KATALYST
ADVISORS LLP

Katalyst Kaleidoscope

October 2020: Tax and Regulatory Insights

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1. Bombay High Court[1]: gift of shares under internal restructuring not taxable as capital gains

The Assessee, a private company had transferred 4,20,090 equity shares of an associate company to another associate company for nil consideration as a part of internal restructuring in order to consolidate the onshore media assets of the group companies under one roof. The cost of these shares amounting to INR 1.41 Crs was recorded as a book loss by the assessee company in its books of accounts; however, it appears that no tax loss was claimed by the assessee company. The Assessing Officer ("AO") was of the view that that transfer of shares of listed entities at nil consideration amongst unlisted group entities was made with the sole purpose of avoiding payment of capital gains tax and such transfer clearly fell within the scope of a colorable device and worked out a capital gain amounting to INR 3.36 Crs.

The Assessee contented that these shares were gifted via a board resolution and there was no requirement of a gift deed and there is no provision in the law which prohibits a company from giving or receiving gifts. Further, there was no embargo on a company to gift any property in order for a "transfer" not to be considered as a transfer exigible to capital gains tax u/s u/s 47(iii) of the Income Tax Act ("ITA"). In light of the above, the Bombay High Court held that fair market value of shares gifted by a company cannot be exigible to capital gains tax owing to a specific exemption u/s 47(iii) of the ITA.

Katalyst Comments: *Gifting of shares between group entities has been a practice which has been followed by companies, time and again, for various business and commercial reasons and has also been allowed across various fora. This decision is a support for the proposition that corporate gifts are permissible. However, it is important to note that the such gift of shares of a company (listed or unlisted), now, could be subject to tax in the hands of the recipient company u/s 56(2)(x) of the ITA.*

2. Madras High Court: amendment to Section 50C (regarding immovable property) permits adoption of stamp-duty valuation retrospectively[2]

The assessee had entered into an 'Agreement to Sell' his property for a sum of INR 19 Crs. The assessee computing the capital gains taking into consideration INR 19 Crs as the sales consideration. According to the AO, the consideration as on the date of agreement to sell was not the full value of consideration; however, the reckoner value as on the date of registration was to be taken as the full value of consideration for the purposes of computing capital gains,

[1] Asian Satellite Broadcast Pvt. Ltd [TS-497-HC-2020(BOM)]
[2] Shri Vummudi Amarendran [TS-520-HC-2020(MAD)]

which was higher than the agreed sale price. The assessee sought to take the benefit of the proviso (i.e. the reckoner value as on the date of agreement to sell should be taken into account and not the reckoner value as on the date of registration), which, although was applicable from April 1, 2017, was introduced in order to relieve the assessee from undue hardship caused on account of charging capital gains on a higher sum on a date subsequent to the date of entering into agreement to sell. The CIT(Appeals) ("CIT(A)") took a contrary view and allowed the sum of INR 19 Crs to be charged as full value of consideration. The appeal of the Revenue was dismissed by the ITAT.

On further appeal, the Madras High Court observed that if a particular amendment is introduced with an objective to remove undue hardship, then the same should be treated as clarificatory and therefore, retrospective (i.e. the date on which a particular provision was inserted). Therefore, although the proviso was inserted with effect from April 1, 2017, the intent of the legislature was to adopt the reckoner value as on the date of agreement and not a subsequent date (i.e. date of registration). The High Court also observed that guideline valuation cannot be taken as the last word in respect of market value but the same can merely be a guiding factor while ascertaining the true market value.

Katalyst Comments: *The High Court upheld one of the fundamental principles of law that if an amendment is made to remove any undue hardship to the assessee, then the same needs to be treated as clarificatory and therefore, retrospective. Further, the observation that the reckoner value cannot be the last word while ascertaining the true market value will be much appreciated, especially in the current times when the real estate market all across the country has been badly hit.*

3. Bombay High Court: additional FSI to be categorized as land, and not as intangible rights, for the purpose of depreciation allowance[3]

The assessee had acquired certain rights in the form of additional Floor Space Index ("FSI") over and above the existing FSI, subject to payment of premium. However, this premium was to be paid under an instalment scheme. On payment of first instalment, assessee received the rights in the form of additional FSI which was capitalized in the books of account and a corresponding credit entry was made as a liability to be paid. This was also reflected in the balance sheet as the balance premium amount was shown as liability. This was categorized as "intangible rights" by the assessee company and a depreciation of 25% was claimed on it as the FSI would entitle the assessee to construct extra floors which would in turn increase the value of the property. The Tribunal held that the depreciation allowable would be on rates

[3] V.Hotels Limited [TS-486-HC-2020(BOM)]

applicable to building only i.e., @ 10% and not @ 25% for some kind of intangible right. This view was upheld by the Bombay High Court.

4. Mumbai ITAT: carry forward of brought forward capital loss permissible, quashes set off against exempt capital gains

The assessee company[4] was a tax resident of Mauritius and was registered with the Securities and Exchange Board of India ("SEBI") as a Foreign Institutional Investor ("FII"). The assessee company had claimed carry forward of past long-term capital losses in its return of income. The AO was of the view that when, pursuant to the India Mauritius Tax Treaty, the capital gains were not chargeable to tax in India, the assessee was neither required to show income under that head in its return, nor entitled to file a return showing capital losses merely for the purpose of getting the same carried forward to the subsequent years. This view of the AO was upheld by the Dispute Resolution Panel ("DRP"). Therefore, in effect, the carry-forward and set off of capital losses was not permitted by the AO.

On further appeal, the Tribunal concluded that the assessee was fully justified in claiming the carry forward of the capital losses. Accordingly, the Tribunal permitted carry forward of capital losses under the provisions of the domestic ITA, even though capital gains may be exempt under Article 13 of the India – Mauritius. The basic premise that the Tribunal relied here is that the assessee company could claim benefit for carry forward of capital losses under the domestic ITA, while continue to claim exemption from capital gains under the relevant DTAA, and that the assessee company cannot be compelled to first set off the capital losses against the capital gains.

Katalyst Comments: *It is for the assessee to examine whether or not in the light of the applicable legal and factual positions the provisions of the ITA are beneficial to him or that of the applicable DTAA. In any case, the tax treaty cannot be thrust upon an assessee. In case the assessee during one year does not opt for the tax treaty, it would not be precluded from availing the benefits of the said treaty in the subsequent years. Further, it is interesting to note that the Tribunal agreed to the stand taken by the assessee company that it is permitted to choose certain provisions of the domestic ITA for a particular leg (i.e. carry forward of capital losses) and certain provisions of the DTAA for the other leg.*

5. Karnataka High Court: depreciation allowable on intangible assets arising out revaluation of assets upon succession of a firm into a company

[4] Goldman Sachs Investments (Mauritius) Limited(TS-496-ITAT-2020(MUM))

The Assessee[5], a private limited company, engaged in the manufacturing, dealing and export of incense sticks had succeeded a partnership firm. Before the firm was converted into a company, the assessee had revalued all its assets and liabilities including the intangibles and accordingly, shares were issued to all the partners of the erstwhile firm, as consideration was. The assessee company then filed its return of income along with a depreciation claimed on the intangibles. The claim was rejected by the AO on the grounds that the assessee had neither purchased/acquired the intangible assets from any third party nor incurred any actual cost. This view was upheld by the Tribunal.

On further appeal, the High Court held that, it was a well-established fact that the partnership firm was the registered owner of various trademarks. Further, the valuation at the time of succession was done taking into consideration the necessary applicable accounting standards, which was accepted by the AO. The assessee and the erstwhile partnership firm were different entities and there was transfer of intangible assets by the partnership firm to the assessee for a valuable consideration, being allotment of shares even though the succession itself was exempt from capital gains tax u/s 47(xiii) of the ITA. Thus, the High Court, interestingly, held that depreciation should be allowable on the revalued amount, given that the revaluation was already done prior to the succession and not upon succession and therefore, the sixth proviso to section 32(1) which restricts aggregate depreciation in the hands of the successor, was not applicable in the present case.

Katalyst Comments: *This is an interesting decision since the Karnataka High Court has upheld depreciation on revalued intangibles, which may aid entities whose inherent value is as a result of intangibles itself. Further, this decision may also aid cases of amalgamation/ demerger where the revaluation was done in the books of the transferor company prior to the amalgamation/ demerger.*

6. Mumbai ITAT: Assessing Officer directed to examine depreciation on customer contracts acquired via a slump sale[6]

The Assessee Company had acquired the industrial steam turbines business of Alstom Siemens AG for a purchase consideration of INR 26 Crs. This purchase consideration has been allocated to fixed and intangible assets at fair values based on an independent valuation carried out by valuers. The Assessee Company had claimed depreciation on the customer contracts acquired under slump sale categorizing them as “business or commercial rights of similar nature”. This

[5] Padmini Products (P) Ltd [TS-523-HC-2020(KAR)]
[6] Demag Delaval Industries Turbomachinery Pvt. Ltd [TS-489-ITAT-2020(Mum)]

contention was rejected by the lower tax authorities as well as the CIT(A). However, the ITAT held that the depreciation is also available on business or commercial rights of similar nature and therefore, remitted the matter back to AO to re-examine depreciation on customer contracts being akin to goodwill.

Katalyst Comments: *This decision further reiterates the position that if consideration has been paid for acquisition of business, then depreciation on so much of the consideration as is represented by excess of consideration over the book value of net assets should also be allowed, since such excess consideration would represent business or commercial rights, for which the acquirer would have paid such excess consideration.*

7. Madras High Court: share premium arising on account of DCF valuation compared to Net Asset Value not a sufficient ground for share premium addition

The Assessee Company[7] had converted itself into a 3-Star hotel and in doing so had issued shares of face value INR 10/- at a premium of INR 1000/- per share after determining the price per share as per the Discounted Cash Flow Method ("DCF"). This was questioned by the AO as he was of the belief that the future projections were overstated and hence the valuation, and therefore the share premium was excessive. The CIT(A) and Tribunal upheld the views of the assessee that, in the absence of any intent to defraud the revenue, the DCF method was acceptable and the AO was not justified in making an addition of what he considered "excessive" share premium as income of the assessee company. The matter went upto the High Court, and the High Court remanded the matter to the AO for fresh consideration.

Katalyst Comments: *DCF method of valuation is not only an internationally accepted methodology but also is the primary method of valuation for several businesses. This decision reiterates the position that the choice of method to be adopted for share valuation is a prerogative of the assessee and so far as the assessee can justify the projections and other factors leading to the valuation, the same should be acceptable by the tax authorities.*

8. Bengaluru ITAT: long standing advances in the books of the assessee cannot be treated as a forfeited sum u/s 56(2)(ix)[8]

The assessee had entered into a sale agreement pertaining to certain land parcels. The assessee had certain sums as outstanding balances payable in his balance sheet against certain land deals which did not materialize owing to certain legal disputes. The AO was of the view that since these sums were still outstanding in the books of the assessee and no legal action

[7] VVA Hotels Private Limited [TS-509-HC-2020(MAD)]
[8] Shri Ravi Shankar Shetty [TS-521-ITAT-2020(Bang)]

was undertaken by the creditors, the said sum stood forfeited by the assessee and likewise taxable u/s 56(2)(ix) of the ITA. This view was upheld by the CIT(A).

The ITAT observed that there was no actual forfeiture on the part of the assessee, as the sums still stood outstanding in the books of the assessee and these were also confirmed by the lenders. Also, there was no negotiation for transfer of capital asset by the assessee with the parties involved. Therefore, the case was not hit by the provisions of Section 56(2)(ix).

9. Jaipur ITAT: construction of a residential house on a commercial plot shall be eligible for benefit u/s 54F of the ITA

The Assessee[9] had sold an agricultural land which she jointly held with her husband and two children. However, the AO invoking the provisions of section 50C re-ascertained the value of the land for stamp purposes and also denied the benefit u/s 54F of the ITA. This was upheld by the CIT(A). On further appeal, the ITAT held that the only condition to avail the benefit u/s 54F of the ITA was that either a residential house had to purchased or a house was required to be constructed for residential purposes within the stipulated time. Whether the plot on which the house had been constructed was of commercial or agricultural nature, was immaterial. The said condition was fulfilled by the assessee by constructing a house for residential purpose on the plot purchased by her, within the stipulated time. Thus, all the conditions for claiming deduction u/s 54F of the ITA were fulfilled by the assessee and all relevant details/evidences were submitted before the AO during the proceedings which were examined by him and nothing was pending on the part of the assessee to prove her claim as per provisions of section 54F of the ITA, the ITAT did not find any merit in denying the said benefit to the assessee.

10. Delhi ITAT: DDT on dividends to non-resident shareholders to be limited to the rates in the DTAA

The Assessee Company[10] was a wholly owned subsidiary of a German Parent, Giesecke & Devrient GmbH. The assessee had raised an additional ground whether the Dividend Distribution Tax ("DDT") levied in terms of section 115-0 of the ITA should be restricted to the rate of tax on dividends as provided in the applicable DTAA governing non-resident shareholders.

[9] Sarita Devi Garg [TS-484-ITAT-2020(JPR)]
[10] Giesecke & Devrient India Pvt. Ltd. [TS-522-ITAT-2020(DEL)]

The ITAT admitted the additional ground raised by the assessee and held that the liability to DDT under the ITA which falls on the company may not be relevant when considering applicability of rates of DDT set out in the tax treaties. The generally accepted principles relating to interpretation of treaties in the light of object of eliminating double taxation did not bar the application of tax treaties to DDT. Moreover, the Supreme Court Ruling in the case of Azadi Bachao Andolan[11] had observed that that in case of inconsistency between the DTAA and the ITA provisions, the DTAA shall prevail over the ITA provisions. Moreover, Sections 4 and 5 of the ITA are so crafted, that they enable the ITA to address the inconsistencies insofar as various DTAAs are concerned.

Katalyst Comments: *This is definitely a welcome ruling; however now the classical system of dividend taxation is applicable. The ruling could lead to various structuring avenues and may also open doors to FDI inflows. However, since the decision is not in favor of the revenue, it would be interesting to see how this case moves up the judicial hierarchy.*

11. CBDT issues guidelines u/s 194-O(4) and Section 206C (1H) on TCS and related provisions[12]

Further to the insertion of a new section 194-0 in the ITA which mandates an e-commerce operator to deduct income-tax at the rate of 1% with effect from October 1, 2020 of the gross amount of sale of goods or provision of service or both, facilitated through its digital or electronic facility or platform and the insertion of sub-section (1H) in section 206C of the ITA which mandates a seller receiving an amount as consideration for sale of any goods of the value or aggregate of such value exceeding INR 50 Lakh in any previous year to collect tax from the buyer a sum equal to 0.1% (0.075%) of the sale consideration exceeding INR 50 Lakh as income-tax at the time of receipt of amount of sales consideration, the CBDT is empowered to issue certain guidelines in order to clarify various issues surrounding these newly introduced provisions. These are as follows:

Sr. No.	Issues	Guidelines
1.	Applicability on transactions carried through various Exchanges	Not applicable to transactions in securities and commodities which are traded through recognized stock exchanges or cleared and settled by the recognized clearing corporation, including recognized stock exchanges or recognized clearing

[11] Union of India and Another Vs Azadi Bachao Andolan 263 ITR 706
[12] Circular No. 17 of 2020 dt. September 29, 2020.

		corporation located in International Financial Service Centre
2.	Applicability on Payment gateway	The payment getaway will not be required to deduct tax if the tax has been deducted by the e-commerce operator on the same transaction.
3.	Applicability of insurance agent or insurance aggregator	If the insurance agent or insurance aggregator has no involvement in transactions between insurance company and the buyer of insurance policy, he would not be liable to deduct tax for those subsequent years. However, the insurance company shall be required to deduct tax on commission payment, if any, made to the insurance agent or insurance aggregator for those subsequent years under the relevant provision of the ITA, then the taxes need to deducted.
4.	Calculation of threshold for the Financial Year 2020-21	• **Section 194-O:** If the gross amount of sale or services or both facilitated during the previous year 2020-21 (including the period up to September 30, 2020) in relation to an individual/ Hindu undivided family exceeds five lakh rupees, the provision of section 194-O shall apply on any sum credited or paid on or after October 1, 2020. • **Section 206C(1H):** Not applicable on any sale consideration received before October 1, 2020. Consequently, it would apply on all sale consideration (including advance received for sale) received on or after October 1, 2020 even if the sale was carried out before October 1, 2020.
5.	Applicability to sale of Motor Vehicle	• Receipt of sale consideration from a dealer of motor vehicles would be

		subjected to TCS under sub-section (1H) of the Act, if such sales are not subjected to TCS under sub-section (1F) of section 206C of the Act. • In case of sale to consumer, receipt of sale consideration for sale of motor vehicle of the value of INR 10 lakh or less to a buyer would be subjected to TCS under sub-section (1H) of section 206C of the Act, if the receipt of sale consideration for such vehicles during the previous year exceeds fifty lakh rupees during the previous year. • In case of sale to consumer, receipt of sale consideration for sale of motor vehicle of the value exceeding ten lakh rupees would not be subjected to TCS under sub-section (1H) of section 206C of the Act if such sales are subjected to TCS under sub-section (1F) of section 206C of the ITA.
6.	Adjustment for sale return, discount or indirect taxes	No adjustment on account of sale return or discount or indirect taxes including GST is required to be made for collection of tax under sub-section (1H) of section 206C of the ITA since the collection is made with reference to receipt of amount of sale consideration.

B. Corporate Law

1. MCA extends the time period of various relaxations offered owing the CoVID-19 situation

Sr. No	Particulars	Initial Date	Revised Date
1.	Companies Fresh Start Scheme, 2020 ("CFSS") – for active companies to put their defaults on		

	account of filing of various documents in order.	September 30, 2020	December 31, 2020
2.	LLP Amnesty Scheme: One-time condonation permitting delay in filing of documents with the RoC by the defaulting LLPs		
3.	MCA Condonation Scheme for filing of Charge Documents/Forms in relation to creation and modification of charges		
4.	Conducting and convening virtual EOGMs/Virtual Board Meetings		
5.	Empanelment of Independent Directors with the MCA portal		
6.	Creation of Deposit Repayment Reserve and Investment/Deposit regarding Debentures		

2. The (Indian) Companies (Amendment) Act, 2020[13] receives Presidential assent.

The (Indian) Companies (Amendment) Act, 2020 ("Act") has brought about certain significant changes. Some of these have been captured below:

a. Decriminalizing several offences;
b. Permitting the listing of Indian companies overseas;
c. Reduction in time limit for rights issue to be kept open, so as to enable faster completion of the issue process;
d. Certain unlisted companies having exposure to public funds to file periodic financial statements;
e. Credit for the amount spent in excess of 2% for CSR activities to be carried forward to subsequent years;
f. Fixed remuneration to Non-executive directors and Independent directors even in a situation when the companies have made inadequate profits or no profits;
g. Establishing additional benches of the National Company Law Appellate Tribunal ("NCLAT")

[13] The Ministry of Law and Justice on September 28, 2020

C. Securities' Laws

1. SEBI issues Informal Guidance[14] on contra trade restrictions and Take-over code restrictions.

The applicants are promoters of the listed company HEG Ltd. ("the Company") wish to undertake inter se transfer of certain number of share of the company amongst the promoter & promoter group (i.e. between individual and non-individual insiders) by way of block deal executed on the stock exchange. The proposed inter se transfer of shares amongst the Promoter & Promoter Group shall not exceed 5% and the acquirers are non-individual members of the promoter group. RSWM Limited and other members of the Promoter & Promoter Group (hereinafter referred to as ("Erstwhile Selling Shareholders") traded/sold certain number of shares in the open market during September 2019 i.e. 6 months prior to filing this interpretative letter with the SEBI. RSWM is not a party to the current transaction.

The SEBI responded that the contra-trade restrictions apply to the promoters individually and not the entire promoter group. Insofar as the any obligation to make an open offer is concerned, since in the current transaction the shares proposed to be transferred do not exceed 5%, there would be no open offer. Therefore, the question of an exemption under the Take Over Code would not arise.

2. SEBI issues a circular on standardization of procedures to be followed by debenture trustees[15]

The SEBI has issued a Circular prescribing the process to be followed by the Debenture Trustee(s) in case of 'Default' by Issuers of listed debt securities which includes seeking consent from the investor or enforcement of security and/or entering into an Inter-Creditor Agreement ("ICA").
The Circular recognizes event of default and the actions in case of default by the issuer. The key ones are as below:

- The Debenture Trustee shall send a Notice containing inter alia, positive consent for signing of ICA to all the investors and shall convene the meeting for enforcement of security.
- The Debenture Trustee shall ensure that the resolution plan under ICA shall be in the interest of investors, shall be in compliance of the Companies Act, 2013 and Rules made thereunder and Securities Contracts (Regulations) Act, 1956 and SEBI Act, 1992 and
- The resolution plan shall be finalized within 180 days.

[14] SEBIIHOIISD/OW /P/2020/10749/1 dt. June 4, 2020
[15] SEBI/HO/MIRSD/CRADT/CIR/P/2020/203 dt. October 13,2020

3. SEBI revises FAQs on Insider Trading[16]

In order to streamline certain ambiguities and interpretational aspects with respect to insider trading, the SEBI has clarified certain queries. The key ones have been captured in the table below.

Sr. No.	Questions	Responses
1.	Whether requirement of pre - clearance is applicable for exercise of employee stock options?	No
2.	Whether trading in ADRs and GDRs by employees of Indian companies who are foreign nationals is covered under provisions of PIT Regulations on code of conduct?	Yes, In order to make any disclosures by such designated persons, a unique identifier analogous to PAN may be used.
3.	What information should a listed Company maintain in its structured digital database, in case the designated person is a fiduciary or intermediary?	• Details of Unpublished Price Sensitive Information ("UPSI"); • Details of persons with whom such UPSI is shared (along with their PANs/other unique identifier) and details of persons who have shared the information.
4.	In case a designated person resigns, what information should be collected by the company/ intermediary/ fiduciary under PIT Regulations?	• All information which is required to be collected from designated persons, should be collected till date of service of such employees with the company. Upon resignation from service of designated person, a company/ intermediary/ fiduciary should maintain the updated address and contact details of such designated person.

[16] Clarifications on Insider Trading dt. October 8, 2020

		• These need to be updated and maintained for one year after resignation from service. Such data should be preserved for a period of 5 years.

D. RBI and Foreign Exchange Regulations

Delhi High Court: reservations of the Enforcement Directorate ("ED") cannot prevent the RBI from allowing a company to make remittance to its foreign subsidiary[17]

The Petitioner Company ("Company") had sought permission from the RBI through its concerned AD Banker to remit funds to its wholly owned subsidiary overseas. These funds were to be utilized by the said overseas subsidiary to meet their financial commitments towards foreign lenders failing which the overseas subsidiary would have defaulted in meeting its overseas financial obligations. This permission was rejected by the RBI owing to pendency of investigation/enquiries under the PMLA and FEMA as expressed by the ED to the RBI.
The High Court held that the RBI needs to excretion its discretion bearing in the mind the erstwhile permissions it had granted to the company with respect to the FEMA ODI Regulations. Further, bearing in mind the facts and circumstances pertaining to the company, the RBI cannot hold the reservations by the ED as a base so as to not grant permission for remittance.

E. Others

The Insolvency and Bankruptcy Board of India ("IBBI") issues Use of Caveats, Limitations and Disclaimers in Valuation Reports Guidelines, 2020[18]

With a view to make the valuation reports issued more sacrosanct from the point of view of the Registered Valuer ("RV") and also in the interest of credibility of the RVs, the IBBI has issued certain guidelines vide a press release ("**Guidelines**"). These Guidelines have been issued in exercise of the powers under Rule 14(i) the Companies (Registered Valuers and Valuation) Rules, 2017 which provides a comprehensive framework for development and regulation of the profession of valuers, and have set standards of professional conduct and performance for the valuation profession in the interest of stakeholders.

[17] Jindal Steel & Power Limited vs. RBI [LSI-652-HC-2020(DEL)]
[18] IBBI Press Release dt. September 1, 2020

These Guidelines shall be applicable on all the valuation reports to be finalised by RVs on or after October 1, 2020. Broadly, these guidelines are divided into 3 sections which are as follows:

- Need for Caveat, Limitations and Disclaimers
- Guidance note on Caveat, Limitations and Disclaimers
- Asset-Class wise samples of Caveat, Limitations and Disclaimers

These Guidelines provide guidance to the RVs in the use of caveats, limitations, and disclaimers in the interest of credibility of the valuation reports. These also provide an illustrative list of the caveats, limitations, and disclaimers which shall not be used in a valuation report.

F. Goods and Service Tax

1. No refund of input services in case of inverted duty structure is available

The taxpayer filed the petition before Madras High Court[19] and argued that the GST law which did not provide refund of input services in case of inverted duty structure should be read down and provision restricting refund only to inputs was against article 14 and 38 of the Constitution of India("COI"). In this regard, the Madras High Court has held that importance should be given to the words used in the statute and they are to be given the meaning in the manner in which they are read. The term 'Inputs' used in Sec 54(3)(ii) clearly means that the provision excludes Input services and Capital goods. Further, rule 89(5) has been amended in conformity with Sec 54(3)(ii) and the Hon'ble HC accordingly held that Section 54 does not violate Article 14 of COI and that Rule 89(5) is intra-virus with parent statute.

Katalyst Comments: *Madras HC also took a note on the judgement of Hon'ble Gujarat HC in case of VKC footsteps on the same subject but distinguished on the grounds that the said judgement did not discuss the provisions of Section 54 (3) (ii) in detail. Although Hon'ble Apex court can resolve the issue of two contrary judgments by Madras and Gujarat high courts, the Government should suitably amend the law to reflect the fundamental GST principle of seamless flow of credit.*

2. Sale of transferable development rights (TDR) and Floor Space Index (FSI) in open real-estate market is liable to GST as 'Service'

[19] Tvl. Transtonnelstroy AFCONS Joint Venture vs. UOI

The Appellant was awarded TDR/FSI as consideration in pursuance of land transferred to Pune Municipal Corp. which was sold in Real-Estate-market. In this regard, the Maharashtra Appellate Authority of Advance Ruling ("AAAR")[20] has held that TDR/FSI "is a benefit arising out of land and not land itself", would be leviable to GST under Heading 9972 at the rate of 18% as per Entry at Sl. No. 16 (iii) of Notification No. 11/2017 and rejected the Appellant's plea that 'TDR' is transaction in money.

3. Lease of plot for 99 years is not sale of land and payment of lease premium to State Development Authority is chargeable to GST.

Ahmedabad Urban Development Authority ("AUDA") carried out e-auction for leasing of certain plots for 99 years which could be only used for commercial projects and Applicant secured bid for the same on payment of one-time lease premium as consideration. Applicant claimed that a long-term lease is nothing but akin to sale and hence, no GST is payable. However, the Gujarat Authority for Advance Rulings[21] ("AAR") has held that lease of plot for 99 years by the Applicant is not sale of land but it is a lease of plot/land and applicant is liable to pay GST on payment of onetime lease premium and annual premium.

4. ITC of lift installation charges are not available

The Maharashtra AAAR[22] has held that the Appellant is not entitled for ITC of lift installation charges due to the fact that the lift when erected, installed and commissioned in a building would be construed as an integral part of the building and hence, will be treated as immovable property. Further, definition of Plant & Machinery u/s 17(5) of the CGST Act, categorically excludes building or any civil structure and since, the lifts are construed as an integral part of the building and hence, no ITC of lift installation charges are available.

5. Implementation of the requirement of Dynamic QR Code on B2C invoices[23]

Applicability of QR code for B2C transactions for E-Invoices has been postponed to December 01, 2020. Also, the requirement of generating a QR code shall apply if the turnover exceeds Rs. 500 Crore during any financial year from 2017-18.

[20] Vilas Chandanmal Gandhi [TS-816-AAAR-2020-NT]
[21] Jinmangal Corporation [TS-832-AAR-2020-NT]
[22] In the matter of M/s Las Palmas Co-operative Housing Society
[23] Notification No. 71/2020-CT dated September 30, 2020

6. A special procedure for taxpayers for issuance of e-Invoices during the period October 01, 2020 to October 31, 2020[24]

Considering the difficulties faced by taxpayers in generating the IRN, it has been notified that registered persons who are required to obtain an IRN and have not done so during the period October, 1 2020 to October 31, 2020, may upload the specified particulars in FORM GST INV-01 on the IRP, within 30 days from the date of invoice. However, in case of failure, the invoice generated without an IRN shall not be considered as valid.

7. Key highlights of the 42nd GST Council Meeting held on 5th October (To be notified)

- Extension on levy of Compensation Cess till June 2022.
- Input Tax Credit would be automatically derived from FORM GSTR 2B from January 01, 2021 for monthly return filers and from April 01, 2021 for quarterly return filers.
- Mandatory filing of GSTR 1 before filing GSTR 3B with effect from April 01, 2021.
- Present system filing of FORM GSTR-1 and FORM GSTR 3B is extended till March 31, 2021.

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[24] Notification No. 73/2020-CT dated October 01, 2020