

PADMA VIBHUSHAN N. A. PALKHIVALA MEMORIAL NATIONAL MOOT COURT (VIRTUAL) COMPETITION, 2021

organised jointly by

The All India Federation of Tax Practitioners,
Goods and Services Tax Practitioners Association of Maharashtra
&
Maharashtra National Law University Mumbai

26th - 28th November, 2021



Moot Proposition

- 1.M/s XYZ Pvt. Ltd. (Assessee) is a private limited company incorporated in India engaged in real estate development.
- 2.During the Financial year 2012-13 i.e., Assessment Year (AY) 2013-14, the Assessee received investment from AB Ltd, an Indian company. AB Ltd purchased the 50,000 shares of Face Value of Rs. 10/- at a premium of Rs. 13,990/.
- 3.Subsequently, the assessee raised another round of funding from CD (Mauritius) Ltd, a company incorporated in Mauritius. CD (Mauritius) Ltd purchased 30,000 shares of Face Value of Rs. 10/- at a premium of Rs. 19,990/-
- 4.For AY 2013-14, the Assessee filed its return of Income October 15, 2013.
- 5.The case of the assessee was selected for scrutiny and a Notice under section 143(2) of the Act dated July 06, 2014 was issued to the Assessee.
- 6.Subsequently, a Notice under section 142(1) of the Act dated October 02, 2014 was issued wherein a question pertaining to the share capital investment, inter alia, was raised.
- 7.The Assessee furnished PAN, ITR and a copy of bank transaction with AB Ltd. For CD(Mauritius) Ltd, the assessee furnished TRC, Audited Financial Statements and a copy of bank transaction.
- 8.The Ld. Assessing Officer (AO) passed an order under section 143(3) of the Act dated March 29, 2015, making an addition of Rs. 70,00,00,000/- under section 68 of the Act for not explaining the source of source of the investment.
- 9.The Assessee preferred an appeal against the order of the AO before the Commissioner of Income-tax (Appeals) (CIT(A))

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10. The Ld. CIT(A) passed an Order dated December 2, 2019, wherein the Ld. CIT(A) modified the Assessment Order and made an addition of Rs. 70,00,00,000 under section 56(2)(vii) of the Act on excessive share premium received on the issuance of shares.

11. The Assessee preferred an appeal before the Order of the CIT(A) before the Hon'ble Income-tax Appellate Tribunal and the matter is sub judice before the Hon'ble Tribunal.

12. On November 2020, a search and seizure action were carried on a ZT group, wherein a diary was found wherein, inter alia, the following journal entries were recorded:

“AB	700
To XYZ	700
....	
CD	600
To XYZ	600”

13. The Ld. AO issued a Notice under section 148 of the Act on April 02, 2021, to the Assessee requiring the assessee to file its return.

14. The assessee filed its return under protest, returning the same income as offered in the original return under section 139(1) of the Act and vide letter dated April 10, 2021 request for a copy of the reasons recorded in accordance with the guidelines laid down by the Hon'ble Supreme Court in the case of GKN Driveshaft v. ITO (2003) 259 ITR 19 (SC).

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15. The Ld. AO vide letter dated April 15, 2021 provided a copy of the recorded reasons and sanction obtained from the appropriate authority.

16. The recorded reasons contained extracts from the diary seized from the ZT group and a statement recorded from one of the employees of the ZT group that they were involved in providing accommodation entry. The investment of Rs. 130,00,00,000 is considered as bogus and an addition under section 68 of the Act is proposed.

17. The assessee filed its objections against the reasons recorded for issuance of Notice under section 148 Act vide letter dated April 25, 2021.

18. The Ld. AO disposed of the objections raised by the Assessee vide a speaking Order.

19. The Assessee has preferred a Writ Petition before the Hon'ble High Court against the Re-assessment proceedings.

Note:

All Circulars & Notifications issued by the Central Board of Direct Taxes extending due dates on account of COVID-19 are relevant.

Issues:

1. Whether the Writ Petition challenging the Notice under section 148 of the Act is maintainable or not?
2. Whether the Notice under section 148 of the Act is void of jurisdiction?
3. Whether the proposed additions under section 68 of the Act deserve to be deleted on merits?