that the Respondent in his defence submitted that digital signatures were used without his knowledge and the person who had used his signature had accepted this fact before the Court and in the Police Station as to misuse of the signature. The Committee further perused letter (brought on record by Respondent) dated 02.01.2015 from one Mr. AK wherein he stated that by mistake, he had used the digital signature of the Respondent. The Committee noted that the Respondent could not produce any evidence of acceptance of his fault by Mr. AK before the Court and Police Authority. Looking into the seriousness of the matter and failure of the Respondent in submitting any corroborative evidence which may establish that his digital signature were misused by Mr. AK, the Committee was not convinced by the version of the Respondent. The Committee noted that the sequence of events indicates that the letters dated 18.12.2013 and 02.01.2015 of Mr. AK could have been only an after-thought and seems to have been procured to hide the negligence on the part of the Respondent .In view of above noted facts, the Committee held that the Respondent failed to exercise due diligence and he is guilty of professional misconduct falling within the meaning of Clause (2) of Part IV of First Schedule and Clause (7) of Part I of the Second Schedule to the Chartered Accountants Act, 1949.