

# **MONTHLY LAW REPORT FOR SEPTEMBER, 2017**

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**MONTHLY LAW REPORT FOR SEPTEMBER, 2017**  
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## Circulars and Notifications Issued by Ministry Of Corporate Affairs (MCA)

Notification & Circular No.	Date of Issue	Subject
<p><b>1. Notification No. : GSR1176(E)  MANU/DCAF/0082/2017</b></p>	<p><b>21<sup>st</sup> September, 2017</b></p>	<p><b>Subject: Companies (Restriction on number of layers) Rules, 2017</b> - In exercise of the powers conferred under proviso to clause (87) of section 2, section 450 read with sub-sections (1) and (2) of section 469 of the Companies Act, 2013, the Central Government hereby makes the following rules, namely:-</p> <p><b>1. Short title and Commencement.-</b> (1) These rules may be called the Companies (Restriction on number of layers) Rules, 2017. (2) They shall come into force on the date of their publication in the Official Gazette.</p> <p><b>2. Restriction on number of layers for certain classes of holding companies.-</b> (1) On and from the date of commencement of these rules, no company, other than a company belonging to a class specified in sub-rule (2), shall have more than two layers of subsidiaries: Provided that the provisions of this sub-rule shall not affect a company from acquiring a company incorporated outside India with subsidiaries beyond two layers as per the laws of such country: Provided further that for computing the number of layers under this rule, one layer which consists of one or more wholly owned subsidiary or subsidiaries shall not be taken into account. (2) The provisions of this rule shall not apply to the following classes of companies, namely:-</p>

	<p>(a) a banking company as defined in clause (c) of section 5 of the Banking Regulation Act, 1949;</p> <p>(b) a non-banking financial company as defined in clause (f) of Section 45-I of the Reserve Bank of India Act, 1934 which is registered with the Reserve Bank of India and considered as systematically important non-banking financial company by the Reserve Bank of India;</p> <p>(c) an insurance company being a company which carries on the business of insurance in accordance with provisions of the Insurance Act, 1938 and the Insurance Regulatory Development Authority Act, 1999;</p> <p>(d) a Government company referred to in clause (45) of section 2 of the Act.</p> <p>(3) The provisions of this rule shall not be in derogation of the proviso to sub-section (1) of section 186 of the Act.</p> <p>(4) Every company, other than a company referred to in sub-rule (2), existing on or before the commencement of these rules, which has number of layers of subsidiaries in excess of the layers specified in sub-rule (1) -</p> <p>(i) shall file, with the Registrar a return in Form CRL-1 disclosing the details specified therein, within a period of one hundred and fifty days from the date of publication of these rules in the Official Gazette;</p> <p>(ii) shall not, after the date of commencement of these rules, have any additional layer of subsidiaries over and above the layers existing on such date; and</p> <p>(iii) shall not, in case one or more layers are reduced by it subsequent to the commencement of these rules, have the</p>
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		<p>number of layers beyond the number of layers it has after such reduction or maximum layers allowed in sub-rule (1), whichever is more.</p> <p>(5)If any company contravenes any provision of these rules the company and every officer of the company who is in default shall be punishable with fine which may extend to ten thousand rupees and where the contravention is a continuing one, with a further fine which may extend to one thousand rupees for every day after the first during which such contravention continues.</p>
<p><b>2. Notification No. : S03086(E) MANU/DCAF/0083/2017</b></p>	<p><b>21<sup>st</sup> September, 2017</b></p>	<p><b>Subject: Enforcement date of proviso to clause (87) of Section 2 of Companies Act, 2013</b> - In exercise of the powers conferred by sub-section (3) of section 1 of the Companies Act, 2013 (18 of 2013), the Central Government hereby appoints the 20th September, 2017 as the date on which proviso to clause (87) of section 2 of the said Act shall come into force.</p>
<p><b>3. Notification No. : S03085(E) MANU/DCAF/0084/2017</b></p>	<p><b>21<sup>st</sup> September, 2017</b></p>	<p><b>Subject: Amendment in notification number S.O. 3118(E), dated the 3rd October, 2016</b> - In exercise of the powers conferred by sub-section (1) of section 210A of the Companies Act, 1956, the Central Government hereby makes the following further amendments in the notification of the Government of India, in the Ministry of Corporate Affairs, number S.O. 3118(E), dated the 3rd October, 2016, published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (ii) dated the 3rd October, 2016, namely:-</p> <p>2. In the said notification,-</p> <p>(i) in paragraph 1, for serial number 2 and the entries relating thereto, the</p>

		<p>following serial number and the entries shall be substituted, namely:-</p> <table border="1" data-bbox="878 243 1425 583"> <tr> <td data-bbox="878 243 967 583">"(2)</td> <td data-bbox="967 243 1224 583">Shri Sanjay Gupta, President, Nominee of the Institute of Cost Accountants of India</td> <td data-bbox="1224 243 1425 583">Member, [nominated under clause (b) of sub-section (2) of section 210A of the said Act].";</td> </tr> </table> <p>(ii) in paragraph 2, for the words "one year" the words "two years" shall be substituted.</p>	"(2)	Shri Sanjay Gupta, President, Nominee of the Institute of Cost Accountants of India	Member, [nominated under clause (b) of sub-section (2) of section 210A of the said Act].";
"(2)	Shri Sanjay Gupta, President, Nominee of the Institute of Cost Accountants of India	Member, [nominated under clause (b) of sub-section (2) of section 210A of the said Act].";			
<p><b>4. Notification No. : GSR1172(E) MANU/DCAF/0081/2017</b></p>	<p><b>20<sup>th</sup> September, 2017</b></p>	<p><b>Subject: Companies (Acceptance of Deposits) Second Amendment Rules, 2017</b> - In exercise of the powers conferred by sections 73 and 76 read with sub-section (1) and sub-section (2) of section 469 of the Companies Act, 2013, the Central Government hereby makes the following rules further to amend the Companies (Acceptance of Deposits) Rules, 2014, namely:-</p> <p>1. (1) These rules may be called the Companies (Acceptance of Deposits) Second Amendment Rules, 2017.</p> <p>(2) They shall come into force on the date of their publication in the Official Gazette.</p> <p>2. In the Companies (Acceptance of Deposits) Rules, 2014 (hereinafter referred to as the principal rules), in rule 3, in sub-rule (3), for the proviso, the following shall be substituted, namely:-</p> <p>"Provided that a Specified IFSC Public company and a private company may accept from its members monies not exceeding one hundred per cent. of aggregate of the paid up share capital, free reserves and securities premium account and such company shall file the</p>			

	<p>details of monies so accepted to the Registrar in Form DPT-3.</p> <p>Explanation.-For the purpose of this rule, a Specified IFSC Public company means an unlisted public company which is licensed to operate by the Reserve Bank of India or the Securities and Exchange Board of India or the Insurance Regulatory and Development Authority of India from the International Financial Services Centre located in an approved multi services Special Economic Zone set-up under the Special Economic Zones Act, 2005 read with the Special Economic Zones Rules, 2006:</p> <p>Provided further that the maximum limit in respect of deposits to be accepted from members shall not apply to following classes of private companies, namely:-</p> <p>(i) a private company which is a start-up, for five years from the date of its incorporation;</p> <p>(ii) a private company which fulfils all of the following conditions, namely:-</p> <p>(a) which is not an associate or a subsidiary company of any other company;</p> <p>(b) the borrowings of such a company from banks or financial institutions or any body corporate is less than twice of its paid up share capital or fifty crore rupees, whichever is less ; and</p> <p>(c) such a company has not defaulted in the repayment of such borrowings subsisting at the time of accepting deposits under section 73:</p> <p>Provided also that all the companies accepting deposits shall file the details of monies so accepted to the Registrar in Form DPT-3."</p> <p>3. In the principal rules, in the Annexure,</p>
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		for Form DPT-3, the following shall be substituted, namely:- Form DPT-3
<b>5. General Circular No. : 10/2017 MANU/DCAF/0080/2017</b>	<b>13<sup>th</sup> September, 2017</b>	<b>Subject: Obligation to comply with the Indian Accounting Standards (Ind AS) and Rule 4 of Companies (Indian Accounting Standards) Rules, 2015- Payment Banks, Small Finance Banks which are subsidiaries of Corporates -</b> The Ministry vide notification no. GSR 365 (E) dated 30.03.2016 notified Companies (Indian Accounting Standards) Amendment Rules, 2016 inter-alia amending Companies (Indian Accounting Standards) Rules, 2015. Some stakeholders have sought clarifications with regard to implementation of Ind AS wherein the holding company has Payment Banks or Small Finance Banks as its subsidiaries. 2. The matter has been examined and it is hereby clarified that the holding company if it is covered by the corporate sector roadmap for implementation of Ind AS, shall follow the corporate sector roadmap and if the company has got payment bank or small finance bank as its subsidiary then subsidiary company shall follow the banking sector roadmap prescribed vide RBI circular BR.BP.BC.No.76/21.07.001/2015-16 dated 11th February, 2016 on "Implementation of Indian Accounting Standards (Ind AS)" read with circular DBR.NBD.No.25/16.13.218/2016-17 dated 6th October, 2016 on "Operating Guidelines for Payments Banks". However, the Payment Banks or Small Finance Banks shall provide the Ind AS financial data to its holding company for the purpose of consolidation.

		3. This issues with the approval of competent authority.
<b>6. Notification No. : SO2938(E) MANU/DCAF/0079/2017</b>	<b>6<sup>th</sup> September, 2017</b>	<b>Subject: Delegation of powers and functions vested in the Central Government under Section 66(2) of Companies Act, 2013 to the Regional Directors at Mumbai, Kolkata, Chennai, New Delhi, Ahmedabad, Hyderabad and Shillong</b> - In exercise of the powers conferred by section 458 of the Companies Act, 2013, the Central Government hereby delegates to the Regional Directors at Mumbai, Kolkata, Chennai, New Delhi, Ahmedabad, Hyderabad and Shillong, the powers and functions vested in it under sub-section (2) of section 66 of the said Act, subject to the condition that the Central Government may revoke such delegation of powers or may itself exercise the powers under the said sub-section, if in its opinion such a course of action is necessary in the public interest. 2. This notification shall come into force with effect from the date of its publication in the Official Gazette.

**Companies Act, 2013 Case Laws**  
**By Advocate P.K. Mittal, +91-9811044365**

- ✚ **Section 102 & 196(3) of the Companies Act, 2013 - dealing with Reappointment of retiring directors:** Where the Board of Directors did not comply with the above provisions by not enclosing draft special resolution and explanatory statement along with notice, the special resolution for reappointment of directors and subsequent meetings held later on would be held null and void. **Subrata Ghosh vs. Sabitendra Nath Roy and Others.** [2017] 140 CLA 1 (Cal.)
- ✚ Petition for Rectification of Register of Members is not maintainable before NCLT where the issue related to title of shares is the main issue to be decided



in the suit pending in a civil court between the parties. **N Ramji vs. Ashwath Narayan Ramji. [2017] 140 CLA 13 (Mad.)**

- ✚ Where there is lot of distrust between the petitioner and respondents giving rise to total mess in the functioning of the company, it is just and proper to provide exit to the petitioner, being minority shareholder rather than removing illegally. **Surinder Kumar Viridi vs. Beavers Leathers (P.) Ltd. and Others. [2017] 140 CLA 1 (NCLT)**
- ✚ Section 46(2) & 56(1) of the Companies Act, 2013 – The said provisions does not specifically indicate that the Tribunal can give direction to the company to issue duplicate shares. However, it can do so when share certificates are proved to have been lost and the Board of directors did not exercise its discretion to issue duplicate share certificates. **Hasmukh Bachubhai Baraiya vs. Symphony Ltd. [2017] 139 CLA 397 (NCLT)**
- ✚ Amendment application cannot be allowed to add new causes of action to the petition, but it can be partly allowed to the extent that it really relates to real controversies in the original petition. **Fidaali Moiz Mithiborwala vs. STMPL Enterprises (P.) Ltd. and Others. [2017] 139 CLA 384 (NCLT)**
- ✚ Where the petitioner, being 50 percent shareholder and director of the company, kept quiet for more than 4 years without bothering about what was happening in the company, he is not entitled to relief u/s 241 & 242 of Companies Act, 2013(dealing with Oppression/Mismanagement) due to delay and laches. **Rahuldev Pramodkar Vyas vs. Surgi Aid Lifecare (P.) Ltd. and Others. [2017] 139 CLA 369 (NCLT)**
- ✚ The NCLT is constituted to render speedy justice in time bound manner without giving scope to raise frivolous pleas in between by amending pleadings. **P Ram Bhoopal and Others vs. Pragnya Riverbridge Developers Ltd. and Others. [2017] 139 CLA 255 (NCLT)**
- ✚ Even if it is found by the Tribunal that there is some Oppression/Mismanagement, the Tribunal is well within it's jurisdiction to decide as to what relief should be granted taking into consideration the interest of the company. **P B Amolik and Others vs. Bombay Diocesan Trust Association (P.) Ltd. and Others. [2017] 139 CLA 283 (NCLAT)**

## Insolvency and Bankruptcy Code, 2016 Judgments By Advocate P.K. Mittal, +91-9811044365

- ✚ **NCLT dismisses Insolvency petition against BHEL, held 'disputed debt' of job-work** - The NCLT rejected insolvency petition filed by Teknow Consultants & Engineers Pvt. Ltd.'s against Bharat Heavy Electricals Ltd. (BHEL). It was noticed that the Operational Creditor was awarded 3 job works by Corporate Debtor for civil work of insulation to be executed at 3 sub-stations which in terms of the conditions stipulated in the job orders, the Corporate Debtor reserved its right to withhold amounts due to the Operational Creditor and was also not liable to pay any interest. It further observed that the Corporate debtor exercised lien to withhold the amounts claimed under the invoices, linking it with their entitlement to receive amounts against the work under 3rd contract. During pendency of the petition and without prejudice to the submissions made, NCLT observes that the liability to pay the claim is disputed and has still not been laid to rest. It concluded that "dispute exists in respect of the claim made by the Operational Creditor". **[LSI-1894-NCLT-2017-(NDEL)]**
  
- ✚ **NCLT admits petition under IBC Code, 2016 for Corporate Debtor's failure to pay undisputed debt** - The NCLT admits the petition filed by Neeraj Papers Ltd. against Rainbow Papers Ltd., directs appointment of interim Insolvency Resolution Professional and declares moratorium. It notes that Corporate Debtor failed and neglected to pay an amount under Invoice within prescribed time. But rejects operational creditor's objection that the Certificate issued by the financial institution u/s 9(3)(c) of the Insolvency and Bankruptcy Code, 2016 was not filed, and that the tenure of statement of accounts is for wrong period. It held that the resolution to institute insolvency resolution proceedings before Adjudicating Authority is sufficient and adequate. **[LSI-1895-NCLT-2017-(AHM)]**
  
- ✚ Where the certificate attached by the respondents to the application is issued by a foreign bank which is not recognized as 'Financial Institution' u/s 3(14) of the Insolvency and Bankruptcy Code, 2016 and the application in the prescribed form is not complete, the application u/s 9 is not maintainable. **Uttam Galva Steels Ltd. vs. DF Deutsche Forfait AG and Another. [2017] 140 CLA 36 (NCLAT)**
  
- ✚ Petition u/s 9 of IBC, 2016 has to be filed individually and not jointly. A joint application u/s 9 is not maintainable as it is not practical for more than one

Operational Creditor to file a joint petition. **Uttam Galva Steels Ltd. vs. DF Deutsche Forfait AG and Another. [2017] 140 CLA 36 (NCLAT)**

- ✚ Where Notice issued by an Advocate/lawyer who is not authorized by the appellant and who held no position with or in regard to appellant, cannot be treated as notice u/s 8, and hence petition u/s 9 at the instance of the appellant is not maintainable. **Macquarie Bank Ltd. vs. Uttam Galva Mettalics Ltd. [2017] 140 CLA 27 (NCLAT)**
- ✚ Merely because Notice was not given to Corporate Debtor before admission, the order of the Adjudicating Authority for ascertaining default cannot be rendered illegal, where the appellant had intervened before admission and its objections were considered. **Innoventive Industries Ltd. vs. ICICI Bank. [2017] 139 CLA 335 (NCLAT)**
- ✚ Petitioner will not lose Locus Standi to file petition to initiate Corporate Resolution Process solely on the ground that it has got itself reimbursed from the insurer of the goods. **Macquarie Bank Ltd. vs. Uttam Galva Mettalics Ltd. [2017] 139 CLA 216 (NCLT)**
- ✚ Where Corporate Insolvency Resolution Process has been initiated against the subsidiary company, the petitioner cannot initiate parallel proceedings against the holding company also on the same cause of action. **Himalay Dassani vs. Isolux Corsan India Engineering & Construction (P.) Ltd. [2017] 139 CLA 361 (NCLT)**
- ✚ Objections filed by the financial creditors are tenable where corporate debtor and its directors are trying to avoid making lawful payments, not furnishing particulars of properties mortgaged and trying to remove personal properties of directors from clutches of law. **In Re : Unigreen Global (P.) Ltd. [2017] 139 CLA 101 (NCLT)**
- ✚ **NCLT admits insolvency Petition against Corporate Guarantor for Principal Borrower's payment default** – The NCLT admits petition u/s 7 of the Insolvency and Bankruptcy Code, 2016 filed by IDBI Bank Ltd. against BCC Estates Pvt. Ltd., appoints Insolvency Professional and directs public announcements. It noted that Corporate Debtor has given unconditional and irrevocable Corporate Guarantee to Bhatia Global Trading Ltd. It dismisses Corporate Debtor's submission that Corporate Debtor is only a guarantor but not a principal borrower, and held that "it is a settled law that liability of the Guarantor is co-extensive with that of the Principal Borrower, it is for the

creditor to choose against whom he wants to proceed, there is no bar in law which prevents any creditor to proceed against both the Principal Borrower and Guarantor". It also dismissed Corporate Debtor's argument that the Principal Borrower is already undergoing Corporate Insolvency Resolution Process and if resolution process is commenced against Corporate Debtor then it would amount to redundancy of proceedings. [LSI-1874-NCLT-2017-(AHM)]

**Income Tax Circulars, Notifications and Press Release  
By CA Manoj Kumar Mittal, +91-9810764620**

**CBDT Modifies Guidelines For Stay Of Demand By The AO**

The CBDT has issued Office Memorandum dated 31st July 2017 by which it has amended the conditions stipulated in the earlier OM dated 29.02.2016 pursuant to which the AO is empowered to grant a stay of the outstanding demand till the disposal of the appeal by the CIT(A)

**CBDT Order Issued U/s 119 To Extend Due Date To File Return Of Income For AY 2017-18**

Further to the press release dated 31.07.2017, the CBDT has issued an order dated 31.07.2017 under section 119 of the Act to extend the due date for furnishing the return of income for AY 2017-18

**CBDT notified changed format that is form no. 29B under section 115JB of the Income Tax Act, 1961**

The CBDT vide Notification No. 80/2017/F. No. 133/23/2015-TPL dated 18, August, 2017 changed the format of form No 29B in relations to report by Chartered Accountants in respect of Books profit under section 115JB of the Income Tax Act.

**The Central Government specifies Indian bond issued by Railway Finance Corporation Limited a long term specified assets**

The central Govt vide Notification No. 79/2017/F. No. 370142/18/2017-TPL dated 08.08.2017 specified bond redeemable after three years and issued by the Indian Railway Finance Corporation Limited referred in Section 54 EC shall be a long term specified assets.

**The Central govt specifies country for the purpose of section 9A(3).**

The Central Govt vide [Notification No. 78/2017/F. No. 142/15/2015-TPL vide dated 03.08.2017 specifies the country for purpose of section 9A(3).

### **The central Govt specifies the notification in relation of section 9A(3)**

In exercise of the powers conferred by the proviso to sub-section (3) of section 9A of the Income-tax Act, 1961 (43 of 1961), the Central Government hereby notifies that the conditions specified in clauses (e), (f) and (g) of said sub-section shall not apply in case of an investment fund set up by a Category-I or Category-II foreign portfolio investor registered under the Securities and Exchange Board of India (Foreign Portfolio Investors) Regulations, 2014, made under the Securities and Exchange Board of India Act, 1992 (15 of 1992). 2. This notification shall come into force from the date of its publication in the Official Gazette. [Notification No. 77 /2017/F. No. 142/15/2015-TPL] DATED 03.08.2017.

## **Income Tax Case Laws** **By CA Manoj Kumar Mittal, +91-9810764620**

### **Case Laws**

#### **Domestic Case Laws**

##### **ITO vs Deputy Superintendent of Police & 2, 85 taxmann.com 17 (Gujarat)**

Where Police authorities seized cash from respondent Nos. 2 and 3 while they were travelling in a car, since department had not issued any requisition with respect to said cash under section 132A and, moreover, same could not have been withheld under provision of Code of Criminal Procedure, impugned order passed by DSP releasing said cash did not require any interference.

##### **79 taxmann.com 292 (Delhi)/[2017], Unitech Hospitality Services Ltd.**

Where original allottees transferred rights and interest in land to a company which further sold land to assessee, in absence of any obligation upon assessee to reimburse development charges to original allottees, no deduction could be claimed against cost.

##### **SLP aginst this decision of DHC dismissed by SC**

##### **85 taxmann.com 15 (Madhya Pradesh), Rohit Agrawal vs PCIT**

Where despite several opportunities, assessee did not account for amount deposited in his saving account and as a result ex parte assessment order was framed, in view of fact that it was only when penalty order was passed and recovery proceedings started that assessee filed a revision, there was no infirmity in order of Principal Commissioner in dismissing said revision

**85 taxmann.com 29 (Madras), Sanmina SCI India (P.) Ltd.**

Where in computing relief under section 10A adjustment of brought forward losses was neither proposed in draft assessment notice nor DRP on appeal, gave such a direction, Assessing Officer could not make such adjustment while passing final assessment order.

**84 taxmann.com 275 (Bombay), Shankarlal Bhagwatiprasad Jalan**

Statement declaring undisclosed income by assessee being recorded after date of search, could be of no evidentiary value in terms of section 132(4)

Undisclosed income for block period has to be computed on basis of material found in course of search and declaration made by assessee under VDIS being not material discovered during course of search, same cannot form basis of assessment.

**DCIT vs Rehau Polymers (P.) Ltd, 85 taxmann.com 23 (Pune - Trib.)**

Where Assessing Officer passed final assessment order under section 143(3) making certain adjustment to assessee's ALP without passing draft assessment order, said order being against provisions of section 144C, deserved to be set aside.

**85 taxmann.com 6 (Jammu & Kashmir), Lakesh Handa**

Conversion of standard 24 carat gold into 22 carot gold jewellery or ornaments through processes employed by assessee amounted to 'manufacture' for purpose of deduction under section 80-IB.

**International Tax Laws**

**81taxmann.com419(Delhi-Trib.) ONGC as Representative Assessee of University of Calgary, Alberta, Canada vs ADIT**

Where assessee-company had made payments to Foreign entity in terms of contract for long term collaboration, participation, training, maintenance of air injection equipment for increasing recovery of oil, said payment was to be treated as 'fees for technical services' as per provisions contained in section 9(1)(vii)

Section 44BB applies in a case where consideration is for services relating to exploration activity which are not in nature of technical services; if consideration is in nature of fee for technical services, provisions of either section 44DA or section 115A will be applicable

**60 taxmann.com 465 (Bangalore - Trib.), DCIT Infosys BPO Ltd.**

Where assessee made royalty payments to non-residents, since benefit of DTAA was available to said recipients, their TDS liability could not be more than rate prescribed under DTAA or Act whichever was lower

Where Assessing Officer while issuing intimation under section 200A, raised demand for TDS at higher rate ignoring provisions of DTAA, since there was no arithmetical error or incorrect claim apparent from any information in statement, impugned order travelled beyond jurisdiction of Assessing Officer as per provisions of section 200A

**54 taxmann.com 286 (Delhi - Trib.), ION Geophysical Corporation vs ADIT**

Tax rate of 10 per cent under section 115A(BB) will be applicable for agreement made after 1-6-2005 in respect of fee for technical services received by a US-company instead of rate of tax at 15 per cent as per India-US DTAA.

**Meinhardt Singapore Pte. Ltd. Vs ADIT, 52 taxmann.com 245 (SC),**

SLP granted against order of High Court where it was held that reassessment of assessee-non resident technical consultant could be made only for those year in which fact of sub-consultancy contract entered by it was not brought to notice of Assessing Officer, however same could not be reopened where fact of sub-consultancy was duly recorded.

**40 taxmann.com 145 (Delhi - Trib.), Technip Italy SPA**

Where addition to income of assessee on account of onshore supply of equipment was based on estimation of income, penalty under section 271(1)(c) could not be levied.

Where assessee had a bona fide belief regarding manner of taxability of income on account of design and engineering fees on net income basis and all facts material to computation of income were duly disclosed by assessee, penalty under section 271(1)(c) could not be imposed

**Transfer Pricing Case Laws**

**79 taxmann.com 208 (Chennai - Trib.), Symantec Software & Services India (P.) Ltd. Vs DCIT,**

Company engaged in product development and product design services would not be comparable to assessee engaged in providing software development and technical support services to its AE.

**76 taxmann.com 25 (Chennai - Trib.), iNautix Technologies India (P.) Ltd. Vs DCIT**

Where turnover of assessee was Rs. 600 crores, comparable having turnover of Rs. 62.5 crores was to be excluded from comparable list.

**76 taxmann.com 123 (Bombay), Haworth (India) (P.) Ltd vs CIT**

Assessee can sought exclusion of comparable on basis of Director's report available before prescribed date as per section 92(F)(iv).

**65 taxmann.com 245 (AAR - New Delhi), Dow Agro Sciences Agricultural Products Ltd.**

Where a Mauritian Company, proposed to transfer shares acquired by it during period of 20 years in Indian company to a company proposed to be incorporated in Singapore, with an object of group re-organisation, transaction having begun 20 years back, it could not be said that it was for tax avoidance and, therefore, profit arising therefrom would not be subjected to tax in India in terms of article 13 of DTAA between India and Mauritius

When acquisition of shares started from year 1999 which were sold after almost 20 years, and, there had been no transaction for sale of those shares earlier, said shares were capital assets as defined in section 2(14) of Act

Provisions of section 115JB would not be applicable to a foreign company if it is a resident of a country having DTAA with India and such foreign company does not have a PE in terms of relevant DTAA

Where income from proposed transaction was not chargeable to tax in India, there will be no question of applicability of sections 92 to 92F

Where proposed transaction of shares would not be taxed in India, there is no need to file return under section 139 by applicant

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