

**SECTION 79 OF THE INCOME-TAX ACT, 1961 - LOSSES - CARRY FORWARD AND SET OFF OF IN CASE OF CERTAIN COMPANIES - DEPARTMENT'S OBJECTIONS TO MERGER / AMALGAMATION / DEMERGER / RECONSTRUCTION SCHEME OF COMPANIES NOT ENTERTAINED BY HIGH COURTS - REMEDIAL MEASURES TO BE TAKEN BY DEPARTMENT THEREFOR**

**LETTER [F.NO.279/MISC./M-171/2013-ITJ], DATED 11-4-2014**

I am directed to refer to the above mentioned subject.

2. In a recent case of proposed amalgamation, it was noted that the scheme of amalgamation was designed seeking amalgamation with retrospective dates so as to claim set off of losses of loss-making Companies against the profits of profit making Companies of the group and thus impacting adversely the much needed public revenue. This fact of proposed amalgamation was not brought to the notice of Income Tax Department either by the Ministry of Corporate Affairs (MCA) or Registrar of Companies (ROC). The Department had to file an intervention application opposing such amalgamation before the High Court which was rejected on the ground that the Department had no locus standi in the matter and that Regional Director, MCA has been delegated power in this regard.

3. In this connection Circular No 1/2014 dated 15.01.2014 has been issued by MCA to Regional Directors which lays down that while furnishing any report regarding reconstruction or amalgamation of companies under the Companies Act, comments and inputs from the Income Tax Department may invariably be obtained so as to ensure that the proposed scheme of reconstruction or amalgamation has not been designed in such a way as to defraud the Revenue and consequently being prejudicial to public interest. It has further been said that the Regional Directors would invite specific comments from the Income Tax Department within 15 days of receipt of notice before filing response to the Court. It is emphasised that this is the only opportunity with the Department to object to the scheme of amalgamation if the same is found prejudicial to the interest of Revenue and therefore, it is desired that the comments/objections of the Department are sent by the concerned CIT to Regional Director, MCA for incorporating them in its response to the Court, immediately after receiving information about any scheme of amalgamation or reconstruction etc.

4. This issues with approval of Member (A&J).

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This document has been compiled as service to our clients. We recommend that you seek professional advise prior to initiating action on specific issues.

**Lunawat & Co.**

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