### Nagarjuna Oil Corporation Ltd T.C.A. Nos. 60 To 62 of 2017 Madras High Court In favour of Assessee

**Issues discussed and addressed:**

Section 194 I–One Time Payment for 99 years of Lease - No TDS as it does not amount to rent.

**Facts of the Case:**

The Tribunal following the decisions in the case of Tril Infopark Ltd. v. ITO (TDS) [2017] 88 taxmann.com 390 (Chennai - Trib.) and Foxconn India Developer (P.) Ltd. v. ITO (TDS) [2012] 24 taxmann.com 48/53 SOT 213 (Chennai - Trib.) had held that one time lump sum paid by the Assessee for getting 99 years lease of land from the Government Undertaking viz., SIPCOT was a payment in the nature of rental and therefore, the Assessee was required to deduct tax at sources under section 194 I of the Act.

**Held by the Court:**

The earlier view of the learned Tribunal stood reversed by a Co-ordinate Bench of this Court in the case of Foxconn India Developer (P.) Ltd. v. ITO (TDS) [2016] 68 taxmann.com 95/239 Taxman 513 (Mad.) in which a Division Bench had held that such lump sum payment made by the Assessee for getting a long term lease does not amount to payment of rent and the same is not adjustable against the annual rent payable by the Assessee and therefore, the provisions of Section 194I of the Act will not apply to such circumstances. The said judgment of the Division Bench of this Court has since been accepted by the Central Board of Direct Taxes which has issued Circular No. 35/2016 [F.NO.275/29/2015-IT (B)], dated 13-10-2016, holding that the Assessee is not entitled to deduct any tax at sources in such circumstances.

### Abdul Wahid & Co Madras High Court In favour of Assessee

### T.C.A. Nos. 512 and 513 of 2018 & C.M.P. No. 10632 of 2018 in T.C.A. No. 513 of 2018

**Issues discussed and addressed:**

Section 2(22(e) – Deemed Dividend – No addition can be made as the recipient firm is not a share holder.

**Facts of the Case:**

The assessment was completed u/s 148 r.w.s. 143(3) by making addition on account of dividend in the hands of assessee firm on the ground that a sum of Rs. 2 Crores was shown as unsecured loan obtained from A Ltd, [hereinafter referred to as the 'company'] by the assessee firm. One of the partners of the assessee firm, namely, T. who held 35% stake in the assessee partnership firm, was also a share holder in the company holding 26.25% shares. Therefore, it was stated that the shareholder of the company had substantial interest in the firm and consequently, the concept of deemed dividend under Section 2(22)(e) of the Act would apply.

The case of the assessee was that it was purchasing finished leather from the company for manufacture of shoe and shoe uppers and during the financial year ending 31-3-2012, the assessee firm had to pay a sum of Rs. 6,31,49,598 to the company towards the supply of leather. Further, to maintain working capital ratio for the purpose of retaining existing working capital facility from the bank, Rs. 2 crores was transferred from the sundry creditors for trade running account of the company, as deferred liability, which was shown under the balance sheet under the head of ''unsecured loan'', since the amount was payable after one year, otherwise, the assessee firm should have declared the same under 'current liability' payable within a day.

**Held by the Court:**

The provisions of Section 2(22(e) would stand attracted when a payment is made by a company, in which public are not substantial interested by way of advance or loan to a share holder, being a person who is the beneficial owner of the shares. On facts, it is clear that the payment has been made to the assessee, a partnership firm. The partnership firm is not a shareholder in the company. The records placed before the assessing officer clearly shows the nature of transaction between the firm and the company and it is neither a loan nor an advance, but a deferred liability. These facts have been noted by the assessing officer. In such circumstances, this Court is of the view that the Tribunal rightly reversed the order passed by the Commissioner (Appeals) affirming the order of the assessing officer.

**Judgments Relied Upon by the Court:**

a. CIT v. Ankitech Pvt. Ltd. & Ors. (2012) 340 ITR 0014 (Del)
b. T. Abdul Wahid & Co. v. ACIT [ITA Nos.1796 & 1797/Mds/2017, dt. 17-10-2017].)

## Jeans Knit (P) Ltd. I.T.A. No. 383 of 2012 Madras High Court In favour of Assessee

**Issues discussed and addressed:**

TDS u/s 195 - Section 9(1)(vii) - Inspection and ensure of quality of fabric, scheduled shipment of raw material and other related services rendered by the non-resident company would not fall within the services contemplated under section 9(i)(vii) of the Act

**Facts of the Case:**

The assessee company engaged in the business of manufacturing and export of garments and 100% export oriented undertaking required to import accessories from other countries and mostly from Europe. For the aforesaid purpose, the assessee had engaged M/s. S (hereinafter referred to as 'non resident company' for short) to render various services at the time of import such as inspection of fabrics, timely dispatch of

material etc. The assessee company paid 12.5% of the import value as charges to the aforesaid non resident company without deduction of TDS. The AO *inter alia* held that non resident company is a service provider and is not an agent of the assessee and the services rendered by non resident company have to be treated as technical services and are squarely covered under the scope and ambit of section 9(1)(vii) of the Act. The assessee failed to deduct the Tax at source at the rate of 10% and therefore, the assessee was treated as an assessee in default.

**Held by the Court:**

It is well settled rule of interpretation of taxing statute that words not defined in the Act must be interpreted in their popular sense meaning, 'that since, which people conversant with the subject matter with which statute is dealing would attribute to it. The words therefore, have to be interpreted according to ordinary parlance and must be given a meaning, which people conversant with the commodity would ascribe to it. (SEE: 'Orient Traders v. Commerical Tax Officer, Tirupati', (2008) 14 SCC 440 : 2009 TaxPub(EX) 1281, 'State of Madhya Pradesh v. Marico Industries Ltd.,', Air 2016 SC 3462 and 'Vijaya Gopala Lohar v. Pandurang Ramchandra Ghorpade & Ors.', Air 2019 SC 3272). It is pertinent to mention here that expression 'managerial', 'technical' and 'consultancy services' employed in Explanation 2 to section 9(1)(vii) of the Act have neither been defined under the Act nor under the general clauses Act, 1987. Therefore, the aforesaid words have to be understood in the sense in which they are understood by the persons engaged in the business and by the common man who is aware and understands the same. The Delhi High Court in 'CIT v. Bharti Cellular Ltd.,', (2009) 319 ITR 139 (Delhi) : 2009 TaxPub(DT) 0996 (Del-HC) as well as in the case of Panalfa ITA No. 292/2014, dated 22-7-2014 dealt with word 'consultancy' and held that the word 'consultancy' has been defined in the Black's Law Dictionary, 8th Edition as an act and advise of someone (such as a lawyer). It has further been held that it may mean a meeting in which parties consult or confer. For consultation service under Explanation 2, there should be a provision of service by the non-resident, who undertakes to perform it, which the acquirer may use. The service must be rendered in the form of an advice or consultation given by the non-resident to the resident Indian payer. The aforesaid decisions were referred to approval in M/G Grup ISM (P) Ltd., ITA No. 325/2014, dated 29-5-2015 and it has been held that consultancy services ordinarily would not involve instances where the non-resident is acting as a link between the resident and another party, facilitating the transaction between them, or where the non-resident is directly soliciting business for the resident and generating income out of such solicitation. It is equally well settled legal proposition that tribunal is a fact finding authority and decision on facts rendered by the tribunal can be gone into by High Court only if a question is referred to it, which says the finding is

perverse (See: Santhosh Hazari v. Purushottam Tiwari', (2001) 3 SCC 179 (SC) : 2001 TaxPub(DT) 1102 (SC) and a decision of this court in CIT v. Soft Brands (P) Ltd.', (2018) 406 ITR 513 (Karn-HC) : 2018 TaxPub(DT) 3520 (Karn-HC).

From the agreement executed by the assessee with the non-resident company, it is evident that the non-resident company is required to inspect the quality of fabric and other accessories in accordance with the sample approved by the assessee and coordinate with the suppliers to ship the goods within stipulated date. The services have been described in the *Agreement* as information and tracking services. Under the agreement, the non-resident company is required to ensure coordination with the suppliers, so that goods are shipped on time and to undertake necessary coordination and ensure that correct quantity and quality of goods are shipped to assessee. It is pertinent to mention here that the assessee in consultation with the exporters identifies the manufacturers as well as the quality and price of the material to be imported. The non-resident company is nowhere involved either in identification of the exporter or in selecting the material and negotiating the price. The quality of material is also determined by the assessee and the non-resident Indian company is only required to make physical inspection to see if it resembles the quality specified by the assessee. For rendering aforesaid service, no technical knowledge is required. The tribunal on the basis of meticulous appreciation of evidence on record, has recorded a finding that non-resident company is not rendering any consultancy service to the assessee. Therefore, the same would not fall within the services contemplated under section 9(1)(vii) of the Act.

## Hybrid Financial Services Ltd ITA Nos. 1265 & 1469 of 2017 Bombay High Court Assess's Favour

**Issues discussed and addressed:**

Section 36(1)(vii) - Bad Debts on account of Inter Corporate Debts and advances given either for purchase of vehicles or plant and machinery - No requirement under the Act that the bad debt has to accrue out of income under the same head i.e 'income from business or profession' to be eligible for deduction - All that is required is that the debt must be written off by the assessee in its books of accounts as irrecoverable.

**Facts of the Case:**

Assessee company engaged in the business of providing finance in the field of lease and higher purchase transaction, management consultancy services etc, had claimed bad debts of Rs. 13,01,04,359.00 by writing off inter corporate deposits and advances given either for purchase of vehicles or plant and machinery. However AO had held that a debt is allowable only when it is a debt arising out of and is incidental to the trade carried out by the assessee and hence he disallowed the claim of assessee.

**Held by the Court:**

it is a settled position in law that after 1-4-1989, it is not necessary for the assessee to establish or prove that the debt has in fact become irrecoverable but it would be sufficient if the bad debt is written off as irrecoverable in the accounts of the assessee. This is because, as held by this Court, decision to treat a debt as a bad debt is a commercial or business decision of the assessee. Recording of a debt as a bad debt in his books of accounts by the assessee prima facie establishes that it is a bad debt. If the Assessing Officer disputes that the onus would be on him to prove otherwise.

Tribunal recorded from the materials on record that admittedly, the debt in question had been written off as irrecoverable in the accounts of the assessee. If that be the position, then there is compliance to the requirement of Section 36(1)(vii) of the Act and the amount covered by the bad debts would be entitled to be deducted vide computing income under section 28 of the Act. Further there is no requirement under the Act that the bad debt has to accrue out of income under the same head i.e 'income from business or profession' to be eligible for deduction. This is not a requirement of law. All that is required is that the debt in question must be written off by the assessee in its books of accounts as irrecoverable.

**Judgments Relied Upon by the Court:**

a. T.R.F. Ltd. v. CIT [2010] 190 Taxman 391/323 ITR 397 (SC)
b. CIT v. Shreyas S. Morakhla [2012] 19 taxmann.com 64/206 Taxman 32/342 ITR 285

## Rameshbhai Jivraj Desai R/T A No. 216 of 2020 Gujarat High Court In favour of Assessee

**Issues discussed and addressed:**

Section 153A – Assessment which attained finality cannot be disturbed in absence of any incriminating material found during search.

**Facts of the Case:**

Despite there being no incriminating material found during search, the AO completed the assessment in respect of unabated assessment year by making additions with respect to items of the regular assessments being income from the sale of the land which was disclosed in the income tax return.

**Held by the Court:**

The tribunal is justified in holding that in absence of any incriminating material related to the given assessment year found during search, assessment u/s. 153A of the Act cannot be made for that assessment year for which assessment has been concluded on the date of search and not abated.

## Srinivasan Chandira Kumar ITA No. 204 of 2015 Karnataka High Court Against Assessee

**Issues discussed and addressed:**

Section 48 – Payment to trust by virtue of share transfer agreement cannot be treated as expenditure incurred wholly and exclusively in connection with the transfer of shares.

**Facts of the Case:**

Pursuant to a share purchase agreement, assessee, an individual sold all his shares of T Ltd along with other shareholders to E Ltd and declared long term capital gain on sale of said shares in return of income. Shareholder of T Ltd were required to pay a particular sum in terms of clause 29 of the said agreement to a trust set up by sellers for the benefit of employees and selective ex employees of the aforesaid company. The assessee had claimed a deduction of proportional amount of the said sum while computing long term capital gains treating it as an expenditure incurred wholly and exclusively in connection with transfer of shares as contemplated under section 48(i) which was however disallowed by the AO.

**Held by the Court:**

Tribunal has correctly held that claim made by assessee to fund could at best be regarded as voluntary payment and not as expenditure wholly and exclusively with transfer of shares and there does not arise any substantial question of law.

## Futurz Next Services (P) Ltd ITA Nos. 1383 & 2396/Del/2017 Delhi ITAT In favour of Assessee

**Issues discussed and addressed:**

Section 50C - Provisions of section 50C cannot be incorporated in computation of block of assets

**Facts of the Case:**

Opening written down value of building block was of Rs. 3,51,97,290 and full value of consideration of property sold as per section 50C was Rs. 2,87,14,500. Assessee requested AO to reduce written down value of building block by Rs. 2 crores being the actual sale consideration but AO reduced WDV by Rs. 2,87,14,500.

**Held by the ITAT:**

Provisions of section 50C cannot be incorporated in computation of block of assets for the simple reason that it only substitutes full value of the consideration received or accruing as a result of transfer for the purposes of section 48' only. Therefore, AO was directed to reduce WDV of asset only by Rs. 2 crores, which had been received by assessee on sale of property. Opening WDV of block building which stood at Rs. 3,51,97,290 was required to be reduced by Rs. 2 crores only, thereby WDV remained of Rs. 1,51,97,290 on

which assessee would be entitled to depreciation @ 10 % amounting to Rs. 15,19,729, against which assessee had claimed depreciation of Rs. 35,19,729, therefore, excess depreciation claimed by assessee was disallowed.

### Satyam Smertex (P) Ltd. /.T.A. No. 2445/Kol/2019 Kolkata ITAT In favour of Assessee

**Issues discussed and addressed:**

Section 68 – Income from Undisclosed Sources – AO failed to disprove materials placed before him. Addition made on the mere ground that assessee failed to produce directors of investor companies or investing companies were having very meagre income, could not be sustained.

**Facts of the Case:**

Assessee received share capital along with premium. AO required assessee to produce directors of investor companies before him, however, assessee did not do so. Further, investing companies were having very meagre income and, therefore, AO drew adverse inference against introduction of share capital along with premium and made addition of amount received under section 68.

**Held by the ITAT:**

Assessee by furnishing PAN details, bank account statements, audited financial statements and IT acknowledgements of investor companies and directors thereof discharged its onus to prove identity and creditworthiness of share applicants and genuineness of concerned transactions of receipt of share capital along with premium and since, AO failed to disprove materials placed before him addition made under section 68 on the mere ground that assessee failed to produce directors of investor companies or investing companies were having very meagre income, could not be sustained.