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DIRECT TAX REVIEW
AUGUST 2020

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SUPREME COURT RULINGS

Capital Gains arising out of land acquisition compensation were chargeable to income-tax u/s 45 for PY referable to date of award of compensation and not date of notification for acquisition

Facts

Proceedings for acquisition of capital asset of assessee were taken up by way of a notification and award of compensation was made. At the time of issuance of initial notification for acquisition, subject land was already in possession of beneficiary college under a lease even after expiry of lease. The Revenue asserted that transfer reached its completion, resulting in capital gains, only on date of award.

Ruling

The Hon'ble Apex Court ruled that matter of compulsory acquisition of land under Act of 1894 for public purpose, property was to vest absolutely in Government (thereby divesting owner of all his rights therein) only after taking of possession in either of methods i.e., after making of award, as provided in section 16 or earlier than making of award, as provided in section 17. Where the possession was taken over before arriving of relevant stage for such taking over, capital gains shall be deemed to have accrued upon arrival of relevant stage and not before. The assessee continued to carry its status as owner of land in question and the status was not lost only because a part of land remained in possession of College, land vested in Government on date of initial notification remains totally baseless and was to be rejected. Further, the transfer of capital asset (land in question), for purposes of section 45 of Act of 1961, was complete only date of award and not on date of notification for acquisition u/s 4 of Act of 1894. The Court held that the AO had rightly assessed tax liability of assessee on long-term capital gains arising on account of acquisition, on basis of amount of compensation allowed as also enhanced amount of compensation accrued finally to the assessee and as regards interest income, had rightly made protective assessment on accrual basis.

Source: SC in Raj Pal Singh vs. CIT, Haryana
ITA No. 2416 of 2010, dated August 25, 2020

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HIGH COURT RULINGS

Court allows writ petition under Article 226 of the Constitution of India inter alia seeks mandamus for directing the respondent to grant refund as determined under Section 143(1) while pendency of assessment proceedings

Facts

Assessee was a company providing hospital services to the general public. During the assessment proceedings, in a personal hearing granted to the assessee, it was informed that the refund had been withheld under Section 241A of the Act. Neither the copy of the order

nor the reasons for withholding the refund were provided to the assessee and accordingly, the present writ petition was filed seeking directions in this regard.

Ruling

The Court held that exercise of withholding of refund under section 241A of the Act, pursuant to notice u/s 143(2) of the Act, without recording justifiable reasons, is not in consonance with the legislative intent and mandate of the aforesaid provision. The reasons cited do not support the finding that refund would adversely affect the Revenue. In view of the aforesaid, we hold that the reasoning given by the Income-Tax Officer is contrary to Section 241A of the Act. Accordingly, we set aside the impugned communication/ order dated 10.01.2020. The Court granted 3 weeks' time to the respondents to re-consider the aspect whether the amount found due to be refunded, or any part thereof, is liable to be withheld under Section 241A in line with the decisions of this court as noted above.

Source: HC, Delhi in Cooner Institute Of Health Care and Research Centre Pvt. Ltd. vs. ITO

WPC No. 430 of 2020, dated August 1, 2020

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Penalty levied under incorrect limb of 271(1)(c) not maintainable

Facts

Penalty u/s 271(1)(c) was levied on the assessee for furnishing inaccurate particulars of income as a result of the default committed by the appellant in not offering the capital gains arising out of the entire sale consideration in the financial year relevant to the Assessment Year 2005-06.

Ruling

The Court held that concealment of particulars of income was not the charge against the appellant, the charge being furnishing of inaccurate particulars of income. As discussed above, it is trite that penalty cannot be imposed for alleged breach of one limb of Section 271(1)(c) of the Act while penalty proceedings were initiated for breach of the other limb of Section 271(1)(c). This had certainly vitiated the order of penalty.

On the ground that while the charge against the assessee was of furnishing inaccurate particulars of income whereas the penalty was imposed additionally for concealment of income, the order of penalty as upheld by the lower appellate authorities could be justifiably interfered with, still we would like to examine whether there was furnishing of inaccurate particulars of income by the assessee in the first place because that was the core charge against the assessee.

It was quite evident to the Court that assessee had declared the full facts and the sale agreement at the first instance; the full factual matrix or facts were before the Assessing Officer while passing the assessment order. It was clear from the facts that the appellant had never suppressed any material fact from the respondent. Hence we are inclined to accept the submissions of the appellant. It is another matter that the claim based on such facts was found to be inadmissible. This is not the same thing as furnishing

inaccurate particulars of income as contemplated under Section 271(1) (c) of the Act. Thus, on a careful examination of the entire matter, the Court answered the substantial question of law in favour of the assessee.

Source: HC, Bombay in Om Prakash Mehta vs. ITO
ITA No. 1742 of 2011, dated August 17, 2020

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Interest on delayed refund becomes part of the principle amount and the delayed interest includes the interest for not refunding the principle amount.

Facts

For the assessment years 1996-97 to 1999-2000, certain refunds arising out of excess TDS were issued in favour of the assessee. However, interest under section 244-A of the Act was not paid in respect of some of the refunds, while in the case of some other refunds, interest was paid for a shorter period than what was claimed by the assessee. The appeal of the assessee was allowed by the ITAT directing the revenue to pay compensation in the shape of simple interest on the amount due at the rate at which the assessee otherwise would have been entitled to, on the delayed payment of excess tax paid. The revenue preferred the current appeal before the High Court.

The following substantial questions of law arise for consideration in this appeal:

i. Whether the Hon'ble ITAT was right in law in directing the department to pay compensation in the shape of simple interest on the amount due at the rate at which the assessee otherwise would have been entitled to without appreciating the fact that assessee was duly paid interest u/s 244A on delayed refund upto the date of issue of refund?

ii. Whether the Hon'ble ITAT was right in law in ignoring the fact that there is no provision under the Income-tax Act for payment of compensation on delayed refund and interest paid?

iii. Whether Hon'ble ITAT on Misc. Appl. filed by Department erred in holding that issue cannot be decided u/s 254(2) and the only remedy is to file appeal before Hon'ble High Court?

The revenue contended there is no provision under section 244-A of the Act in respect of payment of interest on delayed refund.

Ruling

The Court countering the revenue's contentions to the effect that there is no provision under section 244-A of the Act in respect of payment of interest on delayed refund is concerned, the Hon'ble Supreme Court in Commissioner of income Tax v. HEG Ltd., has elaborated the words 'any amount'. The interest on the delayed refund becomes part of the principle amount and the delayed interest includes the interest for not refunding the principle amount. Accordingly, it also includes the interest on the delayed refund.

Ruling the substantial question in law in favor of the assessee, the Court dismissed the revenue's appeal having been below the monetary tax limit as per instructions of CBDT.

Source: HC, Himachal Pradesh in PCIT vs. Solan District Truck Operators Transport Co-op. Society
ITA No. 3 of 2020, dated August 17, 2020

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ITAT RULINGS

Where agreement for sale entered prior to insertion of provisions of Section 56(2)(vii), no addition for difference in consideration and SRO value called for

Facts

The AO invoked provisions of section 56(2)(vii)(b) of the Act and taxed the difference between the consideration paid and the SRO value as on the date of agreement amounting to Rs. 4,55,11,750/- and completed the assessment. Since the agreement for sale was entered into by the assessee for the purpose of purchase of the property in August, 2012 related to the Financial Year 2012-13, relevant to the Assessment Year 2013-14, which is prior to insertion of section 56(2)(vii)(b) of the Act, whereas the provisions of section 56(2)(vii)(b) was introduced in the Finance Act, 2013 w.e.f. A.Y.2014-15, the Ld CIT(A) held that section 56(2)(vii)(b) has no application in the assessee's case and accordingly deleted the addition made by the AO and allowed the appeal of the assessee. The revenue aggrieved with order of the CIT(A), filed the present appeal before the Tribunal. Pertinent to note the registry was done in AY 2014-15 itself.

Ruling

The Ld. DR further submitted that the issue involved in this case is the applicability of section 56(2)(vii)(b) and argued that the decision rendered in the context of section 50C is not relevant in the instant case. By the time the property was registered the provisions of section 56(2)(vii)(b) has come into force and hence, argued that the provisions of section 56(2)(vii)(b) are squarely applicable in the instant case and the stamp duty value as on 13-8-2012 required to be taxed as income in the hands of the assessee.

The assessee submitted that though the assessee had entered into agreement for purchase of property on 13-8-2012, the assessee could not get the property registered due to the problems in obtaining the original title deeds which were in the custody of bank due to the loans as evidenced from the order of the Ld. CIT(A). Therefore, submitted that there is sufficient evidence available from the order of the Ld. CIT (A) that there is genuine cause for delay in registration, which is beyond the control of the purchaser. The advance payment was made by cheque and there was an agreement for purchase of the property for Rs. 5 crores, hence, submitted that there is no application of section 56(2)(vii)(b)(ii) of the Act in the instant case.

The Tribunal observed that in the assessment order, the AO acknowledged the fact that the assessee had entered into an agreement for purchase of the property for a sum of Rs. 5 crores and paid the advance of Rs. 5 crores on 13-8-2012. There is no dispute with regard to existence of agreement. From the order of the Ld. CIT(A), it is observed that the property was in dispute due to bank loan and the original title deeds were not available for complying with the sale formalities. Therefore, there was a delay in obtaining the title deeds for completing the registration. Thus, we find that there is genuine cause for delay in getting the property registered.

The department has not brought any evidence to show that there was extra consideration paid by the assessee over and above the sale agreement or sale deed. No other case law of any high court supporting the contention of the department was brought to our notice by the Ld. DR. Therefore, the tribunal held that the Ld. CIT(A) has rightly applied the decision of this Tribunal in the assessee's case and deleted the addition.

Source: ITAT, Visakhapatnam in ACIT vs. Anala Anjibabu
ITA No. 415 of 2019 dated August 17, 2020

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CIRCULARS & NOTIFICATIONS

Imposition of Charge on the prescribed electronic modes u/s 269SU of the Income Tax Act, 1961

The Board observed that some banks are imposing and collecting charges on transactions carried out through UPI. A certain number of transactions are allowed free of charge beyond which every transaction bears a charge. CBDT held that such practice on part of banks is a breach of section 10A of the PSS Act as well as section 269SU of the IT Act. Such breach attracts penal provisions u/s 271DB of the Act as well as section 26 of the PSS Act.

Banks have been advised to refund the charges collected, if any, on or after January 1, 2020 on transactions carried out using the electronic modes prescribed u/s 269SU of the Act and not to impose charges on any future transactions carried through the said prescribed modes.

Pl. note:

- In order to encourage digital transactions and move towards a cash-less economy the Finance (No. 2) Act 2019 inserted a new provision namely section 269SU in the Income-tax Act, 1961
- Section provides that every person having a business turnover of more than Rs. 50 crores during the immediately preceding PY shall mandatorily provide facilities for accepting payments through prescribed electronic modes
- A new provision namely section 10A was also inserted in the Payment and Settlement Systems Act 2007 which provides that no Bank or system provider shall impose any charge on a payer making payment, or a beneficiary receiving payment, through electronic modes prescribed u/s 269SU
- A circular no. 32/2019 dated December 30, 2019 was also issued by the Board to clarify that based on section 10A of the PSS Act, any charge including the MDR (Merchant Discount Rate) shall not be applicable on or after January 1, 2020 on payment made through prescribed electronic modes.

Source: Circular No. 16/2020 dated August 30, 2020.

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CBDT notifies Procedure for assessment under Faceless Assessment

The process of assessment and appeal was completely manual which in a way hampered the integrity of the departmental officers and transparency in assessment/appeal proceedings.

To overcome the issues of non-integrity, non-transparency and to promote digitalization and bring efficiency, the government implemented “E-Assessment Scheme, 2020” i.e. faceless assessments scheme vide notification No. 61/2019 dated 12th September, 2019.

However, all the assessment proceedings were not covered under the scheme. Therefore, the scheme of "E-assessment" has been replaced with "Faceless Assessment" and the procedure for assessment under the scheme has been laid down in the aforesaid notification.

Source: Notification No. 60/2020 dated August 13, 2020.

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CBDT notifies additional conditions for Pension Funds for exemption u/s 10(23FE) of the Income Tax Act, 1961

A new section 10(23FE) was inserted in the Union Budget, 2020 in order to promote investment of sovereign wealth funds, including the wholly-owned subsidiary of Abu Dhabi Investment Authority (ADIA). This section grants tax exemption to interest, dividend and capital gains income of Sovereign Wealth Fund and a wholly-owned subsidiary of the ADIA subject to fulfilment of certain conditions, in respect of investment made in the infrastructure sector or other deserving notified sectors before March 31, 2024 and with a minimum lock-in period of 3 years.

The additional conditions are as given below:

i. The pension fund must be regulated by the foreign law under which it is created or established
ii. It is responsible for administering or investing the assets for meeting the statutory obligations and defined contributions of one or more funds or plans established for providing retirement, social security, employment, disability, death benefits or any similar compensation to the participants or beneficiaries of such funds or plans,
iii. The earnings and assets of the pension fund are used only for meeting statutory obligations and defined contributions for participants or beneficiaries of funds or plans referred to in clause (ii) and no portion of the earnings or assets of the pension fund insures any benefit to any other private person;
iv. It does not undertake any commercial activity whether within or outside India;
v. It shall intimate the details in respect of each investment made by it in India during the quarter within one month from the end of the quarter in Form No. 10BBB;
vi. It shall file return of income on or before the due date specified u/s 139(1) and furnish along with such return a certificate in Form No. 10BBC in respect of compliance to the provisions of clause (23FE) of section 10, during the FY, from an accountant as defined in the Explanation below sub-section (2) of section 288.

For this purpose, pension fund has to file an application in Form 10BBA with relevant documents and evidence to CBDT. Pr. DGIT/DGIT (Systems) shall lay down the data structure, standards and procedure of furnishing and verification of Form 10BBB and Form 10BBC.

Source: Notification No. 67/2020 dated August 17, 2020.

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CBDT notifies specified income tax authority for furnishing information

PDGIT (Systems), New Delhi has been named as the specified income-tax authority for furnishing information to the 'Scheduled Commercial Banks'. The information to be furnished shall be the IT Return filing status. The Pr. DGIT(Systems) would notify the procedure and format for providing notified information after taking approval from CBDT.

Source: Notification No. 71/2020 dated August 31, 2020.

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ITAT RULINGS

Independent entity carrying out assigned work independently could not be said to be PE of entity in India

Facts

The assessee, as a commissioning party engaged a UK based corporate entity, DBPL to produce and deliver a fully complete feature film provisionally named Desi Boyz based on certain storyline. M/s DBPL was to undertake filming primarily in the UK and also in India and procure the services of all necessary creative and technical service providers and engage all personnel for shooting of the film. M/s DBPL was to make arrangements for locations and enter into location agreements, to procure production equipment including cameras, grip and lighting equipment, sound equipment, prop, ward robe, make-up etc. with a view to complete the film and delivery of the film to the assessee in a first-class manner, among other services.

Assessing Officer held that the assessee is in default in respect of non deduction of tax on payments made to DBPL for its services and thereby raising demand of Rs. 2,66,63,812/- u/s. 201(1) r.w.s.195.

Ruling

Upon perusal of various terms and conditions of the contract, it could be said that the various conditions/ stipulations requiring prior consultation of the assessee was purely with the motive of passive monitoring of the film production activity since the same was very technical in nature. The fact that M/s DBPL worked as an independent entity is further fortified by the fact that M/s DBPL had obtained independent bank loan of 2.18 Million Pounds from Coutts & Co. which was secured against UK Tax credit. Therefore, M/s DBPL could not said to be solely dependent upon the assessee for finance requirements.

Therefore, the assessee could not be said to be Associated Entity of M/s DBPL in terms of Article-10 of the Treaty. Hence, the conclusion drawn by Ld. AO, in this regard, could not be sustained as per the Treaty terms. The Tribunal held that M/s DBPL was acting as an independent entity which was required to carry out the assigned work independently and the assessee could not said to be PE of that entity in India. Therefore, no profit could be said to have accrued to M/s DBPL in India as alleged by the revenue. As a logical consequence, the assessee could not be treated as assessee-in-default in terms of Sec.201(1) & 201(1A) of the Act.

Source: ITAT, Mumbai in Next Gen Films Pvt. Ltd vs. ITO, TDS ITA No. 3782-83 of 2016, dated August 11, 2020

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Secondees being employees of assessee, no disallowance was called for when withholding tax u/s 192 was duly complied with, Sec 195 did not apply

Facts

The Assessing Officer sought clarification of services performed by Boeing Company USA, Boeing Defence Australia Ltd, Boeing Korea LLC

and whether the salary paid to expatriates has been included in its total salary expenditure. Further, the assessee was asked to explain the work performed by the expatriates. The assessee explained that reimbursement of salary cost to expatriate employees is not taxable as FIS, both under the provisions of the Act and relevant DTAA, and no withholding tax was required on the same. It was further explained that the assessee was a real and economic employer of expatriate employees, as these employees were under the control of the company without any relation/connection with the AEs and salary expenses have been borne by the assessee on which the appropriate taxes were duly deducted and deposited u/s 192 of the Act. It was strongly contended that reimbursement of cost charges of salary of expatriate employees is not taxable as FTS/FIS.

The Assessing Officer was not convinced with the submissions of the assessee and referring to the terms of secondment agreement and drawing support from the decision of the Hon'ble High Court in the case of Centrica India Offshore India Ltd 364 ITR 336 and further referring to various judicial decisions, the Assessing Officer finally came to the conclusion that the assessee has failed to deduct tax at source on the expenditure towards salaries and other allowances and invoking the provisions of section 40(a)(i) of the Act, the Assessing Officer made disallowance of Rs. 56,58,19,799/-.

Ruling

The Tribunal held that it was provided that the secondees had expressed their willingness to be deputed to the appellant and AE agreed to release these employees to the assessee. It was provided that the AE will facilitate payment of salaries in secondees home country on behalf of the assessee. Under the head employment status, it is provided that the secondees shall be working for the assessee and will be under supervision, control and management of the assessee as employees of the assessee. It was clear from the afore-stated relevant clauses that the secondees were, in fact, in employment of the assessee and as per the terms, the AE was paying salaries at the home country of the secondees and, therefore, there was reimbursement by the assessee. These facts clearly show that the assessee has been paying to its own employees and this fact alone clearly distinguished the facts of the decision in the case of Centrica India Offshore Ltd.

Further, there was no dispute that the assessee had deducted tax at source u/s 192 of the Act. On the given facts of the case, the Tribunal held that the provisions of Section 195 of the Act did not apply and it accordingly, directed for deletion of addition of Rs. 56.58 crores.

Source: ITAT, Delhi in Boeing India Pvt. Ltd. vs. ACIT
ITA No. 9765 of 2019, dated August 17, 2020

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Where tax had been deducted on strength of beneficial provisions of section DTAAs, provisions of section 206AA could not be invoked by AO to insist on tax deduction @ 20%

Facts

The assessee company was engaged in the business of real estate development, construction of residential apartments and has issued debentures to certain overseas entities and engages M/s. Space Matrix Design Consultants Pte.

Ltd., Singapore for architectural services to the proposed project at Chennai. The revenue found that the assessee had made payments to Space Matrix Design Consultants Pte. Ltd without deduction of tax at source and similarly for interest on debentures to non-residents, the assessee had not applied the rate as prescribed in Section 206AA of the Act as the PAN was not provided by the recipients.

The ld. A.O. examined the payments in the context of make available clause and concluded that the provisions of designs and drawings by M/s. Space Matrix Design Consultants Pte. Ltd., Singapore would amount to make available of the technology and would be regarded as FTS under Clause 12(4)(b) of Singapore-India DTAA. Similarly, in respect of interest payments made to debenture holders, the Assessing Officer was of the opinion that the assessee should deduct the tax at 20% in terms of Section 206AA of the act as PAN is not provided, and the assessee has not furnished the Tax Residency Certificate of the debenture holders. He opined that the provisions of Section 206AA overrides the provisions of Section 90(2) of the Act and calculated short deduction of TDS & interest determining total liability payable at Rs. 1,18,07,272/- including interest under Section 201(1A) of Rs. 28,28,251/- and passed the order under Section 201 & 201(1A).

Ruling

The Tribunal upheld the observations of the Ld. CIT(A) that though charging section 4 and section 5 dealing with ascertainment of total income were subordinate to principle enshrined in section 90(2) but provisions of Chapter XVII-B governing tax deduction at source were not subordinate to section 90(2). Section 206AA was not charging section but was part of a procedural provisions dealing with collection and deduction of tax at source. Provisions of section 195 which casted duty on assessee to deduct tax at source on payments to a non-resident could not be looked upon as a charging provision--Where tax had been deducted on strength of beneficial provisions of section DTAAs, provisions of section 206AA could not be invoked by AO to insist on tax deduction @ 20%, having regard to overriding nature of provisions of section 90(2). Provision in Section 206AA (as it existed) had to be read down to mean that where deductee i.e overseas resident business concern conducted its operation from a territory, whose Government had entered into a DTAA with India, rate of taxation would be as dictated by provisions of treaty. The revenue's appeal was dismissed.

Source: ITAT, Bangalore in Mantri Technology vs. DCIT
ITA No. 130 of 2018, dated August 24, 2020

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CIRCULARS & NOTIFICATIONS

Rule 114AAB: Class or classes of person to whom provisions of section 139A shall not apply

CBDT notified the Income Tax (19th Amendment) Rules, 2020 for non-furnishing of PAN by a non-resident and Form 49BA. In rule 37BC of the Income Tax Rules, 1962, the following sub-rule shall be inserted:

> *'Section 206AA shall not apply in respect of the payments made to a person being a non-resident, not being a company, or a foreign company if the provisions of section 139A do not apply to such person on account of rule 114AAB.'*

Section 139A of the Income Tax Act, 1961 provides that every person specified therein who has not been allotted a PAN, shall apply to the

AO for allotment of PAN. After Rule 114AAA, Rule 114AAB shall be inserted for "Class or classes of person to whom provisions of section 139A shall not apply". Accordingly, Section 139A shall not apply to a non-resident, not being a company, or a foreign company, (hereinafter referred to as the non-resident) who has, during a previous year, made an investment in a specified fund.

The rule further imposes the following conditions on the non-residents:

i. The non-resident does not earn any income in India, other than the income from investment in the specified fund during the PY
ii. Any income-tax due on income of non-resident has been deducted at source and remitted to the Central Government by the specified fund at the rates specified in section 194LBB of Act
iii. The non-resident furnishes the following details and documents to the specified fund:
    a. name, e-mail id, contact number;
    b. address in the country or specified territory outside India of which he is a resident;
    c. a declaration that he is a resident of a country or specified territory outside India; and
    d. Tax Identification Number in the country or specified territory of his residence and in case no such number is available, then a unique number on the basis of which the nonresident is identified by the Government of that country or the specified territory of which he claims to be a resident.

Further, the specified fund shall furnish a quarterly statement for the quarter of the FY, in which the details and documents referred to in clause (iii) of sub-rule (1) are received by it, in Form No.49BA to the PDGIT (Systems) or the DGIT (Systems) or the person authorized by them, electronically and upload the declaration referred to in sub-clause (c) of clause (iii) of sub-rule (1) within 15 days from the end of the quarter of the FY.

For this purpose, "specified fund" means any fund established or incorporated in India in the form of a trust or a company or a limited liability partnership or a body corporate which has been granted a certificate of registration as a Category I or Category II Alternative Investment Fund and is regulated under the Securities and Exchange Board of India (Alternative Investment Funds) Regulations, 2012, and which is located in any International Financial Services Centre;

Source: Notification No.58/2020 dated August 10, 2020.

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VERENDRA KALRA & CO

CHARTERED ACCOUNTANTS

CONTACT DETAILS:

Head Office
75/7 Rajpur Road, Dehradun
T +91.135.2743283, 2747084, 2742026
F +91.135.2740186
E info@vkalra.com
W www.vkalra.com

Branch Office
80/28 Malviya Nagar, New Delhi
E info@vkalra.com
W www.vkalra.com

For any further assistance contact our team at
kmt@vkalra.com