



## 8<sup>TH</sup> THE DASTUR NATIONAL DIRECT TAX MOOT COURT COMPETITION, 2025

14<sup>th</sup> and 28<sup>th</sup> June, 2025

### MOOT PROPOSITION

#### Deducted in Faith, Penalised in Law

1. A company named M/s A Private Limited (“Assessee”) had claimed a deduction of cess on income tax of ₹5,00,00,000/- while computing its business income for the AY 2020-21. This deduction was claimed in the return of income filed on 31<sup>st</sup> December, 2020. The said deduction was claimed relying upon the decision of the Hon’ble Bombay High Court in the case of **Sesa Goa Limited vs. JCIT [2020] 423 ITR 426 (Bombay)** and decision of the Hon’ble Rajasthan High Court in the case of **Chambal Fertilisers and Chemicals Limited vs. JCIT [2019] 107 taxmann.com 484 (Rajasthan)**.
2. The said claim was not disturbed in the intimation issued under **Section 143 (1)** of the Act on 5<sup>th</sup> April, 2021.
3. Vide Finance Act, 2022, Explanation 3 to **Section 40** was inserted with retrospective effect from 1<sup>st</sup> April, 2005. It was clarified that tax would include cess and surcharge. Accordingly, in terms of **Section 40(a)(ii)** of the Act, deduction of payment of cess or surcharge could not be claimed, retrospectively.
4. Simultaneously, an amendment was made in **Section 155** by inserting **Sub-Section (18)**. As per the said Subsection, if deduction of surcharge / cess was claimed and allowed for any previous year, then such claim would be deemed to be under reporting of income for the purposes of **Section 270A(3)**, notwithstanding anything contained in **Section 270A(6)**. Further the Assessing Officer (“AO”) was granted a right to rectify such assessment to

recompute the income and time limit to carry out such rectification was to be counted from 31<sup>st</sup> March, 2022.

5. However, as per the proviso to **Section 155(18)**, an Assessee can make an application, *suo motu*, to the AO requesting to compute income after reducing the claim of cess / surcharge and pay the tax within the prescribed period. When such a course of action is adopted within the time prescribed, then, such claim of cessation would not be deemed to be under reporting of Income. Time limits and relevant forms have been prescribed in Rule 132. The Assessee did not make any application under proviso to **Section 155(18)**.
6. The AO passed an order under **Section 154** of the Act on 1<sup>st</sup> May, 2023 denying the claim of cess of ₹5,00,00,000/- and recomputed the income. Further, he initiated penalty proceedings under **Section 270A** of the Act in the said order of rectification for under-reporting of income.
7. The Assessee did not challenge the said order of rectification and paid tax within 30 days of such order. Further, the Assessee filed an application under **Section 270AA** of the Act for immunity from levy of penalty.
8. AO rejected the application for immunity on the ground that penalty was imposable for mis-reporting of income. Simultaneously, AO issued show cause notice for levy of penalty for mis-reporting of income.
9. Assessee objected to levying of penalty on the following grounds:
  - 9.1 There is no under reporting of Income as the claim was made relying upon the decision of the Jurisdictional High Court and another High Court which was in favour of the Assessee.
  - 9.2 When an amendment is brought with retrospective effect, though a claim may be denied, however, such retrospective amendment cannot be a ground to levy penalty.
  - 9.3 Penalty proceedings cannot be initiated in order of rectification passed under **Section 154**.
10. The AO rejected the contentions raised by the Assessee. Relying upon the provisions of **Section 155(18)**, it was stated that claim of cess in the return of income is deemed to be under-reporting of income. It was also mentioned that the Assessee did not opt for the opportunity in terms of proviso to **Section 155(18)**. AO, therefore, treated such claim to be

mis-reporting of income. Accordingly, penalty was levied at the rate of 200% of under-reported income. Such order of penalty was passed on 31<sup>st</sup> March, 2024.

11. The appeal against the said order was dismissed by CIT (“**Appeals**”) and by Tribunal by simply relying upon the deeming fiction in **Section 155(18)**.
12. The Assessee had also challenged the order rejecting immunity under **Section 270AA** under **Section 264** of the Act in revision jurisdiction. The PCIT rejected the application, confirming the order rejecting immunity.
13. An appeal has been filed by the Assessee under **Section 260A** of the Act before the Hon’ble Bombay High Court, challenging the order of the Tribunal confirming the levy of penalty.
14. Further, the Assessee has also filed a writ petition challenging the revision order under **Section 264** of the Act.
15. The Assessee has also been advised to file a petition challenging the vires of **Section 155(18)** and Rule 132. Accordingly, a writ petition was filed, wherein the Assessee challenged the vires of **Section 155(18)** to the extent it deems the claim of cess to be under-reporting of Income. Consequently, it has also challenged proviso to **Section 155(18)** and Rule 132.
16. The Hon’ble Bombay High Court has directed the appeal and both the writs to be heard together and has fixed the matter for final hearing.