KATALYST ADVISORS

Katalyst Kaleidoscope

November 2022: Tax and Regulatory Insights

Summary of Contents

A. Income Tax highlights

1. Landmark judgements in relation to Charitable Trusts: interpretation becomes stricter

The Supreme Court, in the case of *New Noble Educational Society*[1], held that the provision for granting exemption to a charitable trust, enjoins that the institution should exist 'solely for educational purposes and not for purposes of profit' (means that such institutions cannot have objects which are unrelated to education) and distinguished the decisions in *American Hotel and Lodging*[2] and *Queens Education Society*[3]. The Apex court has also laid down principle that 'business' and 'profits' in the seventh proviso to Section 10(23C) of Income Tax Act, 1961 ('ITA') and Section 11(4A) of ITA merely means that the profits of business which are 'incidental' to educational activity i.e., relating to education such as sale of text books, providing school bus facilities, hostel facilities, etc.

In another landmark judgement, the primary question for consideration in the case of *Ahmedabad Urban Development Authority*[4] before Supreme Court was with respect to interpretation of the residual clause of the term 'charitable purpose' i.e., "advancement of any other object of General Public Utility ('GPU')" along with the proviso to section 2(15) of ITA, which deals with conditionalities of the exemption. The Apex court held that any taxpayer seeking exemption and undertaking activity pertaining to GPU is not permitted to engage itself in any trade, commerce, or business, or provide services in relation thereto for any consideration, the exception being that such activities can be carried out to achieve objects of GPU and aggregate receipts from business activity /service in relation thereto should not exceed 20% of total receipts. It was also held that where a property held under the trust is a business, income therefrom would enjoy tax exemption u/s 11(1) of ITA irrespective of the fact whether such business is incidental or ancillary to the attainments of the objects of the trust provided such income is wholly applied for charitable and religious purposes. However, if the business is not held under the trust, the income would not qualify for tax exemption u/s 11(1) of ITA unless such business is incidental or ancillary to the attainments of the objects of the trust and separate books of accounts are maintained as per section 11(4A) of ITA.

[1] [2022] 143 taxmann.com 276 (SC)
[2] [2008] 301 ITR 86/170 Taxman 306 (SC)
[3] [2015] 55 taxmann.com 255 (SC)
[4] ACIT v. Ahmedabad Urban Development Authority [2022] 144 taxmann.com 78 (SC)

Katalyst Comments

The above two landmark rulings for charitable trusts confirm that a close look is required at the activities of the charitable trusts before applying for tax exemptions. The business activities should only be incidental to the charitable purpose and not color the charitable intent of the trust. Incidentally, too much rigour imposed by such judgements could discourage the charities to some extent.

2. Karnataka HC: Tax component can be claimed as deduction while computing capital gains, if mutually agreed to be excluded as per agreement[5]

In this case, the tax payer entered into a share purchase agreement for sale of shares wherein the agreement provided that sellers (husband and wife) shall be liable to reimburse the Companies (whose shares are being transferred) for all taxes that may be levied in respect of the period up to the closing date. The tax payer claimed the tax component as a deduction while computing capital gains u/s 48 of ITA. It was held that the intention of the parties was clear to the effect that the value of the shares shall be the amount agreed between the parties excluding the tax component and hence, the deduction of 50% of the tax component (i.e., proportionate to the tax payer's shareholding in the company) was allowed to the tax payer.

3. Bangalore ITAT: Redemption of preference shares and premium paid on such shares do not attract deemed dividend provisions[6]

Redemption of preference shares cannot be considered as reduction of share capital within the meaning of deemed dividend u/s 2(22)(d) of ITA since it is a distribution to a holder, who is not entitled to participate in the surplus assets in the event of liquidation [Section 2(22)(d) deals with distribution to be considered as deemed dividend, in certain situations]. Further, payment of premium on redemption of preference shares shall not be exigible to tax as deemed dividend u/s 2(22)(e) of ITA (which, inter-alia, provides that any sum paid by a private company by way of a loan or advance to a shareholder shall be taxed as deemed dividend), since the same is towards consideration for redemption and is not an amount in nature of loan or advance.

[5] Smt. Durga Kumari Bobba v. DCIT [2022] 142 taxmann.com 31 (Karnataka)
[6] Information Technology Park Ltd. v. ITO [2022] 143 taxmann.com 408 (Bangalore - Trib.)

4. Mumbai ITAT: Assessment order passed in name of non-existent entity post amalgamation held void-ab-initio[7]

Relying on the SC judgement in *Maruti Suzuki*[8]*, the* Karnataka High Court set aside the assessment order passed by the AO on the amalgamating entity (viz., the State Bank of Indore) which had ceased to exist as on the date of the assessment order on account of its merger with the State Bank of India, thereby rendering the entire assessment proceedings void-ab-initio.

5. Chennai ITAT: 'Excessive' share premium taxability u/s 56(2)(viib) attracted on conversion of CCPS to equity shares; justification of valuation report is required[9]

The tax payer entered into an agreement with the investor fixing the premium on conversion of Compulsorily Convertible Preference Shares ('CCPS') in FY12 when section 56(2)(viib) of ITA was not in force. The CCPS were converted into equity shares in FY15 as per the share subscription agreement already entered into in FY12. The tax payer contended that actual money has been received in earlier years and in FY15, there is mere conversion of shares. Tribunal did not accept this contention holding that there is constructive payment and the money is constructively received by the tax payer in the CCPS conversion year and hence, the provisions of Section 56(2)(viib) are applicable.

6. Mumbai ITAT: Waiver of unsecured loan is on capital account and hence not taxable[10]

The tax payer had obtained unsecured loan from certain parties for the purpose of using it in the business of lending of money; the lenders are obviously not the customers of the tax payer. Majority portion of the said load was assigned to another party and balance (waived off portion) was transferred to 'capital reserve account' claiming same to be capital receipt. Following the landmark Supreme Court judgement in the case of *Mahindra & Mahindra*[11]*, the* Tribunal held that there is no dispute that the loan transaction is a capital account transaction and aforesaid waiver of loan cannot take the colour of trading transaction; hence, should not be hit by the provisions of section 28(iv).

[7] State Bank of India [TS-820-ITAT-2022(Mum)]
[8] PCIT v. Maruti Suzuki India Ltd. [416 ITR 613 (SC)]
[9] S. A. Metro Plots v. ITO [2022] 144 taxmann.com 173 (Chennai - Trib.)
[10] ACIT v. Infinite Buildcon Pvt. Ltd. [ITA No. 2241/Mum/2021]
[11] 2003-TIOL-427-HC-MUM-IT

The Tribunal also held that the amount credited by the tax payer to Capital Reserve account represents "waiver of loan" which was received by the tax payer in the earlier years. The 'waiver of the loan' cannot be equated with the 'actual receipt of money' contemplated u/s 56(2)(x) of ITA and hence, the provisions of section 56(2)(x) are not attracted since there is no receipt of money during the year under consideration.

Katalyst comments

TDS u/s 194R of ITA should also not be applicable on waiver of loan since the same does not amount to any monetary benefit or perquisite; However, CBDT has explained in its Circular no. 12 of 2022 dated June 16, 2022 through an example, that waiver of loan though being a capital receipt would be perceived as benefit / perquisite hence, subject to TDS. While an explanatory Circular 18 of 2022 dated September 13, 2022 has removed banks from its ambit, it unfortunately continues to remain open in case of other entities.

7. Hyderabad ITAT: Section 56(2)(viia) inapplicable upon buy back of shares[12]

Section 56(2)(viia) of ITA applies in a case where a private company receives shares from another private company without or for inadequate consideration. Relying on the Mumbai Tribunal case of *Vora Financial Services*[13], it was held that for applicability of section 56(2)(viia), the shares should become property of the recipient company and such shares should be the 'shares of other company'. With reference to the buying back of own shares by a company which become extinguished by reducing the capital, it is clear that the test of 'becoming property' and also 'shares of any other company' fails, thereby rendering the provisions u/s 56(2)(viia) inapplicable to the cases of buyback of own shares.

Katalyst comments

The provisions of Section 56(2)(viia) are a deemed income provision which are now part of the expanded Section 56(2)(x). The gamut of provisions u/s 56(2)(x) has expanded beyond any logical basis and has created enormous issues and litigation and is a major roadblock in genuine structuring and restructuring initiatives. It is important that the Government recognizes the need to downsize such outlier provisions and restrict them to obvious tax avoidance schemes only.

[12] VITP (P.) Ltd. v. DCIT [[2022] 143 taxmann.com 304 (Hyderabad - Trib.)]
[13] [2018] 96 taxmann.com 88/171 ITD 646 (Mum. - Trib.)

B. Corporate Law Highlights

1. Kolkata NCLT: Non-disclosure and non-consolidation of financial statements shall not affect sanction of Scheme of Arrangement[14]

Kolkata NCLT held that the observations of Regional Director ('RD') in relation to Transferor Company not complying with Schedule III of Companies Act, 2013 by not making disclosure in relation to nature and extent of non-current investment and upon non-consolidation by Transferor Company of financial statements of Transferee Company even though the Transferor Company holds more than 20% shares in Transferee Company, shall not have any bearing on the sanction of Scheme of Amalgamation of the companies.

Katalyst Comments

RD's observation in relation to Transferor Company on regulatory aspects should not hold up the merger process before NCLT, as the companies can meet non-compliances or non-disclosures independently.

2. Ahmedabad NCLT: Call option held by Transferee Company of shares of Transferor Company shall not affect sanction of Scheme of Amalgamation[15]

The fact that, pre-sanction of scheme, the Transferee Company held call option on shares held by certain shareholders of the Transferor Company and upon sanction of said scheme, the Transferee Company shall have the right to purchase the shares of Transferor Company, at a fixed price, shall not adversely affect the sanctioning of the scheme of amalgamation. Further, post sanction of scheme, the call option shall be understood in context of call shares of Transferee Company and may be exercised to acquire shares in any manner including buy back, capital reduction etc.

[14] In the matter of: Dropsy Merchants Private Limited & Marigold Barter Private Limited, C.P. (CAA) No.37/KB/2021, NCLT, Kolkata, dated September 23, 2022

[15] In the matter of VR Finechem Private Limited & Shiva Pharmachem Limited, CP (CAA) 12/AHM/2022, dated September 26, 2022

C. Securities' Law highlights

1. SEBI: Various amendments to SEBI LODR[16] notified

- Insertion of Regulation 59A in relation to *'Draft scheme of Arrangement and Scheme of Arrangement'* which relates to requirement for a listed entity that has listed non-convertible debt securities or non-convertible redeemable preference shares, to file the draft scheme of arrangement along with payment of fees @0.1% of the paid-up share capital of the listed/ transferee/ resulting company with the stock exchange for obtaining their no-objection letter;
- Earlier a special resolution was required, to appoint an independent director; as per the new requirement, in case special resolution fails to get the requisite majority, one test would be to check if ordinary resolution is passed, the other test would be obtaining approval of the majority public shareholders. Both the test thresholds would have to be fulfilled simultaneously;
- Greater disclosures applicable to listed entities for financial results in terms of submission of un-audited or audited quarterly results within 60 days from the end of quarter;
- Listed entities to provide a statement of assets and liabilities and statement of cash flows at end of every half year by way of note along with financials;
- Certain financial ratios to be disclosed with financial results by the listed company; and
- Utilization of issue proceeds of non-convertible securities in the format prescribed by SEBI to be submitted along with quarterly financial results;

Katalyst Comments

The burden of disclosures on the listed entities has been further increased by the introduction of abovementioned disclosures.

2. SEBI: Consultation paper on the extant SEBI (Buyback of Securities) Regulations, 2018

SEBI has issued a consultation paper on 'Review of SEBI (Buyback of Securities) Regulations, 2018' on November 17, 2022 upon representation received by SEBI from market participants requesting for review of certain substantive provisions pertaining to buyback of specified securities, buyback through tender offer, as well as through open market through Stock Exchange mechanism etc. The sub-group formed for this purpose submitted its report to SEBI

[16] Notification No. SEBI/LAD-NRO/GN/2022/103, dated November 14, 2022

on May 3, 2022 and now comments are sought from the stakeholders in this context by December 1, 2022.

The objective for same is to streamline the process of buy-backs from open market with a view to making such process robust, efficient, transparent and shareholder friendly; refining the process of buy-backs through tender offers; review of timelines for buy-backs; and aligning the said Regulations with Companies Act, 2013.

Given below are certain key suggestions of the sub-group:

- **Time period for open market buy-back through stock exchanges -** it is proposed to introduce a glide path with respect to reduction in the maximum limit and time period or such a buyback as per the table given below:

Parameter	***Current thresholds***	***w.e.f. April 1, 2023***	***w.e.f. April 1, 2024***	***w.e.f. April 1, 2025***
Maximum limit (% of paid up capital and free reserves	*15%*	*10%*	*5%*	*0%*
Time period for completion of buyback offer	*6 months*	*66 working days*	*22 working days*	*NA*

- **Type of shares eligible for buy back -** Buyback should be undertaken only in respect of frequently traded shares;
- **Minimum amount to be utilized -** Increase in minimum threshold for utilization of proceeds of 50% of amount earmarked for buy-back, to 75%. Further, 40% of amount earmarked for buy-back to be utilized within half of time period proposed above;
- **Restrictions on Volume and Price** has been proposed since there were no pricing-related restrictions specified earlier;
- **Quantum** – restriction of buy-back to 15% of paid up capital and free reserves is proposed to be applicable only to buy-backs undertaken through stock exchanges; For tender offer route, limit to be enhanced to 40% of paid up capital and free reserves from current 25%;
- **Creation of escrow account** - Time limit of 2 working days prior to public announcement proposed to be imposed along with additional forms of escrow for both buy-back through stock exchange and tender offer route;
- **Flexibility to revise price for buyback through tender offer -** Board of directors can revise the buy-back price up to 1 working day prior to opening of the buy-back offer;

- **Letter of Offer ('LOF') review by SEBI** – SEBI Review process can be eliminated and merchant bankers be allowed to directly disseminate the LOF to the shareholders through certification of compliance with the Buy-back Regulations in the LOF and to the SEBI prior to the opening of an offer;
- **Cooling off period between buy-back** - proposed to be shortened to 6 months in certain cases;
- **Post- buyback compliance –** extinguishment of share certificates to be done in presence of company's secretarial auditor instead of merchant banker;
- Revised mechanism for buy-back through book building process in relation to announcement, buy back price, retail & promoter participation etc. has been proposed;
- If consents are required from company's lenders, disclosure to that effect should be included in the public announcement, explanatory statement and/or letter of offer;
- Time line standardized to include *working days;*
- **Taxation matters -** It is proposed to shift the incidence of tax on buyback from the company to the shareholders on the basis of the logic that since the buyback tax is paid by the company it amounts to the tax being borne by all shareholders, whereas all shareholders may not have tendered their shares and that creates an anomaly.

3. SEBI: Consultation paper on Regulation 30 of LODR in relation to disclosure requirements for material events or information

Events specified in Para A of Part A of Schedule III of Listing Obligations and Disclosure Requirements ('LODR') Regulations are deemed to be material ('Para A') and events specified in enumerated in Para B of Part A of Schedule III of LODR Regulations ('Para B') are required to be disclosed based on companies' materiality policy as per Regulation 30(4) of LODR Regulations. On account of complaints received regarding inadequate/ inaccurate/ misleading/ delayed disclosures made by listed companies; need expressed by listed companies for uniformity in determining materiality of events or information; and certain issues on timelines for compliances, SEBI has issued a consultation paper as captured above on November 14, 2022; comments thereon are invited and should be sent to SEBI by November 27, 2022.

In the above context, a large number of changes, additions and amendments have been proposed to the LODR regulations, and some key ones are broadly summarized as under:

- In relation to Para B events, it is proposed to make the provisions of regulation 30(4) more objective by inserting a quantitative criterion of minimum threshold for disclosure. The

threshold is proposed to be the lowest of 2% of turnover, 2% of net-worth or 5% of average PAT of the last 3 years.

- The timelines for disclosure are sought to be tightened to 12 hours instead of 24 hours in certain cases, and 30 minutes post board meeting, in some other cases.

- It is proposed that the top 250 listed entities shall necessarily confirm or deny any event or information reported in mainstream media, either print or digital, which will have a material effect on the listed entity; this is as against the current dispensation of the listed company having the option to do so, at its own initiative.

- Regarding credit ratings, under the current requirement for disclosing information re a revision in ratings, new ratings are also proposed to be required to be disclosed; it is also sought to be provided that such disclosure of rating or revision shall be made even if not requested by the listed entity or the request was withdrawn by the listed entity.

- Frauds, defaults by listed entity or key managerial personnel are required to be disclosed. It is proposed to extend the disclosure requirements to directors or senior management or subsidiaries; a wide definition of default is also proposed to be inserted.

- Currently, change in director, KMP, auditors and compliance officers are required to be disclosed; it is proposed to add senior management to such disclosure requirements.

- A new provision is proposed to be added that if the managing director or CEO of a listed entity is indisposed or unavailable to discharge his duties in a regular or consistent manner for more than a month, that is supposed to be disclosed.

Katalyst Comments:

Clearly, while one can appreciate some justification for the tightening, the overwhelming compliance and disclosure requirements will add more pressure to listed entities

4. SEBI: Issue of capital and disclosure requirement ('ICDR') regulations amended – optional alternative mechanism introduced

The ICDR regulations have been amended w.e.f. November 21, 2022 by the insertion of a new Chapter IIA dealing with Initial Public Offer ('IPO') to introduce an optional alternative mechanism for issuers of IPOs in terms of 'pre-filing' of draft offer document with SEBI.

The rationale for same is to maintain confidentiality of sensitive information about the business of the issuer which, as per the existing mechanism, is disclosed in detail in the Draft Red Herring Prospectus ('DRHP') at a time when there may not be certainty that the IPO would be executed or when it would be executed.

The key features of the amendment are as follows:

i. In lieu of an IPO on the main Board (platform where large companies having minimum post-issue paid-up capital of Rs 10 crore apply for listing), the issuer may make an IPO by pre-filing a draft offer document;

ii. The pre filed offer document will not be available in the public domain, but the issuer shall make a public announcement in one English, one Hindi and one regional language newspaper, within 2 days of such filing, disclosing the fact that DRHP has been filed with SEBI;

iii. SEBI may recommend changes or issue observations on such offer documents within the specified period of 30 days, in which case the issuer shall carry out the changes, and submit to SEBI an Updated Draft Red Herring Prospectus-I ('UDRHP-I'), incorporating the observations;

iv. Upon receipt of observation, the UDRHP-I shall be made public for comments by the lead manager, for at least 21 days from the date of filing, and based on the comment received from the public, the lead manager shall make changes in the red herring prospectus and submit to SEBI an Updated Draft Red Herring Prospectus II before filing the offer document with the ROC, with a copy to SEBI.

Summary of key changes is tabulated below:

Activity	Existing mechanism	Pre-filing mechanism
Publicity and Marketing	Permitted from the date of filing of DRHP. Public communication/ marketing from the date of board meeting in which the IPO is approved till filing of DRHP	**Not permitted.** Limited marketing permitted (Only for Testing the waters with QIBs). Public communication/ marketing from date of board meeting in which the IPO is approved till filing of updated draft offer document

	shall be consistent with past practices of issuers	(UDRHP-I) shall be consistent with past practices of issuers
Compliance with all ICDR Requirements at the time of filing of draft offer document	DRHP to be in compliance with ICDR Regulations (to the extent applicable)	Pre-filed DRHP to be in compliance with ICDR Regulations (to the extent applicable) with flexibility/ exemption in certain cases such as issuance of new shares/ compulsory convertibles, Changes in matters mentioned under Schedule XVI of ICDR etc. Compliance with additional conditions for Offer for Sale ('OFS') related to minimum period of one year of holding of equity shares proposed to be offered at OFS and compliance with conditions pertaining to securities which are ineligible to be counted towards minimum promoters' contribution to be tested at the stage of UDRHP-I.
Convertible securities	As on the date of filing DRHP, Reg 5 required that the proposed issuer should not have any outstanding convertible securities or any other right which would entitle any person with any option to receive equity shares of the issuer .	New Reg 59E allows the issuer who has opted for pre-filing DRHP to convert outstanding securities anytime before the observations are received from SEBI.
Validity of SEBI Observation	Issue shall open within 12 months from the date of SEBI Observation	Issue shall open within 18 months from the date of SEBI Observation subject to filing of UDRHP-I within 16 months
Applicability of Schedule XVI	Applicable from the date of filing of DRHP	Applicable from the date of issuance of SEBI Observations on pre-filed document. Change (increase or decrease) in fresh issue size after issuance of SEBI's observation proposed to be permitted

		to the extent of 50% as against 20% in existing mechanism.

Katalyst Comments

This is a welcome move from SEBI to motivate large companies who are apprehensive that the peer competitors might take undue advantage of the information-rich DRHP disclosed by them in the public domain, to explore the possibility of an IPOs. This mechanism is also advantageous in a scenario where issuers who have already received SEBI observation letter but may defer their IPO by some months due to volatility in market conditions or some other factors.

D. RBI/ Foreign Exchange Laws

1. Matrix for calculation of late submission fee introduced for reporting delays in Foreign Investment, External Commercial Borrowings and Overseas Investment[17]

To bring uniformity in imposition of Late Submission Fees ('LSF') across functions, RBI has introduced an LSF of Rs. 7,500 for delay in reporting of returns which do not capture flows of any periodical reporting such as, Form ODI (Part-II) / Annual Performance Report (APR), FC-GPR (B), Annual Return on Foreign Liabilities & Assets (FLA), etc.

In case any return captures flows or returns which capture reporting of non-fund transactions or any other transactional reporting (example, FC-GPR, FC-TRS (transfer of equity instruments, Form ODI-Part I, Form ODI-Part III etc.), the late fee in addition to Rs. 7,500 shall be determined basis 0.025% of the product of amount involved in delayed reporting and number of years of delay rounded-upwards to the nearest month and expressed up to 2 decimal points.

It is imperative to note that the payment of LSF is an option (and not a compulsion) for regularizing reporting delays without undergoing the compounding procedure. LSF is made known to the Applicant along with the conditional approval of the respective report filed. The final acknowledgement/communication is given after LSF is paid by the Applicant.

[17] RBI A.P. (DIR Series) Circular No. 16, dated September 30, 2022

E. Goods and Service Tax Highlights

1. No GST applicable on liquidated damages

The Tamil Nadu[18] AAAR has upheld the ruling of AAR and held that the amount paid as 'liquidated damages' is an amount paid only to compensate for injury, loss or damage suffered by the aggrieved party due to breach of the contract. Further, the AAAR has also clarified that it is mere flow of money from the party who causes breach of the contract to the party who suffers loss or damage due to such breach and such payments do not constitute consideration for supply and hence, it is not taxable.

Katalyst comments:

The AAAR has relied upon the circular no. 178/10/2022-GST dated August 3, 2022 relating to GST applicability on liquidated damages. Further, the AAAR has clarified that the liquidated damages do not qualify as 'supply of service' as it is a 'condition to a contract' and not the 'consideration to a contract'.

2. ITC on Corporate Social Responsibility ('CSR') expenses incurred in furtherance of business is available

The Telangana[19] AAR has ruled that ITC relating to expenditure incurred to meet obligations under the CSR are available as the said expenditure is in relation to the furtherance of business. It has also clarified that the running of the business of a company will be substantially impaired if the said expenditure has not been made and failure to incur such expenditure attracts penalty u/s 135(7) of the Companies Act, 2013 which may go upto a maximum of Rs.1 Cr. Therefore, the expenditure made towards the CSR is an expenditure made in the furtherance of the business and ITC of the same is available.

Katalyst comments:

*It is pertinent to note that the Uttar Pradesh AAR in **Dwarikesh Sugar Industries Ltd [TS-1238-AAR(UP)-2020-GST]** has held that CSR expenses are incurred 'in course of business' and are eligible for ITC. Further, CESTAT Mumbai in **Essel Propack** has observed that CSR expenses have a direct bearing on smooth functioning of a Company by improving its image, and thereby, ITC on CSR expenditure can be claimed.*

[18] In the matter of Achampet Solar Private Ltd [TS-564-AAAR(TEL)-2022-GST]
[19] Bambino Pasta Food Industries Pvt Ltd. [TS-581-AAR(TEL)-2022-GST]

3. Electronic cash ledger (ECL) debit constitutes tax payment and NOT mere deposit of money in ECL before due date

Out of the total GST liability of INR 32 crores, INR 29 crores was already paid before the due date by the tax payer, however; GSTR-3B returns for the period July 2017 to December 2019 were not filed and the interest of INR 13 lakhs was demanded for late filing of GST returns. In this regard, the Jharkhand[20] HC upheld the demand of interest and held that "any registered person can pay the tax not later than the last date on which he is required to furnish such return" but "on filing of GSTR-3B only and therefore, any deposit in ECL prior to due date of filing of GSTR 3B return does not amount to discharge of tax liability due to State exchequer.

Katalyst comments:

The interest is payable on the tax liability discharged beyond due date. Further, the GST is deposited to ECL for the purpose of discharging GST liability only. However, post deposit of GST to ECL, if the GST return is not filed, interest should be paid on net GST liability (i.e., post adjustment of tax already paid) and not on the entire GST liability.

4. The SC directs Union of India ('UOI') to expedite paperless/e-filing before Courts/Tribunals

The SC[21] has instructed UOI to take all expeditious steps to ensure that filing by the Union Government of all appeals and proceedings before the High Courts as well as Revenue Tribunals (including CESTAT and ITAT) should take place in the e-filing mode/paperless mode.

Katalyst comments:

A welcome ruling by the Hon'ble Apex court. In relation to the directives issued to UOI earlier for integration of CESTAT, ITAT with Legal Information Management & Briefing System (LIMBS), the Apex court has accepted the suggestion of Tax payer to include the requirement that all filings relating to GST Tribunal should be in the electronic mode exclusively and that the tribunal should be paperless in its operations.

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[20] RSB Transmissions (India) Ltd vs. UOI & Ors [TS-589-HC(JHAR)-2022-GST]
[21] CCE and ST Surat vs. Bilfinder Neo Structo Construction Ltd [TS-590-SC-2022-GST]

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