

THE BARRISTER

by S.B. Jain and Associates

The latest legal updates, news and views

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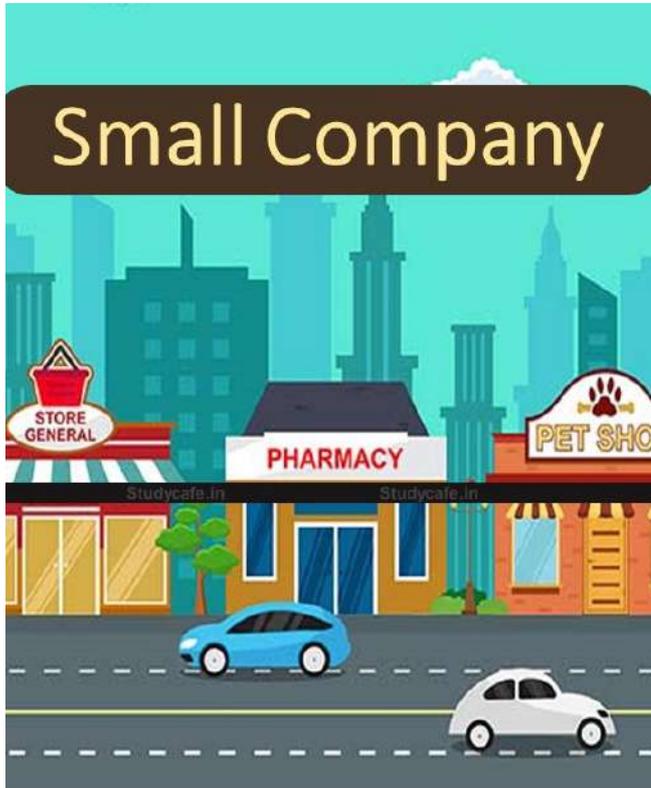


What is Society Registration?

A society is an association of several individuals combined using a mutual accord to deliberate, govern and act cooperatively for some communal purpose. Societies are usually registered for the advancement of charitable activities like sports, music, culture, religion, art, education, etc. Society Registration, under, The Society Registration Act, in India, lays down certain procedures for the sake of society registration & operation.

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CORPORATE AFFAIRS



Amendment in Definition of Small Company

MCA amended the Companies (Specification of definition details) Rules 2014, thereby amending the definition of small company.

The limit of paid up capital and turnover for the small company has been increased to rupees FOUR CRORE (Earlier Two Crore) and rupees FORTY CRORE (Earlier Four\ Crore) respectively.

New limits to fall into the definition of small company: Paid up Capital – not exceeding Rs. 4 Crore and Turnover – not exceeding 40 Crore

Extension of time for filing e-form DIR-3-KYC

A Representation has been received in ministry requesting for extension of time beyond 30.09.2022 for filing e-form DIR-3-KYC and web form DIR-3-KYC-WEB without payment of fee. The matter has been examined in the ministry and it has been decided to allow filing of e-form DIR-3-KYC and web-form DIR-3-KYC-WEB without filing fee upto 15th October, 2022.

DIR-3 KYC



TAXATION



Supreme Court allows 4 weeks extension to open common portal for Tran 1 & 2

Hon'ble Supreme Court while hearing an application from GSTN, has allowed extension of 4 weeks time to comply with their order dated 22/07/2022 issued in the matter of UOI & Anr. V/s Filco Trade Centre Pvt. Ltd. & Anr. bearing SLP (C) nos. 32709-32710/2018. Accordingly, GSTN would open the common portal for filing transitional credit through Tran 1 and Tran 2 w.e.f 01/10/2022.

Changes in Table 4 of GSTR 3B - Reporting of ITC

The Notified changes of Table 4 of GSTR-3B have been incorporated in GSTR-3B and are available on GST Portal since 01.09.2022. The taxpayers are advised to report their ITC availment, reversal of ITC and ineligible ITC correctly as per new format of Table 4 of GSTR-3B at GST Portal for the GSTR-3B to be filed for the period August 2022 onwards.



LEGAL

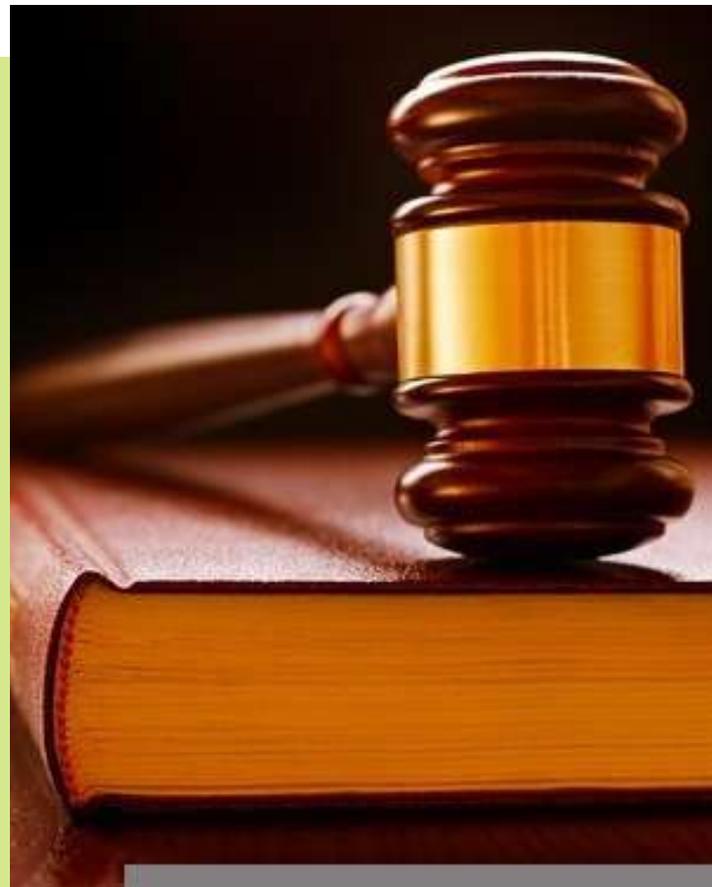


All women entitled to safe and legal abortion, marital status can't be a ground to deny it: SC

In a landmark judgment, the Supreme Court said that all women, irrespective of their marital status, are entitled to safe and legal abortion till 24 weeks of pregnancy under the Medical Termination of Pregnancy (MTP) Act. The court also said that that law cannot be static and should be evolved with changing times, adding that non-traditional relationships, like live-in, should be recognised under the law

Suit Is Liable To Be Dismissed If A "Necessary Party" Is Not Impleaded : SC

The SC observed that a suit is liable to be dismissed if a "necessary party" is not impleaded. For being a necessary party, according to the court, the twin test has to be satisfied (1) there must be a right to some relief against such party in respect of the controversies involved in the proceedings (2) that no effective decree can be passed in the absence of such a party. Order I Rule 9 provides that no suit shall be defeated by reason of the misjoinder or nonjoinder of parties, and the Court may in every suit deal with the matter in controversy so far as regards the rights and interests of the parties actually before it.



SOCIETY REGISTRATION IN INDIA



INTRODUCTION

A society is a union of individuals united by mutual consent to consider, determine and cooperate for everyday purposes. Societies are characterized by models of connections (social relations) between individuals who share a unique culture and institutions; a given society may be described as the total of such relationships among its constituent members. Societies are usually registered to promote charitable activities such as education, health, environment, arts, religion, culture, music, sports, etc.

Registration of a Society In India

A Society can be created by a minimum of 7 or more persons. Apart from persons from India, companies, foreigners, as well as other registered societies can also register for the Memorandum of association of the society. Similar to Partnership firms, society can also be either unregistered or registered. But, only the registered societies will be able to withstand consigned properties and/or have an ensemble filed against or by the society. Society registration is maintained by state governments. Thus, the application for society registration must be created to the specific authority of the state, where the registered office of the society is situated. For Society registration, the establishing members must agree with the name of society first and then prepare for the Memorandum, followed by Rules & Regulations of the society.

Selection of a Name



SOCIETY REGISTRATION

SOCIETIES ACT, 1860

The Societies Registration Act, 1860 was introduced with the aim of improving the legal conditions of societies registration for promotion of literature, science or fine arts or for diffusion of useful knowledge for charitable purposes. The Societies Registration Act, 1860 has been adopted by most of the State Governments with/without further amendments.

DOCUMENTS REQUIRED TO REGISTER A SOCIETY IN INDIA

PAN Card: PAN card of all the members of the proposed society has to be submitted along with the application.

Residence Proof: The residence proof of all the members of the society also has to be submitted.

Memorandum of Association: The memorandum of association has to be prepared which will contain the following clauses and information:

- The work and the objectives of the society for which it is being established.
- The details of the members forming the society.
- It will contain the address of the registered office of the society.

Rules & Regulations of the Society: The rules and regulations of the society also have to be prepared which will contain the following information:

- Rules and regulations by which the working of the society will be governed and the maintenance of day to day activities.
- It will contain the rules for taking the membership of the society.
- The details about the meetings of the society and the frequency with which they are going to be held is to be mentioned.
- Information about the Auditors.
- Forms of Arbitration in case of any dispute between the members of the society.

FROM THE ARCHIVES

***M/s. Gunjan International
versus
Commissioner of Sales Taxes, Delhi***

Present for the respondent: Mr. S.B. Jain

Date of order: 26.06.2013

NOTICE OF ASSESSMENT OF PENALTY U/S 33 READ WITH SECTION 86(14); 86(20) OF DVAT ACT – VALIDITY OF NOTICE ISSUED U/S 59(2); 59(3) WITHOUT REQUIRING A DEALER TO PRODUCE DOCUMENTS – SPECIAL AUDIT UNDER SECTION 58A OF THE ACT – THE APPELLANT DEALER FILED OBJECTIONS AGAINST THE ORDER OF VATO FOR ASSESSMENT OF NOTICE OF PENALTY - THE OBJECTION HEARING AUTHORITY REJECTED THE OBJECTIONS – IN TRIBUNAL THE APPELLANT CONTENDED THAT THE PENALTY ORDERS WERE ILLEGAL AS NO DIRECTION WAS ISSUED U/S 59(2); 59(3) FOR PRODUCTION OF DOCUMENTS – FURTHER STATED THAT OBJECTIONS TAKEN AGAINST THE ISSUE OF DIRECTION U/S 58A OF THE ACT FOR SPECIAL AUDIT FOR A.Y 2008-09 HAD BEEN TAKEN AS A STATEMENT FOR IMPOSING THE PENALTY U/S 86(20) – TRIBUNAL HELD THAT VATO MIS DIRECTED HIMSELF IN ASSESSING THE PENALTY AND OHA COMMITTED ILLEGALITY IN UPHOLDING THE PENALTY – THE TRIBUNAL QUASHED BOTH THE PENALTIES.

BRIEF FACTS OF THE CASE:

FACTS IN BRIEF LEADING TO FILING OF THE APPEALS WERE THAT NOTICE U/S 58A OF THE DELHI VALUE ADDED TAX ACT 2004 WAS ISSUED BY THE VATO FOR SPECIAL AUDIT OF THE BUSINESS AFFAIRS OF THE APPELLANT FOR THE ASSESSMENT YEAR 2008-09 BY M/S RAVI BANSAL; CO., CHARTERED ACCOUNTANTS. AGGRIEVED BY THIS ORDER, THE APPELLANT FILED OBJECTIONS WHICH WERE REJECTED BY THE OHA. AS A CONSEQUENCE OF THIS ORDER OF THE OHA, VATO (WARD-08) ISSUED NOTICE OF ASSESSMENT OF PENALTY U/S 33, R/W SECTION 86(14) OF THE ACT WHEREBY HE ASSESSED A PENALTY OF RS.50,000/- ON THE GROUND THAT THERE WAS VIOLATION OF SECTION 59(2) AND 59(3). HE ALSO ASSESSED PENALTY OF RS.50,000/- U/S 33 R/W

SECTION 86(20) OF THE ACT FOR THE REASON THAT THE APPELLANT HAD MADE A STATEMENT TO THE COMMISSIONER WHICH WAS FALSE, MISLEADING OR DECEPTIVE IN A MATERIAL PARTICULAR. APPELLANT FILED OBJECTIONS AGAINST THESE TWO PENALTIES BEFORE OBJECTION HEARING AUTHORITY WHO VIDE HIS COMMON ORDER DATED 21.02.2013, REJECTED THE OBJECTIONS.

AGGRIEVED BY THE ORDER OF THE OHA, APPELLANT FILED THE APPEALS, EACH ACCOMPANIED BY AN APPLICATION FOR STAY OF THE AMOUNT IN DISPUTE.

HELD:

THE BASIC REQUIREMENT OF ASSESSMENT OF PENALTY U/S 86(14) WAS THAT A VATO GETS JURISDICTION TO ASSESS PENALTY UNDER THIS PROVISION WHEN HE HAS SATISFIED HIMSELF THAT THE APPELLANT HAD FAILED TO COMPLY WITH THE REQUIREMENT OF THE DIRECTIONS ISSUED U/S 59 (2) OR 59 (3) OF THE ACT. A CAREFUL PERUSAL OF THE ORDER OF THE VATO SHOWED THAT HE DID NOT RECORD THIS FACT IN HIS PENALTY ASSESSMENT ORDER. FURTHER, THE OHA FAILED TO CONSIDER THE OBJECTION WHICH THE APPELLANT HAD SPECIFICALLY TAKEN WHILE ASSAILING THE ASSESSMENT OF PENALTY ON THE GROUND THAT NO DIRECTION HAD EVER BEEN GIVEN TO THE APPELLANT REQUIRING HIM TO PRODUCE ANY DOCUMENT AS PER THE REQUIREMENT OF SECTION 59 (2) OR 59 (3) OF THE ACT. NO PENALTY COULD HAVE BEEN ASSESSED WITHOUT ISSUING ANY SUCH DIRECTION AS MANDATED BY SECTION 59 (2) OR 59 (3) OF THE ACT. OHA HAD COMMITTED ILLEGALITY IN UPHOLDING THIS PENALTY ASSESSED U/S 86 (14) MERELY ON THE GROUND OF DELEGATION OF POWER TO THE VATO. THE OHA UTTERLY FAILED TO APPLY HIS JUDICIAL MIND IN UPHOLDING THE PENALTY. THE TRIBUNAL HELD THAT THE PENALTY U/S 86 (14) HAD NO LEGS TO STAND AND THE SAME WAS LIABLE TO BE QUASHED.

ALSO HELD THAT:

A CAREFUL PERUSAL OF THE PROVISION AS CONTAINED IN SECTION 86 (20) SHOWS THAT THE INTENTION OF THE LEGISLATURE WHICH IS CLEARLY SPELT OUT FROM THE LANGUAGE OF THIS PROVISION IS THAT THE STATEMENT MADE BY A DEALER WHICH IS FALSE, MISLEADING, DECEPTIVE OR IS CONCEALMENT OF A MATERIAL PARTICULAR, IS SUCH A STATEMENT THAT IS MADE DURING ASSESSMENT PROCEEDINGS AND NOT WHILE FILING THE

OBJECTIONS U/S 74 OF THE ACT. UNDER THIS PROVISION THE QUANTUM OF PENALTY TO BE COMPUTED BY THE VATO WAS TO BE EQUAL TO THE TAX DEFICIENCY OR EQUAL TO RS.50,000/- WHICHEVER WAS MORE . THUS, USE OF THE EXPRESSION ‘TAX DEFICIENCY ITSELF IN THIS PROVISION SHOWED THAT THIS PROVISION COULD BE INVOKED ONLY WHEN THE STATEMENT OF A DEALER WAS FOUND TO BE FALSE, MISLEADING, DECEPTIVE OR CONCEALMENT OF A MATERIAL PARTICULAR DURING PROCEEDINGS WHICH FORM THE BASIS OF ASSESSMENT. THUS , THE OBJECTIONS, WHICH THE DEALER HAD FILED AGAINST THE ORDER PASSED U/S 58A OF THE ACT FOR THE SPECIAL AUDIT FOR THE ASSESSMENT YEAR 2008-09 COULD NOT BE TERMED , BY ANY STRETCH OF IMAGINATION, AS A STATEMENT HAVING BEEN MADE DURING THE ASSESSMENT PROCEEDINGS OF 2008- 09. EVEN OTHERWISE, THE SPECIAL AUDIT WAS FOR 2008-09, BUT THE PENALTY WAS ASSESSED FOR THE ASSESSMENT YEAR 2010-11. ACCORDINGLY, ON THIS COUNT ALSO, THE PENALTY WAS NOT TENABLE. THE TRIBUNAL HELD THAT THE VATO MISDIRECTED HIMSELF IN ASSESSING THIS PENALTY AND THE OHA, WITHOUT APPLYING HIS JUDICIAL MIND, COMMITTED ILLEGALITY IN UPHOLDING THIS PENALTY. BOTH PENALTY ORDERS WERE QUASHED.



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