

**LD/72/016 ITAT Ahmedabad:
ITA No. 388/Ahd/2022 The Asst.
Commissioner of Income tax Vs.
Grand Polycoats Company P Ltd. 26th May 2023**

ITAT upheld CIT(A) order deleting disallowance of commission expenses whereby the AO had restricted the commission expense @ 2% of total sales only; Similar commissions paid by the Assessee in preceding AY's were not doubted by Revenue; Commission paid to various unrelated parties ranged from 2.75% to maximum of 6.75%; Said payments were made through cheque after deduction of TDS and many of the parties paid service tax on the commission received by them for it; Separately, ITAT also upheld deletion of disallowance of gratuity premium.

**LD/72/017 Karnataka High Court:
Writ Petition 7647 of 2023
Sanath Kumar Murali Vs.
The Income Tax Officer 24th May 2023**

Reassessment proceedings for AY 16-17 set aside by High Court (HC); Term 'income chargeable to tax' under Section 149(1)(b)" must be read in terms of 'income' as arising out of the 'Capital Gains' in instant case by subjecting it to the provisions of Section 48; Revenue failed to apply its mind to this aspect while dealing u/s 148A; Invoking the extended limitation period under Section 149(1)(b) where capital gains income was less than Rs. 50 lacs, was incorrect as per HC.

**LD/72/018 ITAT Mumbai:
ITA No. 13/Mum/2023
Saltwater Studio LLP Vs. NFAC
22nd May 2023**

ITAT deleted penalty u/s 270A since Revenue failed to bring quantum additions under the misreporting clauses (a) to (f) of Section 270A(9); Penalty under Section 270A is not mandatory; Revenue passed assessment order with quantum addition of total Rs.3.95 Lakh where ITAT gave partial relief by deleting addition of Rs.3.27 Lakh and confirmed the balance addition of Rs.67 thousand; As per ITAT, since AO failed to bring the addition/disallowance he made in quantum assessment, under the ken of (a) to (f) of the sub section(9) of section 270A of the Act, the penalty levied for misreporting @ 200% cannot be sustained because it is trite law that penalty provisions have to be strictly interpreted;

**LD/72/019 ITAT Mumbai:
ITA No. 545/Mum/2023
Zainul Abedin Ghaswala Vs.
The Commissioner of Income Tax (A)
22nd May 2023**

Assessee held to be eligible for exemption u/s 54F, though assessee holds multiple jointly-owned

properties; Assessee was not found to be the exclusive owner of five residential flats since they were occupied by the other family members; ITAT referred to Madras HC ruling in Dr. P.K. Vasanthi Rangarajan, relied upon by the Assessee, wherein it was held that the joint ownership of the property would not stand in the way of claiming exemption u/s 54F; ITAT also placed reliance on SC ruling in Vegetable Products as per which a view favouring the assessee has to be preferred in case of conflicting views of judiciaries.



Indirect Tax

**LD/72/020 [SLP (CRL.) No. 2868/2023]
(Sc), 19-04-2023] Makhijani Pushpak
Harish Vs. The State of Gujarat Criminal
Appeal No. 1193 Of 2023**

The condition of furnishing of bank guarantee as one of the conditions of the grant of bail is held to be bad in law where the appellant was charged with arrest under offences punishable under Sections 69, 132(1)(a) of the Central Goods and Services Act, 2017

**LD/72/022 [7248/2023 &
CM APPL. 28227/2023 - DEL HC ,07-07-2023]
Advance Systems Vs. The Commissioner of
Central Excise and CGST W P(C)**

The appellate proceedings are a continuation of the petitioner's applications for refund and, therefore, when the assessee succeeds before the first appellate authority, the Orders-in-Appeals are required to be implemented. There is no requirement to file a fresh refund application and even if an online refund application is filed on the basis of order-in-appeal, it's not permissible for the department to issue a deficiency memo or seek additional documentation. Further, the refund also cannot be withheld on the ground that the order-in-appeal is under review for the purpose of filing the appeal.

**LD/72/023 [WPA 1009 of 2022 - CAL HC,
12-06-2023] M/s Gargo Traders Vs. The Joint
Commissioner Commercial Taxes
(State Tax) & ORS**

Where the assessee has all the documents relating to the receipt of goods namely tax invoice, e-way bill, transporters bill, proof of payment of consideration to the supplier, and there is no allegation that there was collusion between the said assessee and the supplier with respect to the transaction in question for obtaining an undue tax benefit, it is not permissible to deny the ITC to the assessee merely on the ground that the registration of the supplier is cancelled with retrospective effect.

***LD/72/024 [1218 OF 2023 – CAL, 02-08-2023]
Suncraft Energy Private Limited And Another
Vs. The Assistant Commissioner, State Tax,
Ballygunge Charge and Others***

Where the receiver has fulfilled all the conditions of section 16(2) and has also made payment of consideration to the supplier but the supplier has not paid tax to the Government, then recovery against the

receiver in respect of ITC in respect of unpaid taxes by the supplier can be initiated only after the attempt to recover the tax from the supplier has failed due to exceptional circumstances such as where there has been collusion between the appellant and the supplier or where he is missing or has closed down its business or does not have any assets and such other contingencies.



Other

***LD/72/025 W.P.(C) 3259/2023, CM
APPL No. 14097/2023, 19816/2023 &
36265/2023 RUCHIR AGRAWAL versus PUBLIC
ENTERPRISES SELECTION BOARD & ORS***

The Delhi HC upheld the preference given to Chartered Accountants (CA) over Cost Accountants for appointment to the post of Director (Finance) at Indian Oil and dismissed the petition stating that Chartered Accountants are more suitable for the role of Director (Finance) due to their job's nature. The position involves overseeing various financial

aspects like accounting, finances, inventory, income tax, and audit assurance. The court emphasized that Chartered Accountants are the ideal choice for this role as they possess the necessary skills, whereas Cost Accountants primarily focus on supervising company expenses. During the proceeding of this matter, the Hon'ble High Court of Delhi observed that "it becomes clear that there exist a distinction between the role of Chartered Accountant and Cost Accountant and therefore it is established that the Chartered Accountants are treated differently than the Cost Accountants in some Statutes and there can be no embargo upon the authorities to treat them differently".

Disciplinary Case

Due diligence – Company's annual return submitted by Respondent discloses change of shareholding pattern in the balance sheet despite of Company Law Board's order to the effect to maintain status quo – Lack of due diligence on the part of Respondent – Held, Respondent is GUILTY of professional misconduct falling within the meaning Clause (7) of Part I of Second Schedule to the Chartered Accountants Act, 1949.

Held:

In the instant case the charge against the Respondent was that he submitted the Annual Reports of the Company for the year 2012 and 2013 to the Registrar of the Companies disclosing a change in its shareholding pattern in the Balance Sheet despite of the fact that there existed one Company Law Board order for maintaining status quo in respect of shareholding pattern. The Committee observed that the Complainant had filed a petition before the Company Law Board (CLB) seeking two interim reliefs Firstly, to restrain X and Y from transferring, alienating or dealing with the assets of the Company in any manner and secondly, that they would be directed to maintain status quo in respect of shareholding pattern as it existed on 17th December, 2012. The Company Law Board passed the order in favour of the Complainant by directing to maintain status quo. The Committee, on perusal of the Annual return filed by the Company for year 2011 found that name of the Complainant and his wife was duly disclosed as shareholders of the Company however, in Form 20B and Annual return for the period of F.Y. 2012 and 2013 of the Company which were uploaded by

the Respondent on 13th November 2013 the name of Complainant and his wife were not appearing in the list of shareholders of the Company. The Complainant had brought on record certificate from Company Secretary that shows the change of shareholding pattern of the Company from Complainants to other persons on 13th November 2013 w.e.f. 26th September 2009. Hence, the Committee noted that the Company had filed the resignation letter of the Complainant & his group from the back date and the Respondent while filing the annual returns for Financial Years ending 2012 & 2013, did not considered this fact and in the meantime, the CLB order to maintaining status quo came into existence. The lack of due diligence on the part of Respondent resulted into change in shareholding pattern of the said company and this in turn, caused non-compliance with the alleged CLB order in question. In view of above noted facts, the Disciplinary Committee held that the Respondent is GUILTY of professional misconduct falling within the Clause (7) of Part I of the Second Schedule to the Chartered Accountants Act, 1949.

(PR/9/14-DD/32/14-DC/544/17)