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IN THE SUPREME COURT OF INDIA

CIVIL ORIGINAL JURISDICTION

I.A NO. 33106 / 2019

IN

W. P (C) NO. 188 / 2004

IN THE MATTER OF:

Balganj Consumer Forum

Petitioner

Versus

Union of India and ors

Respondent

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(ANIL KATTIYAR)

ADVOCATE ON RECORD

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IN THE SUPREME COURT OF INDIA  
CIVIL ORIGINAL JURISDICTION

I.A NO. 33106 / 2019

IN

W. P (C) NO. 1881 2004

IN THE MATTER OF:

Rangary Consumer Forum

Petitioner

Versus

Union of India and ors

Respondent

APPLICATION ON BEHALF OF THE PRINCIPAL COMMISSIONER OF  
INCOME TAX-1, CHANDIGARH FOR CONTINUING THE RECOVERY  
PROCEEDINGS BY WAY OF ATTACHMENT OF ACCOUNTS

MOST RESPECTFULLY SHEWETH:

1. That the present Applicant had entered appearance in pursuance of the Order dated 11.04.2018 passed by this Hon'ble Court, relevant portion of which is being extracted below.

"The Commissioner of Income Tax, Chandigarh, is directed to file an affidavit as to what is the basis of assessment of capital gains

2. That the Affidavit in compliance with the aforesaid Order was filed by the Applicant, which is part of this Hon'ble Court's record.

3. That subsequently, during the course of hearing on 05.09.2018, this Hon'ble Court directed that:

*"Let the Income Tax Department not to make any further attachment of account, without prior permission of this Court."*

4. That the instant Application is being filed in light of the aforesaid direction.

5. That according to the assessment record in the case, M/s Golden Forest India Limited stopped all business operations since December 2000. The Company, however, was not wound up as per the provisions of the Companies Act since the assets of the assessee-company were more than its liabilities (as was observed by Hon'ble Punjab and Haryana High Court in the case of National Investors Forum v. Golden Forest India Ltd in its Order dated 18.08.2003). As liquidation of the company was not possible as per the provisions of the Companies Act, 1965, no Official liquidator was appointed in this case and the company continues to exist despite it not functioning since 2000.

6. That subsequently, this Hon'ble Court, vide its order dated 19.08.2004 in the present matter, appointed a Committee which had the responsibility of realizing the assets of Golden Forest

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group) and distributing the receipts amongst various depositors/claimants of these companies, after due identification and verification.

7. That subsequently, the assessee i.e. the Committee- Golden Forest's (India) Ltd. applied for a separate PAN and filed separate returns even though the Company i.e. Golden Forest India Limited has a valid and a subsisting PAN.
8. That during the Assessment proceedings, the Assessment Officer noticed that the Committee Golden Forests (India) Ltd had sold lands belonging to the company, M/s Golden Forest India Ltd in various parts of the country in different years. The assessment record reveals that lands of Rs. 101, 11, 80,000/-, Rs. 58, 26, 60, 000/-, Rs. 30, 00, 00, 000/-, Rs. 21, 30, 50, 000/- and Rs. 21, 02, 00, 000/- respectively were sold by the Committee Golden Forests (India) Ltd on behalf of company in A.Y. 2011-12, A.Y. 2013-14, A.Y. 2014-15, A.Y. 2015-16 and A.Y. 2016-17 respectively.
9. That further, it would be imperative to note that there has been no intimation to this office regarding any existing direction from any court including this Hon'ble Court till the aforesaid order dated 05.09.2018, not to make any further attachment of accounts for recovering the outstanding Income Tax dues of the Company, since the company's incorporation and thereafter in the hands of the Committee who has stepped into the shoes of the ex-management on the basis of directions of this Hon'ble Court.

That as per the assessment records for A.Y(s) 2011-12, 2013-14, 2014-15, 2015-16 and 2016-17 during the assessment proceedings of the Committee Golden Forests (India) Ltd, the Committee has itself stated that the assets sold belong to the Company M/s Golden Forest India Limited. The assessment records also show that details of land sold each year were provided by the Committee during assessment proceedings (or taken from the books of accounts of the Committee). The Assessing Officer found the lands in question to be a capital asset as per section 2(14) of the Act, on the basis of nature of land mentioned in sale deeds (outside or within MC Area) or enquires made regarding the distance of land from the outer limits of the municipality.

11. That it would be clear from the above events that the Applicant is well within its rights to go for recovery proceedings in order to recover its rightful dues, which as on 31.12.2016 as reported by the Assessing Officer, are to the tune of Rs. 103,51,20,104/- in the hands of M/s Golden Forest India Ltd.

12. That in this regard, it is stated that a chart of year-wise outstanding demand in the case of M/s Golden Forest India Ltd. drawn by the Assessing Officer is being annexed herewith as Annexure 'A'. Pertinently, the demands mentioned at Sr. Nos. 1, 2, 3, 4 and 5 of Annexure 'A' are verifiable from records and these are uncontested demands as the orders of ITAT w.r.t. Sr. Nos. 1, 3, 4 and 5 for the A.Y. 1996-97 and Block Period have

dismissed on account of non prosecution. It is also stated that Assessee has not filed any further appeal before Hon'ble High Court in this regard, as per the records of this office. Further, as per records of this office, assessee has not filed any appeal at all against the demand mentioned at Sr. No. 2, before the Commissioner of Income Tax (Appeals).

13. That in continuation to the above, it is also stated that outstanding demands of Rs. 2,71,90,554/- mentioned at Sr. No. 6 to 9 of Annexure 'A' are verifiable from records. It is also stated that assessee has filed appeal before CIT (A) which is pending for adjudication. Therefore outstanding demands amounting to Rs. 2,71,90,554/- (including interest chargeable) mentioned at Sr. No. 6 to 9 are contested.

14. That, it is stated that with regard to demand mentioned at Sr. No. 3 for Block Asst. ending 07.09.1995, as per records of this office, verifiable demand amounting Rs. 1,16,71,075/- was raised, however collection amounting Rs. 43,00,000/- out of the above is not readily verifiable from records as no challans are traceable in records. Tax collection amounting to Rs. 43,00,000/- was reflected as collected in dossier folders maintained by the office of Assessing Officer. It is further submitted that efforts are being made by the office of Assessing Officer to trace the office case records.

15. That further, it is stated that the net outstanding demand for the

220(2), as mentioned at Sr. No. 5 of the Annexure 'A'. Though demand of Rs. 4,25,59,752/- was raised in that year as per the records, however, its further adjustments and proof of collection to the tune of Rs. 3,53,99,719/- are not readily traceable from the records. Further, it is submitted that efforts are being made by the office of Assessing Officer to trace the records of abovementioned collection/adjustment.

16. That in this regard, it is stated that the recovery proceedings are lawful as these are statutory dues, which are overdue. Out of the total demand of Rs. 103,51,20,104/-, the demands of Rs. 74,90,00,527/- at Sr. No. 1 are uncontested, verifiable and includes interest chargeable as per section 220 (2) of Income Tax Act upto 31.12.2018. Therefore, it is humbly prayed that the department be permitted to recover this demand immediately along with interest chargeable u/s 220(2) of the Act till the date of recovery.

17. As regards to the balance demand, it is also humbly prayed that the department may be allowed to reserve the right to recover outstanding Income Tax dues along with interest chargeable u/s 220(2) of the Act amounting to Rs. 25,89,29,023/- pertaining to A.Y. 1997-98 and Block assessment year mentioned at Sr. No. 2-5, after verification of same from the records and further amounts of Rs. 2,71,90,554/- mentioned at Sr. No. 6-9, on finalization of appeals pending before CIT(A).

Hon'ble court permits the Applicant to continue with the recovery proceedings for its outstanding dues by way of attachment of accounts and otherwise.

### PRAYER

It is therefore, most respectfully prayed that this Hon'ble Court may graciously be pleased to

- a) Permit the Applicant to continue with the Recovery Proceedings in respect of the Company, with respect to its outstanding dues;
- b) Pass such and further Orders that this Hon'ble Court may deem fit in the facts and circumstances of the case.

Dated:

New Delhi

Ms. Anil Katiyar

(Advocate for the Applicant)



IN THE SUPREME COURT OF INDIA  
CIVIL ORIGINAL JURISDICTION

I.A NO. \_\_\_\_\_ / 2019

IN

W. P.(C) NO. 188/2004

IN THE MATTER OF:

Rajen Consumer Forum

Petitioner

Versus

Union of India & ors

Respondent

AFFIDAVIT OF SUKHVINDER KHANNA, PRINCIPAL  
COMMISSIONER OF INCOME TAX-1, CHANDIGARH

I, SUKHVINDER KHANNA, D/o Lt. Col. GURDIAL SINGH (Retd.),  
aged 58 years, presently working as PRINCIPAL COMMISSIONER  
OF INCOME TAX-1, CHANDIGARH, do hereby solemnly affirm and  
state as under:

*Sukhvinder Khanna*  
Principal Commissioner  
Income Tax-1, Chandigarh

18 FEB 2019



1. That I am conversant with the facts and circumstances of the case and am duly authorized to file and swear this Affidavit. I have read the contents of the above-mentioned Application and am familiar with the facts of the present case.
2. That the appellant is a public servant and is filing the present Interlocutory Application in that capacity.
3. That the above Application has been drafted under my instructions and the facts mentioned therein are true and correct to the best of my knowledge and belief and the legal submissions are as per advice received by me and believed to be true.

*Subhinder Khanna*  
(Deponent)  
Subhinder Khanna  
19/2/19

VERIFICATION:

Verified on this \_\_\_\_\_ day of February 2019 at New Delhi. That the contents of the present affidavit are true and correct and nothing material has been concealed.

*Subhinder Khanna*  
(Deponent)  
Subhinder Khanna  
19/2/19

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NOTARY PUBLIC  
P. N. D. SINGH  
10 FEB 2019  
ATTESTED  
19 FEB 2019

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Sl. No.	A.Y.	Date of assessment order	Order passed under section of the Income Tax Act, 1962	Demand raised (in Rs.)	Interest w/s 22(2) in the date of Recovery (in Rs.)	Total amount to be recovered (in Rs.)	Amount actually recovered (in Rs.)	Date of Recovery	Balance Outstanding as on 31.12.2016 (in Rs.)	
									Outstanding Demand	Interest w/s 22(2) in the date of Recovery
1	1996-97	20.03.2000	271C	2,32,69,151	N/A		Nil	N/A	2,32,69,151	5,23,59,752
1	1996-97	20.03.2000	271D	20,71,92,550	N/A		Nil	N/A	20,71,92,550	4,63,10,237
2	1997-98	28.04.2006	271C	3,68,85,795	N/A		Nil	N/A	3,68,85,795	8,26,50,008
2	1997-98	28.04.2006	271D	1,63,06,200	N/A		Nil	N/A	1,63,06,200	3,67,70,725
3	Block Assmt. ending 07.09.1995	28.04.1998	2011(A)	1,16,71,075		1,16,71,075	41,00,000*	As per status report of KIT-SR-4 dated 04.02.1999	79,71,075	1,58,34,800
4	Block Assmt. 08.09.1995 to 31.03.1996	21.01.2000	201(3)	2,31,59,151	N/A		Nil	N/A	2,31,59,151	5,23,59,752
5	Block Assmt. (1994-95)	21.04.1997	1580C	4,25,59,752		4,25,59,752	1,58,34,800*	As per status report of KIT-SR-4 dated 04.02.1999	71,64,035*	1,31,32,678
6	2009-10	30.12.2016	143(3) C.W.S.	4,04,02,410	12,12,072	4,16,14,482	404,02,410	27.03.2017	12,12,072	2,54,575
7	2010-11	30.12.2016	143(3) C.W.S.	5,49,56,100	51,56,415	3,95,08,715	3,23,56,100	27.03.2017	54,53,415	10,31,217
8	2012-13	30.12.2016	143(3) C.W.S.	37,87,71,620	1,13,63,148	39,01,34,768	37,87,71,620	27.03.2017	1,13,63,148	23,86,265
9	2015-16	15.01.2018	143(3) C.W.S.	28,61,88,360	57,23,767	29,19,12,127	28,61,88,360	26.03.2018	57,23,767	5,25,118
				Outstanding Demand		34,44,06,357			69,09,13,747	

SUBJECT TO VERIFICATION

Outstanding Demand Interest payable w/s 22(2) upto 31<sup>st</sup> December, 2018  
Total Outstanding Demand as on 31<sup>st</sup> December, 2018

= Rs. 34,44,06,357/-  
= Rs. 69,09,13,747/-  
= Rs. 103,53,20,104/-

Attested to be True Copy  
Sd/-  
(Signature)  
Director, Income Tax  
East, Commissioner of Income Tax  
West Bengal  
Circular No. 100/2018

0/C

IN THE SUPREME COURT OF INDIA  
CIVIL ORIGINAL JURISDICTION

I.A. No. 33106 of 2019  
IN

Writ Petition (s) (civil) No(s). 188 of 2004

In the Matter of :

M/S RAIGANJ CONSUMER FORUM .... Petitioner

Versus

UNION OF INDIA & ORS. .... Respondents

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New Delhi  
Date:

Suruchii Aggarwal, Advocate  
Counsel for Committee - GFIL  
(Appointed by Hon'ble Supreme Court of India)

IN THE SUPREME COURT OF INDIA  
CIVIL ORIGINAL JURISDICTION

I.A. No. 33106 of 2019

IN

Writ Petition (s) (civil) No(s). 188 of 2004

**In the Matter of :**

M/S RAIGANJ CONSUMER FORUM                      .... Petitioner

Versus

UNION OF INDIA & ORS.                      .... Respondents

REPLY ON BEHALF OF THE  
COMMITTEE-GFIL APPOINTED BY  
THE HON'BLE SUPREME COURT.

**Most Respectfully Sheweth:-**

1. That vide orders dated 30.7.2018 & 5.9.2018, the Hon'ble Supreme Court has directed this Committee to disburse the 70% of the principal amount invested by about 15 lacs investors with the companies M/s Golden Forests (India) Limited & Golden Projects Limited. The total amount required to pay 70% of the principal amount is about Rs. 630 crores plus expenses required to be incurred on disbursement which are expected to be about Rs. 35 crores.
2. That since earlier on three occasions, the Income Tax Department attached bank accounts of Committee and took away Rs.96,01,60,014/- by adopting a coercive method during

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pendency of appeals filed by the Committee before CIT-appeals 1 Chandigarh. Therefore, to maintain smooth disbursement process, the Hon'ble Supreme Court vide its order dated 5.9.2018 passed the following order:

"Let the Income tax department not make any further attachment of account without prior permission of this court."

3. That the Committee approached the Hon'ble High Court of Delhi against the said attachment however Hon'ble High Court dismissed W.P.4598 of 2017 on the ground of lack of territorial jurisdiction. There after the Committee filed C.W.P. 17713 of 2017 before Punjab and Haryana High Court. The counsel of Income Tax Department stated before the Punjab and Haryana High Court that the Supreme Court is seized of the matter therefore on 8.1.2019 the Hon'ble Court disposed of the C.W.P. 17713 of 2017 with the order "leaving the parties to their remedies before the Hon'ble Supreme Court". Copies of letters of attachment issued by Income Tax Department are annexed as **ANNEXURE R-1** (colly.) Pg .. to pg...) Copy of C.W.P. No. 17713 of 2017 filed before Punjab and Haryana High Court is annexed as **ANNEXURE R-2** (Pg.....to pg.....) and copy of order dated 8.1.2019 passed by Punjab and Haryana High Court in C.W.P. No. 17713 of 2017 annexed as **ANNEXUIRE R-3** (Pg.... to Pg....).

4. That the applicant department has filed a chart of pending demands which pertains to the period from A.Y. 1995-96 to 2015-16. The outstanding demand as on 31.12.2018 has been

calculated as Rs. 34,44,03,357/- and the interest payable u/s 220(2) up to 31.12.2018 has been calculated as Rs. 69,07,13,777/- and therefore the total outstanding demand with interest as on 31.12.2018 is Rs. 103,51,20,104/-.

The Committee has examined the chart and found that the demands at Sr. No. 1 to 5 relate to the period up to the year 2000 which were initially raised against the Company Golden forest or its associates and the demands at Sr. No. 6 to 9 have been raised from the Committee which relates to tax on interest received by it on FDRs and Capital gain tax on properties auction sold by it.

- 5 That regarding the demands at Sr. No 1 to 5 of the chart which were initially raised against the Companies, it is submitted that when the Committee was directed to invite claims from the Creditors of the Company in Oct-2004, Income Tax Department also filed its claim vide no. 6507-08 dated 19/20 Jan 2005. The total demand of Rs.52,81,43,520/- was raised against three companies M/s Golden Forests (India) Limited, M/s Golden Project Limited and M/s Golden Tourist Resorts and Developers Limited. However the total regular demand of all the three companies was only Rs. 6,90,29,041/-. The claim form shows that the rest of the amount relates to penalty u/s 271 C & D, u/s 201 (1) of Income Tax Act & interest.

The Committee apprised the Hon'ble Supreme Court about the claims of creditors through status report dated 29.11.2006 and also informed the Income tax Department about it vide letter no. 748 dated 6.1.2007. The Hon'ble Supreme Court till date has not passed any order regarding payment to creditors

other than investors which include claim of Income Tax Department also. In any case this claim of Income Tax Department is subject to scrutiny as the amount has major portion of interest and penalties.

The Income Tax Department has been following up this claim with the Committee from time to time and the Committee has been apprising them about the status of the claim.

6. Recently after passing of orders regarding payment of 70% of investment to investors, the Income Tax Department has suddenly converted the said claim into 'Pending outstanding demand for recovery' and accordingly served letter dated 12.2.2019 on the Committee and thereby have started seeking reply of the Committee in regular course in such a way that in case reply is not satisfactory the Income Tax Department shall again, by adopting coercive method, attach the bank account of Committee to recover the claim amounts with interest u/s 220(2). The Committee has replied to the Income Tax Department vide letter no 373 dated 14.2.2019 and has informed the Department as under:

"10. It may be noted that while appraising the claims of creditors to the Hon'ble Supreme Court, the Committee specifically mentioned in the status report filed on 29.11.2006 (Annexure 2) that the claims are no proven claims therefore, in case the Hon'ble Supreme Court directs this Committee to consider your claim, it shall be open to the Committee to scrutinize the claim at that time and send its recommendations to the Hon'ble Court."

Copy of letter dated 12.2.2019 of Income Tax Department is annexed as **ANNEXURE R-4** (Pg... to Pg...). Copy of reply of the Committee dated 14.2.2019 with annexure 1 (claim letter dated 19/20.1. 2005), annexure 2 (status report dated 29.11.2006) and annexure 3 (letter dated 6.1.2007) is **ANNEXURE R-5** (Pg.. to PG...).

7. That regarding the demands at Sr. No 6 to 9 of the chart, it is submitted that these demands relates to tax on interest received by the Committee on FDRs and Capital gain tax on properties sold by it. The Income Tax Department has raised the demand of interest for the Assessment years 2009-10, 2010-11, 2012-13 & 2015-16 as it has already, by way of attaching the bank account of the Committee, taken away regular demands, penalties and interests up to a certain date against notice u/s 226(3) dated 9.10.2017 for Rs. 22,04,41,524/- for the A.Y. 2007-08, 2008-09 & 2011-12, against notice u/s 226(3) dated 20.3.2017 for Rs. 45,35,30,130/- for the A.Y. 2009-10, 2010-11 & 2012-13 and against notice u/s 226(3) dated 20.3.2018 for Rs. 28,61,88,360/- for the A.Y. 2015-16. By these recovery notices, the Income Department has taken away total of Rs.96,01,60,014/- against the demand of Rs.92,69,49,373/-.

The Income Tax Department has attached the bank accounts during the pendency of appeals filed by the Committee before CIT, appeals 1 Chandigarh. The Committee has filed I.A. no. 36379 of 2018 for the transfer of these appeals to the Hon'ble Supreme Court so that the issues raised therein may be decided by this Hon'ble Court.

8. That the Income Tax Department has assessed the Committee on protective basis and separately the Company has also been assessed on substantive basis for seven assessment years i.e . 2007-08, 2008-09, 2009-10, 2010-11, 2011-12, 2012-13 & 2015-16 and raised demand u/s 156 of Rs.92,69,49,373/- whereas Rs.96,01,60,014/- (including interest) has been forcibly taken away by Income Tax Authorities from the bank account of the Committee holding the committee to be a Representative Assessee of Golden Forest Group of Companies.
9. The Ld. Assessing Officer has passed Substantive Assessment Order on the Company - M/s Golden Forests (India) Ltd. through this Committee GFIL and has erroneously held this Committee as a 'Representative Assessee' u/s 160 of the Income Tax Act, 1961. The Assessing Officer has also erred in raising demand from this Committee holding this Committee as 'Representative Assessee'. The Ld. Assessing Officer has further erred in issuing notices under Section 274 read with Section 271 (1) (c) of the Income Tax Act, 1961 and initiating penalty proceedings against the Company - M/s Golden Forests (India) Ltd. through this Committee – GFIL for the reasons stated in the foregoing paragraphs.
10. That the Committee has been appointed only for a limited purpose of realizing assets of the Golden Forests Group Companies and not for managing their properties. In fact, vide order dated 29.07.2005 passed in TC (C) No.2 of 2004, this Hon'ble Court held that:

"It is pointed out to us that the Committee is taking decisions on its own regarding properties of the Company. It therefore become necessary to clarify that

the Committee cannot take any decision on its own. If any decision is to be taken, the Committee must file an application to this Court. It is this Court which will take the decision."

Copy of the order dated 29.07.2005 passed by this Hon'ble Court is annexed as **ANNEXURE R-6** (Pg.. to PG...).

11. That the Committee is neither an agent nor a guardian nor a manager nor an administrator nor a trustee of the Golden Forests Group of Companies. It is working only as per the directions of the Court; therefore, it cannot be held 'Representative Assessee' u/s 160 of the Income Tax Act, 1961. The function of the Committee is only to realize the assets and report the status to the Hon'ble Court for formulation of a scheme of disbursement out of realized funds amongst the investors and creditors of the Company which are about 15 lakhs in number. In discharge of the task assigned to this Committee, a number of properties/Lands have been auction-sold by the Committee, which have been confirmed by the Hon'ble Supreme Court/Hon'ble High Court of Delhi.
12. That all properties which were owned and possessed by M/s Golden Forests (India) Ltd and its subsidiary/associate companies are in the custody of the Committee as "Custodia Legis" under the order of the Supreme Court.
13. The Committee would like to invite the attention of the Hon'ble Court to the order dated 19.04.1995 passed by the Hon'ble Bombay High Court in the matter of ACIT Vs. A.K.Menon

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which specifically dealt with the question whether the custodian appointed by the Court can be considered as a 'Representative Assessee' on behalf of notified parties and whether it is a duty and obligation of the custodian to file returns and pay taxes. The Hon'ble Court in Para-1 of the order referred to Para 82 & 83 of its earlier order dated 20.02.1995 which held as under:

"1. The points raised by this application have already been answered by an order dated 20th February, 1995. In that order the Court has inter alia held as follows:

"82. Dr. Balasubramanian also submitted that by virtue of sections 2 and 11 of the Special Courts Act, in effect a Notified Party was put into a civil death. He submitted that the Notified Party has an absolute disability. He submitted that the Custodian became a Representative Assessee on behalf of the Notified Parties. He submitted that now it was the duty and the obligation of the Custodian to file returns and pay taxes.

83. At this stage Mr. Bobde interrupted and informed Court that these must not be deemed to be arguments on behalf of the Income Tax Department. One Mr. K.V. M. Pai, Commissioner of Income Tax, II Circle also asked Mr. Bobde to inform Court that Dr. Balasubramanian was not instructed by the Tax Department to make any such submissions on their behalf. Dr. Balasubramanian then stated that he was merely assisting the Court. In my view this last submission of Dr. Balasubramanian i.e. that the

Custodian is a Representative Assessee, merely needs to be stated to be rejected. All that has happened is that the properties stand attached under the provisions of the Special Courts Act. There is no vesting of properties in the Custodian. The Custodian is neither an agent nor a guardian nor a manager nor an administrator nor a trustee of the Notified parties. The Custodian does not become the owner of the property nor does he step into the shoes of a Notified party. The Custodian is merely an Officer of this Court and nothing more. He has to deal with the property as per the directions of the Court."

On the basis of this order, Hon'ble Justice S.N.Variava dismissed the application. Copy of the order dated 19.04.1995 passed by the Hon'ble Bombay High Court is annexed as **ANNEXURE R-7** (Pg.. to PG...).

14. That the Assessment Orders are also bad and illegal as before the assessment order was passed, the Committee was not informed about the fact that the Committee is being treated as Representative Assessee. The Ld. Assistant Commissioner of Income Tax had never, in any of the notices issued to the Committee-GFIL, informed the Committee-GFIL that the Committee is being treated as Representative Assessee of the Company Golden Forests (India) Ltd. and is required to file Income Tax Returns, Audit Reports etc. on behalf of the Company Golden Forests (India) Ltd.
15. The preferential payment of Income Tax & Capital Gain Tax shall reduce the availability of funds for distribution

substantially. The properties have been purchased with the funds of the depositors and they shall be the sufferers.

16. That the case of the Committee since beginning has been that:

a) the Committee is not a person under the definition of 'Person' under section - 2(31) of the Income Tax Act, 1961 which states as under:

Unless the context otherwise requires, the term "person" includes:

- (i) an individual,
- (ii) a Hindu undivided family,
- (iii) a company,
- (iv) a firm,
- (v) an association of persons or a body of individuals, whether incorporated or not,
- (vi) a local authority, and
- (vii) every artificial juridical person, not falling within any of the preceding sub-clauses.

Vide Protective Assessment order, the Committee has been held to be Artificial Juridical Person. The Committee, while filing additional grounds, has clarified that Artificial Juridical Person is an entity established under the statute, for instance, a University or Society or Trust etc established under the statute. The Committee has been constituted under the order of the Supreme Court and not under any statute; therefore, Committee cannot be considered to be an Artificial Juridical Person.

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b) That the Committee is working under the directions of this Hon'ble Court and there is no direction to the Committee till date to pay Capital Gains Tax on the amounts realized from the properties auction-sold by the Committee and confirmed by the Hon'ble High Court of Delhi.

The amount realized from the sale of the properties is to be distributed to the investors. But if Capital Gains Tax is held liable to be paid to Income Tax Department, the funds available for disbursement shall be reduced to about 2/3rd of the sale proceeds, thus a major chunk of relief to be provided to the investors would get sliced off. This Committee is de facto performing the functions of a Liquidator.

Section 45 of the Income Tax Act deals with Capital gain arising out of transfer of Capital Assets and Section 46 states that the distribution of assets by official liquidator in respect of the company in liquidation is not regarded as transfer by the Company for the purpose of Section 45. Section 46 is reproduced as under:

"46. Capital gains on distribution of assets by companies in liquidation

(1) Notwithstanding anything contained in section 45, where the assets of a company are distributed to its shareholders on its liquidation, such distribution shall not be regarded as a transfer by the company for the purposes of section 45.

(2) Where a shareholder on the liquidation of a company receives any money or other assets from the company, he shall be chargeable to

income- tax under the head" Capital gains", in respect of the money so received or the market value of the other assets on the date of distribution, as reduced by the amount assessed as dividend within the meaning of sub- clause (c) of clause (22) of section 2 and the sum so arrived at shall be deemed to be the full value of the consideration for the purposes of section 48.

From the above it is clear that Capital Gain tax is not applicable to the distribution of assets by official liquidator and the taxable liability of individual share holder is to be assessed in the hand of each share holder after distribution of assets by official liquidator. The Committee is also doing the same; the only difference is that the distribution of assets is to the investors in place of share holders. This will avoid double taxation on individual investors that is to say first from the Committee and secondly individual investors.

- c) That It is pertinent to notice that most of the lands are agricultural lands beyond 8 Km from the Municipal limits on which Capital Gains Tax is not applicable. The Committee has downloaded (from the website of the Income tax department of India) a booklet namely 'How to Compute Your Capital Gains' under 'Tax Payers Information Series – 3' published by Income Tax Department, Directorate of Income Tax (PR,PP & OL). Chapter-2 of the said booklet deals with 'Computation of Capital Gains'. Clause (c) specifically exempts the agriculture lands in India from the provisions of the 'Capital Gains'.

Clause (c) read as follows:

c) Agricultural land in India other than the following:-

(i) Land situated in any area within the jurisdiction of municipality, municipal corporation, notified area committee, town area committee, town committee, or a cantonment board which has a population of not less than 10,000 according to the figures published before the first day of the previous year based on the last preceding census.

(ii) Land situated in any area around the above referred bodies upto a distance of 8 kilometers from the local limits of such bodies as notified by the Central Government.

17 That it is pertinent to bring to the kind notice of the Hon'ble Court that the Committee earns interest on the fixed deposits made from the sale proceeds of the properties on which bank deducts tax at source (TDS) and from the year 2005 till 2018, the bank has deposited Rs.35,62,37,277/- as TDS on Committee's account. The Committee files Income Tax returns every year but Income Tax Department has not refunded this to the Committee till today.

18 That Under the order dated 05.05.2015 passed by the Delhi High Court in CM No. 6838 of 2015 in W.P.(C) 1631 of 2014, the Committee deposited Rs.1,18,78,064.00 with Income Tax Department being 10% of the demand for the A.Y. 2007-08 and 2011-12. This amount is also exclusive of the amount taken away by the Income Tax Department.

19 The Committee has also examined the Assessment orders passed for the A.Y. 2007-08, 2008-09, 2009-10, 2010-11,

2011-12, 2012-13 & 2015-16 and found some defects in every Assessment order therefore the Committee highlighted the defects before CIT,Appeal-1 Chandigarh where appeals for the A.Y. 2007-08, 2008-09, 2009-10, 2010-11, 2011-12, & 2012-13 are pending. The Committee has also filed appeal against the Assessment order passed for the A.Y.2015-16 which is pending notice by CIT, Appeals-1, Chandigarh. The defects highlighted before CIT, Appeals are in the shape of additional submission copies of which are annexed here as ANNEXURE-R-8 (colly.) (pg.. to pg...)

20 There are some law points which require attention and consideration of the Hon'ble Court:

- a) Whether the Committee being Custodia Legis falls under the definition of a 'person' under Income Tax Act.
- b) Whether the Committee being Custodia Legis is liable to pay Income Tax.
- c) Whether Income Tax Department can take coercive action against the Committee regarding deposits realized by it by sale of assets in the capacity of Custodia Legis
- d) Whether Custodia Legis working under the control of this Hon'ble Court has protection of the court.
- e) Whether Income Tax Department can interfere with the working of Committee being Custodia Legis and raised demands from the funds collected for poor investors.
- f) Whether Section 46 of Income Tax Act can be applied to the Committee and exempt it from paying Capital gain tax as official liquidator.
- g) Whether Income Tax Department can make recoveries during the pendency of appeals before CIT.

21. The Committee prays that:

(a) The application may pleased be dismissed with the direction to in the Income Tax Department to refund Rs.96,01,80,014/- being the amount attached by it with interest to the Committee.

(b) Direct the Income Tax Department to refund Rs.1,18,73,064/- being the amount deposited under High Court direction to the Committee with interest.

(c) Direct the Income Tax Department to refund Rs.35,62,27,277/- being the total TDS deposited with the applicant as on 31.3.2018 to the Committee with interest.

(d) The applicant be direct not to levy Capital gain tax on the sale conducted by the Committee.

(e) The applicant be directed not to make any recovery of amounts due to the Golden Forests Companies from the accounts of the Committee as the Committee is not a Representative Assesse of the Company but is Custodia Legis.

(b) Pass any other direction which the Hon'ble Court deem fit and proper

Filed on

Filed By

Suruchii Aggarwal, Advocate  
Counsel for the Committee - GFIL

**IN THE SUPREME COURT OF INDIA  
CIVIL ORIGINAL JURISDICTION**

I.A. No. 33106 of 2019  
IN

Writ Petition (s) (civil) No(s). 188 of 2004

**In the Matter of :**

M/S RAIGANJ CONSUMER FORUM

.... Petitioner

Versus

UNION OF INDIA & ORS.

.... Respondents

**AFFIDAVIT**

I, Shri Brij Mohan Bedi, S/o Shri Sadhu Ram Bedi, aged about 69 years, R/o H. No. 22, Sector-4, Panchkula, do hereby solemnly affirm and state as under:-

1. That I am one of the members of the Committee appointed by the Hon'ble Supreme Court. I am duly authorised and being fully competent and fully conversant with the facts and circumstances of the case, I am competent to swear this affidavit.
2. That I have read the contents of accompanying reply which has been prepared under my instructions.
3. That the contents of the accompanying reply are true and correct to the best of my knowledge and are derived from record of the case. Annexure are true copy of its original.

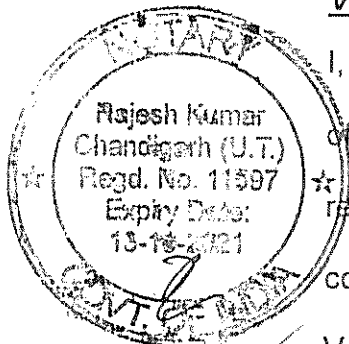
  
DEPONENT

**VERIFICATION:-**

I, the deponent above named, do hereby verify and state that the contents of paragraph 1 to 3 of the affidavit are true to my knowledge based on records of the case, no part of it is false and nothing material has been concealed there from.

Verified by me at on this the 1<sup>st</sup> day of July, 2019.

  
DEPONENT



ATTESTED & VERIFIED

NOTARY, CHANDIGARH (U.T.)

- 1 IIII 2019



GOVERNMENT OF INDIA  
INCOME TAX DEPARTMENT

Office of Asst. Commissioner of Income Tax,  
Circle- 3(1), Room No. 314, Aayakar Bhawan, Sector 17-E, Chandigarh.

Dated: 20.03.2017

F.No. ACIT/Circle-3(1)/Chd/2016-17/

**NOTICE UNDER SECTION 226(3) OF THE INCOME TAX ACT, 1961**

To,  
The Branch Manager,  
UCO Bank, Sector-17 A,  
Chandigarh

Sir,

A sum of Rs. 45,35,30,130/- for the Assessment Years 2009-10, 2010-11 & 2012-13 is due from M/s Golden Forest India Ltd. (PAN - AAACG6033C) on account of Income Tax/penalty/interest/fine. You are hereby required under section 226(3) of the Income Tax Act, 1961 to pay to me forthwith any amount due from you to or, held by you or your bank, for or on account M/s Golden Forest India Ltd. in its committee's account i.e. Chairman, Committee GFIL (PAN - AAAJC0494N), A/c No. 02360110024638 or any other account upto the amount of arrears shown above.


2. I also request you to pay any money which may subsequently become due from you to him/them or which you may subsequently hold for or on account of him/them upto the amount of arrears still remaining unpaid, forthwith on the money becoming due or being held by you as aforesaid.

3. Any payment made by you in compliance with this notice is in law deemed to have been made under the authority of the said assessee and my receipt will constitute a good and sufficient discharge of your liability to the above person to the extent of the amount referred to in the receipt.

4. Please note that if you discharge any liability to the assessee after receipt of this notice you will be personally liable to me as Assessing Officer/Tax Recovery Officer to the extent of the liability discharged, or to the extent of the liability of the assessee for tax/penalty/interest/fine referred to in the preceding para, whichever is less.

5. Further, if you fail to make payment in pursuance of this notice, you shall be deemed to be an assessee in default in respect of the amount specified on this notice and further proceedings may be taken against you for the realization of the amount as if it were an arrear of tax due from you in the manner provided in sections 222 to 228 of the Income Tax Act, 1961 and this notice shall have the same effect as an attachment of a debt under section 222 of the said Act.

6. The necessary demand draft/pay order be issued in favour of the Asst. Commissioner of Income Tax, Circle - 3(1), Chandigarh, payable at Chandigarh.

  
(Jagpal Singh)  
Asst. Commissioner Income Tax  
Circle- 3(1), Chandigarh.

Copy to the assessee

**GOVERNMENT OF INDIA**  
**INCOME TAX DEPARTMENT**  
 Office of Asst. Commissioner of Income Tax,  
 Circle- 3(1), Room No. 314, Aayakar Bhawan, Sector 17-E, Chandigarh.

F.No. ACIT/Circle-3(1)/Chd/2017-18/ Dated: 20.03.2018  
**NOTICE UNDER SECTION 226(3) OF THE INCOME TAX ACT, 1961**

To,  
 The Branch Manager,  
 UCO Bank, Sector-17 A,  
 Chandigarh

Sir,  
 A sum of **Rs. 28,61,88,360/-** for the Assessment Years 2015-16 is due from **M/s Golden Forest India Ltd. (PAN - AAACG6033C)** on account of Income Tax/penalty/interest/fine. You are hereby required under section 226(3) of the Income Tax Act, 1961 to pay to me forthwith **any amount due** from you to or, held by you or your bank, for or on account **M/s Golden Forest India Ltd. in its committee's account i.e. Chairman, Committee GFIL (PAN - AAAJC0494N), A/c No. 02360110024638** or any other account upto the amount of arrears shown above.

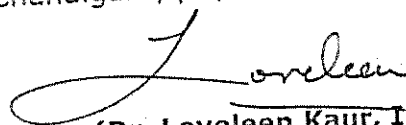
2. I also request you to pay any money which may subsequently become due from you to him/them or which you may subsequently hold for or on account of him/them upto the amount of arrears still remaining unpaid, forthwith on the money becoming due or being held by you as aforesaid.

3. Any payment made by you in compliance with this notice is in law deemed to have been made under the authority of the said assessee and my receipt will constitute a good and sufficient discharge of your liability to the above person to the extent of the amount referred to in the receipt.

4. Please note that if you discharge any liability to the assessee after receipt of this notice you will be personally liable to me as Assessing Officer/Tax Recovery Officer to the extent of the liability discharged, or to the extent of the liability of the assessee for tax/penalty/interest/fine referred to in the preceding para, whichever is less.

5. Further, if you fail to make payment in pursuance of this notice, you shall be deemed to be an assessee in default in respect of the amount specified on this notice and further proceedings may be taken against you for the realization of the amount as if it were an arrear of tax due from you in the manner provided in sections 222 to 225 of the Income Tax Act, 1961 and this notice shall have the same effect as an attachment of a debt under section 222 of the said Act.

6. The necessary demand draft/pay order be issued in favour of the Asst. Commissioner of Income Tax, Circle - 3(1), Chandigarh, payable at Chandigarh.

  
 (Dr. Loveleen Kaur, IRS)  
 Asst. Commissioner Income Tax  
 Circle- 3(1), Chandigarh



भारत सरकार / Govt. of India  
 आयकर विभाग / Income Tax Department  
 आयकर सहायक आयुक्त, सर्कल 3(1), आयकर भवन, तीसरी मंजिला, कनरा नं. 314, सेक्टर 17E, चण्डीगढ़  
 O/o the Asstt. Commissioner of Income Tax, Circle 3(1), Aayakar Bhawan, Room No. 314, Sector 17E, Chandigarh.  
 No. ACIT/C-3(1)/CHD/2017-18/ Dated: 09.10.2017

**NOTICE UNDER SECTION 226(3) OF THE INCOME TAX ACT, 1961**

To,  
 The Branch Manager,  
 LIC Bank, Sector - 17 A,  
 Chandigarh

Su.  
 A sum of Rs. 22,04,41,524/- for the Assessment Years 2007-08, 2008-09 and 2011-12 is due from M/s Golden Forest India Ltd. (PAN - AAACG6033C) on account of Income Tax/penalty/interest/fine. You are hereby required under section 226(3) of the Income Tax Act, 1961 to pay to me forthwith any amount due from you to or held by you or your bank, for or on account of M/s Golden Forest India Ltd. in its Committee's account i.e. Committee Golden Forest (PAN - AAAJC0494N) A/c No. 02360110024638 or any other account upto the amount of arrears shown above.

2 I also request you to pay any money which may subsequently become due from you to him/them or which you may subsequently hold for or on account of him/them upto the amount of arrears still remaining unpaid, forthwith on the money becoming due or being held by you as aforesaid.

3 Any payment made by you in compliance with this notice is in law deemed to have been made under the authority of the said assessee and my receipt will constitute a good and sufficient discharge of your liability to the above person to the extent of the amount referred to in the receipt.

4 Please note that if you discharge any liability to the assessee after receipt of this notice you will be personally liable to me as Assessing Officer/Tax Recovery Officer to the extent of the liability discharged, or to the extent of the liability of the assessee for tax/penalty/interest/fine referred to in the preceding para, whichever is less.

5 Further, if you fail to make payment in pursuance of this notice, you shall be deemed to be an assessee in default in respect of the amount specified on this notice and further proceedings may be taken against you for the realization of the amount as if it were an arrear of tax due from you in the manner provided in sections 222 to 225 of the Income Tax Act, 1961 and this notice shall have the same effect as an attachment of a debt under section 222 of the said Act.

6 The necessary demand draft/pay order be issued in favour of the Assistant Commissioner of Income Tax, Circle - 3(1), Chandigarh, payable at Chandigarh.

Yours faithfully

(Tarannum Verma)

Asst. Commissioner Income Tax  
 Circle- 3(1), Chandigarh

Received notice  
 5.05 PM on 9/10/2017  
 (Signature)

Copy to the Assessee

→ Unmanned Ints All 9/10  
 → convey to Representative  
 of Golden Forest - 9/10



ANNEXURE-R-2

20

IN THE HIGH COURT FOR THE STATES OF PUNJAB & HARYANA  
AT CHANDIGARH

CWP No. 17713 of 2017

Committee -Golden Forest India Ltd., Chandigarh.

..Petitioner

Versus

Assistant Commissioner of Income Tax, Chandigarh and others

...Respondents

**I N D E X**

Sr. No.	Particulars	Dated	Pages	Court Fee
1.	List of Dates and Events	08.08.17	1-12	-
2.	Civil Writ Petition	08.08.17	13-47	50
3.	Affidavit in support	08.08.17	48	-
4.	Annexure P-1 (Order)	19.08.04	49-56	6
5.	Annexure P-2 (Order)	05.09.06	57-86	6
6.	Annexure P-3 (Order)	15.10.08	87-92	6
7.	Annexure P-4 (Order)	18.06.03	93-111	3
8.	Annexure P-5 (Order)	30.12.16	112-123	8
9.	Annexure P-6 (Order)	30.12.16	124-136	9
10.	Annexure P-7 (Order)	30.12.16	137-152	11
11.	Annexure P-8 (colly.) (Notifications)	-----	153-155	2
12.	Annexure P-9 (CBDT Circular)	06.10.15	156-157	2
13.	Annexure P-10 (colly.) (demand notices)	30.12.16	158-160	2
14.	Annexure P-11 (colly.)(application)	-----	161-163	2
15.	Annexure P-12 (colly.) (Notices)	-----	164-166	2
16.	Annexure P-13 (order)	05.05.15	167-168	3
17.	Annexure P-14 (Letter)	12.06.15	169-171	2
18.	Annexure P-15 (Order)	01.04.16	172-173	3
19.	Annexure P-16 (notice)	07.02.17	174-175	2
20.	Annexure P-17 (colly.) (notices)	09.02.17	176-182	6
21.	Annexure P-18 (Letter)	17.02.17	183	1

22.	Annexure P-19 (Colly.) (Letter and circular)	01.03.17/ 29.02.17	184-191	6
23.	Annexure P-20 (letter)	02.03.17	192-194	2
24.	Annexure P-21 (Letter)	03.03.17	195-197	2
25.	Annexure P-22 (colly.)(Notices)	20.03.17	198-206	6
26.	Annexure P-23 (Order)	03.02.10	207-215	6
27.	Annexure P-24 (Order)	24.05.17	216-218	3
28.	Resolution	-----	219	-
29.	Power of attorney	08.08.17	220	3
30.	Total court fees	08.08.17		154

**Notes:**

- The main law points are contained in Paragraph No. 4<sup>to</sup> 45 at Pages Nos. 43 of the petition.
- Relevant Statutes:
  - The Constitution of India.
  - Income Tax Act, 1961;
- Whether notice of Caveat: No.
- Any other similar case: Nil.

Chandigarh  
Dated:08.08.17

(Alok Mittal)(Abhishek Sanghi)  
Advocates  
Counsels for the petitioner

22

IN THE HIGH COURT FOR THE STATES OF PUNJAB & HARYANA  
AT CHANDIGARH

CWP No. 17713 of 2017

Committee -Golden Forest India Ltd., Chandigarh.

..Petitioner

Versus

Assistant Commissioner of Income Tax, Chandigarh and others

...Respondents

INDEX

Court Fee Rs. 154-00

Chandigarh

Dated:08.08.17

(Alok Mittal)(Abhishek Sanghi)

Advocates

Counsels for the petitioner

IN THE HIGH COURT FOR THE STATES OF PUNJAB & HARYANA  
AT CHANDIGARH

CWP No. 17713 of 2017

Committee -Golden Forest India Ltd., Chandigarh.

..Petitioner

Versus

Assistant Commissioner of Income Tax, Chandigarh and others

...Respondents

**LIST OF DATES AND EVENTS**

.... The petitioner is the Committee GFIL constituted by the order of the Hon'ble Supreme Court of India dated 19.08.2004, passed in TC (C) No. 2 of 2004 titled Securities & Exchange Board of India Vs. Golden Forest (I) Ltd., with the following mandate: -

- i. To invite claim from the investors and creditors of the Company M/s Golden Forest (India) Limited and to tabulate the same.
- ii. To identify the properties of Golden Forests (India) Limited and take their possession through the District Administration concerned, and if need be with the police help as well.
- iii. To put on sale the properties of the Company M/s Golden Forests (India) Limited under the supervision of/and subject to the confirmation by the Hon'ble Supreme Court of India (now subject to the confirmation by the High Court of Delhi)

.... The Company M/s Golden Forests (India) Ltd. was incorporated on 23.02.1987 and granted certificate of

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commencement of business on 06.03.1987. Complaints of misappropriation of funds and unauthorized involvement in Collective Investment Schemes were received against the Company, which led to Writ Petition being filed by SEBI before the Hon'ble High Court of Bombay. The Company closed its business in December, 2000 when its Directors were arrested.

.... The Hon'ble Punjab and Haryana High Court in CP No. 60/2001 titled 'National Investors Forum vs. Golden Forest (India) Ltd.' vide its Order dated 18.06.2003, appointed a Provisional Liquidator to take into custody all the assets of the Company and sell them by public auction.

... Subsequently, the matter went before the Hon'ble Supreme Court. By order dated 27.07.2004, the Supreme Court proposed to appoint a Committee which was to be entrusted with the responsibility of realising the assets, distributing the receipts amongst the Claimants.

19.08.14<sup>04</sup> The Hon'ble Supreme Court in TC (C) No.2 of 2004 vide its order dated 19.08.2004 appointed the Committee i.e. the present Petitioner and discharged the office of the Provisional Liquidator appointed by the Hon'ble Punjab & Haryana High Court.

**ANNEXURE: P-1.**

05.09.06 The Hon'ble Supreme Court in TC (C) No.2 of 2004 vide order dated 05.09.2006, directed the Petitioner to sell the properties which were in its possession.

**ANNEXURE P-2.**

15.10.08 On 15.10.2008, in the matter of TC (C) No.2 of 2004, the Hon'ble Supreme Court further passed direction in respect of sale of properties of the Company-GFIL.

**ANNEXURE: P-3**

... The Golden Forest Group of Companies purchased large chunks of lands and properties almost all over India during the period of 1992-98. The lands were purchased with the funds invested by more than 15 lakhs of investors with the Company, with a view to develop those lands as agro-forestry *venture* & resorts etc and to repay the amounts with returns to the investors, from proceeds of this *venture* etc. Therefore, the lands were acquired by the Company with a view to develop them.

... These lands alongwith some built-up properties are being sold by the Committee under the orders of the Hon'ble Supreme Court, that too not for earning profit (Capital Gains) but to repay the investors, the amounts deposited by them with the Company. The sold properties include agricultural land as well as built-up properties situated in the states of Haryana, Punjab, Himachal Pradesh, Delhi, Uttarakhand, Andhra Pradesh and Madhya Pradesh.

18.06.03 Though the status of the Petitioner is not that of an Official Liquidator; yet the functions of the Committee are akin to those of an Official Liquidator. The difference is only in the designation or nomenclature. The mandate of the Hon'ble Supreme Court to the Petitioner is to recover possession of the assets of the Golden Group of Companies, and thereafter, to sell those properties and submit a report in the Hon'ble Supreme Court of India (now to the Hon'ble Court). The funds collected by the sale of the properties are to be exclusively distributed/ disbursed to the investors/ creditors. It is submitted that the Hon'ble Punjab & Haryana High Court, had appointed a Provisional Liquidator to perform various functions including recovering possession of assets of the Golden Group of Companies and selling them. **Annexure: P-4.**

.. The whole purpose was to payoff the investors/creditors. To avoid passing of conflicting orders by different High Courts, the Hon'ble Supreme Court transferred all the cases pending in various High Courts against the Company M/s Golden Forests (India) Ltd, to itself. Thereafter, the Hon'ble Supreme Court appointed the Petitioner to recover possession of the properties of the Golden Group of Companies, sell these properties and to submit a report to the Hon'ble Supreme Court (now to the Hon'ble Delhi High Court). The whole purpose again is to collect funds for making payments to the investors/creditors.

... The above narration would show that the functions of the Committee are very much akin to those of the Official Liquidator only, the difference being in the nomenclature or designation. It may be respectfully submitted that the Petitioner has been functioning as a de facto Liquidator.

... The Committee has been regularly filing Income Tax Returns since its appointment including for the Assessment Years 2009-10, 2010-11 and 2012-13.

30.12.06 The Assessing Officer passed the Assessment Orders dated 30.12.2016 for Assessment Year 2009-10 under Section 147 of the Act, against the Company M/s. Golden Forest India Limited. **ANNEXURE: P-5.**

30.12.16 For the A.Y. 2010-11, the Assessing Officer passed the Assessment Order dated 30.12.2016 wherein it is stated that "all the assets and liabilities of the Committee-GFIL is basically that of the assessee Company. During the year under consideration, the Committee-GFIL has filed its return declaring total income of Rs. 46,22,107/- and claimed refund of Rs. 51,29,933/- on account of TDS. As request but no return has been filed by MIs. Golden Forest India Ltd. In the Income and Expenditure statement of the Committee, it has declared bank interest from fixed deposits and savings account deposits of the committee amounting to Rs. 41,20,320/-. In the Balance sheet of the Committee-GFIL, it has declared interest accrued from Fixed deposits of Bid money

amounting to Rs. 5,15,11,821/-. However, this has not been included for the computation of the income of the assessee committee. The Committee has not declared the interest on the pretext that the FDRs have not matured and has not been received. **Annexure P-6.**

30.12.16 Similarly, for the A.Y. 2012-13, interest income of Rs. 33,83,93,409/- was added to the income of the Company on substantive basis and on the Petitioner on protective basis. **Annexure P-7.**

.. The Assessing Officer has erroneously held that the two properties sold are not agricultural as the distance of above two villages from district Panchkula is 16 kms and 14 kms respectively. The sale of the said lands would not attract capital gains in view of the fact that 'agricultural land' is excluded from the definition of capital asset as per Section 2 (14) (iii) of the Act based on its proximity to a municipality or cantonment board. **Annexure P-8 (Colly.) and Annexure P-9 respectively.**

.. Thereafter, Notices of Demand dated 30.12.2016 under Section 156, Income Tax Act and Notices under Section 274 read with Section 271 of the Act were issued to the Committee through the Company Golden Forest India Limited through the Petitioner for the Assessment Years 2009-10, 2010-11 and 2012-13.

... Aggrieved by the Orders of the AO for the Assessment Years 2009-10, 2010-11 and 2012-13, the Petitioner

preferred appeals before the Commissioner of Income Tax (Appeals).

30.12.16 Consequently, in reply to the penalty notice, the Petitioner requested for the stay on penalty proceedings as an appeal has been preferred before the CIT(A) for A. Y. 2009-10, 2010-11 and 2012-13. **Annexure P- 10 (Colly), Annexure P- 11 (Colly) and Annexure P- 12 (Colly) respectively.**

... The Petitioner had preferred W. P. (C) No. 1631/2014 under Article 226 & 227 of the Constitution for seeking quashing of the Show Cause Notice dated 24.12.2013 issued by the ACIT asking the Committee to deposit Capital Gains Tax.

... Subsequently, the Committee preferred a C.M. No. 6838/2015 in W.P. (C) 1631/2014, titled 'Committee Golden Forests India Ltd. vs. Assistant Commissioner of Income Tax' before the Hon'ble High Court of Delhi, being aggrieved by the Notice under Section 156 of the Act for A.Y.s 2007-08 & 2011-12. Further, the notices issued under Section 274 of the Act for the relevant periods were also challenged. The Hon'ble Delhi High Court issued notice in the aforesaid matter vide order dated 20.04.2015.

05.05.15 The Hon'ble Court vide Order dated 05.05.2015 held that the impugned notices should not be enforced till final decision in the appeal before the CIT(A). Further, the Petitioner was directed to deposit 10% of the

demanded amount within a period of six weeks.

**Annexure P-13.**

12.06.15 The Committee vide letter dated 12.06.2015 informed the Respondent No. 2 that in compliance of the order dated 05.05.2015 of the Hon'ble Court, the following amounts have been deposited:-

- I. A.Y. 2007-08 - Rs. 6,00,137/-
- II. A.Y. 2011-12 - Rs. 1,12,77,926/-

**Annexure P-14.**

.... The Petitioner had preferred W. P. (C) No. 2574/2016 under Article 226 & 227 of the Constitution for seeking quashing of the Assessment Orders passed under Section 147 of the Act dated 30.03.2015, 07.01.2016 and 30.03.2015 respectively for the Assessment Years 2007- 08, 2008-09 and 2011-12 respectively, besides praying for quashing of orders dated 28.01.2016 for rectification under Section 154 for AY 2007-08 and 2011-12.

01.04.16 The Hon'ble Court vide Order dated 01.04.2016 directed that no coercive steps shall be taken against the Committee Golden Forest India Limited pursuant to the orders under challenge. The said matter is pending consideration before the Hon'ble Court.

**Annexure P-15.**

07.02.17 In the meantime, the Respondent No.1 issued a notice dated 07.02.2017 for recovery of demand against the Petitioners for the assessment years 2008-09, 2011-

12, 2012-13, 2013-14. Further, regarding the assessments completed in the FY 2016-17, viz. AY 2014-15, 2009-10, 2010-11, also the said notice of recovery of demand was issued. The Assessing Officer has extracted the demands for AYs 1996-97, 1997-98, 2007-08, 2008-09, 2011-12, and Block Asst. 1999-2000, as also those completed in the FYs 2016-17 for AYs 2012-13, 2010-11 and 2009-10 against the Company, Golden Forest India Limited in the said notice for recovery of demand. The Committee was requested to pay 10% of the demand in respect of the demands created in the FY 2016-17 by 17.02.2017.

**Annexure P - 16.**

09.02.17 The notices of hearing were issued on 09.02.2017 by the CIT (Appeals-I) for AYs 2007-08, 2008-09, 2011-12 against the Company, Golden Forest India Limited and for the Assessment Years 2008-09, 2011-12 and 2012-13 against the Committee, Golden Forest. **Annexure P- 17. (Colly).**

17.02.17 Justice R.N Aggarwal (Retd) (erstwhile Chairman of the Committee) vide letter dated 17.02.2017 informed the CIT (Appeals-I) that the Committee has resigned and a new Committee has been constituted by the Delhi High Court. **Annexure P-18.**

29.02.17 By notice dated 01.03.2017 for recovery of demand, the Respondent No.1 directed the Petitioner to make a payment of 15 of demand in terms of CBDT Circular

dated 29th February, 2016 for the AYs 2009-10, 2010-11 and 2012-13. **Annexure P-19 (Colly.)**

02.03.17 By notice dated 02.03.2017 for recovery of demand, the Respondent No.1 directed the Petitioner to make a payment of 15% of demand in terms of CBDT Circular dated 29th February, 2016 for the assessments completed against the Company during the current financial year i.e. FY 2016-17 viz. AYs 1996-97, 1997-98, 2008-09 Block Asst. 1999-2000. **Annexure P-20.**

03.03.17 By notice dated 03.03.2017 for recovery of demand, the Respondent No.1 directed the Petitioner to make a payment of 15% of demand in terms of CBDT Circular dated 29 February, 2016 for the assessments completed against the Company during the current financial year i.e. FY 2016-17 viz. AYs 2007-08 and 2011-12. **Annexure P-21.**

03.03.17 The Respondent No.1 issued notices dated 20.03.2017 under Section 226 (3) of the Act to UCO Bank, State Bank of Patiala and Oriental Bank of Commerce for payment of a sum of Rs. 45,35,30,130/- each for the same period of AYs 2009-10, 2010-11 and 2012-13 against the Company on account of income-tax /penalty / fine. **Annexure P-22 (Colly.)**

... The aforesaid notice was delivered by hand at 5.27 pm on 20/3/2017 to UCO Bank (Respondent no 3.) The committee has deposited hundred and eleven (111) crores in one FOR and 45 crores in another FOR with

UCO Bank. The said FDRS had been sent to the Bank for renewal on 21.3.2017. The committee was not informed about notice much less served with the notice under Section 226(3) by the Respondent No.1. UCO Bank Respondent No. 3 utilized the FOR of 111 crores and instead of renewing it, and on 22.3.2017 made a demand draft for an amount of Rs 45,35,30,130/- for remittance to Respondent No.1. The balance amount was converted into FOR by UCO Bank. On 23.3.2017 the Demand Draft was deposited with Income tax authority under receipt.

.... The petitioner was not informed by Respondent No.1 of the action under Section 226(3). The notice was delivered on the office of the committee on 23.3.2017 in the afternoon by post by which time recovery had already been made from UCO Bank. The Respondent No.1 has deliberately not served the Petitioner in accordance with the provisions of the Act and has not provided an opportunity as contemplated under the Act.

.... The State Bank of Patiala (Respondent No.4), and Oriental Bank of Commerce were also served by hand, on 20.3.2017.

.... The officers of Respondent No.4 were not informed by Respondent No.1 that UCO Bank has already issued a pay order/ demand draft dated 22.03.2017 for Rs. 45,35,30,130/- to the Respondent No.1. The Respondent No.1 has however, withdrawn the notices

against State Bank of Patiala and Oriental bank of Commerce.

03.02.10 The Hon'ble Court has jurisdiction to entertain the present petition in view of the Order dated 03.02.2010 passed by the Hon'ble Supreme Court in transferred TC (C) No. 2/2004, along with all other tagged cases, to this Hon'ble Court for passing further orders in those cases. Therefore, the Committee is competent to approach this Hon'ble Court for issue of an appropriate direction. **Annexure P- 23.**

24.05.17 The present petitioner had challenged the said assessment orders and notices before the Hon'ble Delhi High Court by way of WP(C) No. 4598 of 2017 and the said petition was disposed off vide order dated 24.05.2017 whereby it was stated that the petitioner should approach the Punjab and Haryana High Court at Chandigarh in accordance with law. **Annexure P- 24.**

**Hence the Present Writ Petition.**

Chandigarh  
Dated:08.08.17

(Alok Mittal)(Abhishek Sanghi)  
Advocates  
Counsels for the petitioner

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IN THE HON'BLE HIGH COURT FOR THE STATES OF PUNJAB  
AND HARYANA AT CHANDIGARH

CWP No. 17713 of 2017

Committee -Golden Forest India Ltd., (Appointed by Supreme Court of India), H. No. 60, Sector 4, Chandigarh through its Member Mr. B.M. Bedi S/o Sh. S.R. Bedi Aged about 67 years.

..Petitioner

Versus

1. Assistant Commissioner of Income Tax, Circle -1(1) , Plot No. 17, Room No. 214, Second Floor, Sector 17-E, Chandigarh.
2. Deputy Commissioner of Income Tax, Circle 3(1), Aayakar Bhawan, Room No. 314, Sector 17-E, Chandigarh.
3. UCO Bank, through its Assistant General Manager, Branch Office, SCO No. 55-56-57, Sector 17-B, Chandigarh.
4. State Bank of Patiala <sup>(Now State Bank of India)</sup> through Chief Manager, Punjab and Haryana High Court Branch, Sector 1, Chandigarh.
5. Oriental Bank of Commerce, through its Branch Manager, Branch Office, SCO No. 128-129, Sector 8-C, Chandigarh.

Chandigarh

Dated:08.08.17

(Alok Mittal)(Abhishek Sanghi)

Advocates

Counsels for the petitioner

Civil Writ Petition under Articles 226/227 of Constitution of India praying for the issuance of a writ in the nature of certiorari quashing the impugned assessment order dated 30.12.2016 for Assessment years 2009-10, 2010-11 and 2012-13 (Annexures P-5, P-6 and P-7 respectively) under section 147 of the Income Tax Act and demand notices under section 156 of the Act dated 30.12.2016 for the Assessment years 2009-10, 2010-11 and 2012-13 (Annexure P-10 (colly.)).

AND/OR

Issue a writ in the nature of certiorari quashing the impugned notices dated 07.02.2017 (Annexure P-16), 01.03.2017 (Annexure P-19(colly.)), 02.03.2017 (Annexure P-20) and 03.03.2017 (Annexure P-21) and also impugned notice dated 20.03.2017 (Annexure P-22 (colly.)) under section 226(3) of the Act issued to UCO Bank, State Bank of Patiala and Oriental Bank of Commerce respectively for recovery.

AND/OR

Issue any other appropriate writ, order or direction that this Hon'ble Court may deem fit in the circumstances of the present case.

**RESPECTFULLY SHOWETH:**

1. That the present writ petition is being filed on behalf of the Committee-GFIL appointed by the Hon'ble Supreme Court of India and reconstituted by the Hon'ble Delhi High Court. The challenge

in the present writ petition is to the impugned assessment order dated 30.12.2016 for Assessment years 2009-10, 2010-11 and 2012-13 under section 147 of the Income Tax Act and demand notices under section 156 of the Act dated 30.12.2016 for the Assessment years 2009-10, 2010-11 and 2012-13 and also to the impugned notices dated 07.02.2017, 01.03.2017, 02.03.2017 and 03.03.2017 and also impugned notice dated 20.03.2017 under section 226(3) of the Act issued to UCO Bank, State Bank of Patiala and Oriental Bank of Commerce respectively for recovery. The impugned assessment orders and the impugned notices have been issued by the respondent Nos.1 and 2 who are amenable to the writ jurisdiction of this Hon'ble Court and therefore the petitioner is entitled to invoke the extra ordinary writ jurisdiction of this Hon'ble Court under Article 226/227 of the Constitution of India.

2. That the petitioner is the Committee GFIL constituted by the order of the Hon'ble Supreme Court of India dated 19.08.2004, passed in TC (C) No. 2 of 2004 titled Securities & Exchange Board of India Vs. Golden Forest (I) Ltd., with the following mandate: -

- i. To invite claim from the investors and creditors of the Company M/s Golden Forest (India) Limited and to tabulate the same.
- ii. To identify the properties of Golden Forests (India) Limited and take their possession through the District Administration concerned, and if need be with the police help as well.
- iii. To put on sale the properties of the Company M/s Golden Forests (India) Limited under the supervision of/and subject to the confirmation by the Hon'ble

Supreme Court of India (now subject to the confirmation by the High Court of Delhi)

3. That the Company M/s Golden Forests (India) Ltd. was incorporated on 23.02.1987 and granted certificate of commencement of business on 06.03.1987. Complaints of misappropriation of funds and unauthorized involvement in Collective Investment Schemes were received against the Company, which led to Writ Petition being filed by SEBI before the Hon'ble High Court of Bombay. The Company closed its business in December, 2000 when its Directors were arrested.

4. That the Hon'ble Punjab and Haryana High Court in CP No. 60/2001 titled 'National Investors Forum vs. Golden Forest (India) Ltd.' vide its Order dated 18.06.2003, appointed a Provisional Liquidator to take into, custody all the assets of the Company and sell them by public auction.

5. That subsequently, the matter went before the Hon'ble Supreme Court. By order dated 27.07.2004, the Supreme Court proposed to appoint a Committee which was to be entrusted with the responsibility of realising the assets, distributing the receipts amongst the Claimants.

6. That the Hon'ble Supreme Court in TC (C) No.2 of 2004 vide its order dated 19.08.2004 appointed the Committee i.e. the present Petitioner and discharged the office of the Provisional Liquidator appointed by the Hon'ble Punjab & Haryana High Court. The relevant portion of the aforesaid order is stated as follows:

*"The Committee shall take into its custody all assets of the Company, wherever they may be. For the purpose of enabling the Committee to take charge of the assets all authorities including the Police, District Magistrates etc. are directed to give all necessary assistance.*

*After realisation of the assets and scrutinisation of the claims, the Committee to put up a Report before this Court. As far as possible such Report to be put up within six months from today.*

Copy of Order dated 19.08.2004 passed by the Hon'ble Supreme Court is annexed herewith and marked as **ANNEXURE: P-1.**

7. That the Hon'ble Supreme Court in TC (C) No.2 of 2004 vide order dated 05.09.2006, directed the Petitioner to sell the properties which were in its possession. The relevant portion of the order is as follows:

*"37. The Committee is put at liberty to put to sale the properties at Village Jharmari, lands at Village Kot Billa, Jaswant Garh and other adjoining villages and a Resort at Nalagarh and other properties of GFIL, possession of which has already been taken by the Committee, by auction after due publicity. The sale shall be subject to the confirmation by this Court. After the properties are put to sale, the Committee shall report to this Court about the auction sale effected which shall be subject to the final orders of this Court.1*

Copy of Order dated 05.09.2006 passed by the Hon'ble Supreme Court in TC (C) No. 2 of 2004 is annexed herewith and marked as **ANNEXURE P-2.**

8. That on 15.10.2008, in the matter of TC (C) No.2 of 2004, the Hon'ble Supreme Court further passed direction in respect of sale of properties of the Company-GFIL. The relevant portion has been reproduced below:

*"In order to facilitate the disbursement due to the investors, the money has to be collected by selling these properties. The Committee is authorized to take possession of all the properties owned by the respondents. If there are any valid claims in respect of any of these properties by third parties, the Committee may consider the same and pass appropriate orders, subject to confirmation by this Court."*

*As regards the sale of properties is concerned, the Committee may make appropriate publication regarding the sale and sufficient notices be issued to the prospective purchasers by publishing the same in the local newspapers having wide circulation in the area where the property is situated. Any sale conducted by the Committee shall be based on valuation made either by the Committee or by other approved valuer and upset price is fixed before sale is finalized. The sale is, however, subject to the confirmation by this Court. As soon as the sale is over, the details including the purchase price and all the details shall be made over to this Court for the purpose of confirmation."*

Copy of Order dated 15.10.2008 passed by the Hon'ble Supreme Court in TC (C) No. 2 of 2004 is annexed herewith and marked as **ANNEXURE: P-3**

9. That the Golden Forest Group of Companies purchased large chunks of lands and properties almost all over India during the period of 1992-98. The lands were purchased with the funds invested by more than 15 lakhs of investors with the Company, with a view to develop those lands as agro-forestry *venture* & resorts etc and to repay the amounts with returns to the investors, from proceeds of this *venture* etc. Therefore, the lands were acquired by the Company with a view to develop them.

10. That these lands alongwith some built-up properties are being sold by the Committee under the orders of the Hon'ble Supreme Court, that too not for earning profit (Capital Gains) but to repay the investors, the amounts deposited by them with the Company. The sold properties include agricultural land as well as built-up properties situated in the states of Haryana, Punjab, Himachal Pradesh, Delhi, Uttarakhand, Andhra Pradesh and Madhya Pradesh.

11. That though the status of the Petitioner is not that of an Official Liquidator; yet the functions of the Committee are akin to those of an Official Liquidator. The difference is only in the designation or nomenclature. The mandate of the Hon'ble Supreme Court to the Petitioner is to recover possession of the assets of the Golden Group of Companies, and thereafter, to sell those properties and submit a report in the Hon'ble Supreme Court of India (now to the Hon'ble Court). The funds collected by the sale of the properties are to be exclusively distributed/ disbursed to the investors/ creditors. It is submitted that the Hon'ble Punjab & Haryana High Court, had appointed a Provisional Liquidator to perform various functions including recovering possession of assets of the Golden Group of Companies and selling them. A copy

of the said order dated 18.06.2003 passed by Hon'ble Punjab and Haryana High Court in C.P. No. 60/2001 is **Annexure: P-4**. The whole purpose was to payoff the investors/creditors. To avoid passing of conflicting orders by different High Courts, the Hon'ble Supreme Court transferred all the cases pending in various High Courts against the Company M/s Golden Forests (India) Ltd, to itself. Thereafter, the Hon'ble Supreme Court appointed the Petitioner to recover possession of the properties of the Golden Group of Companies, sell these properties and to submit a report to the Hon'ble Supreme Court (now to the Hon'ble Delhi High Court). The whole purpose again is to collect funds for making payments to the investors/creditors.

12. That the above narration would show that the functions of the Committee are very much akin to those of the Official Liquidator only, the difference being in the nomenclature or designation. It may be respectfully submitted that the Petitioner has been functioning as a de facto Liquidator.

13. That the Committee has been regularly filing Income Tax Returns since its appointment including for the Assessment Years 2009-10, 2010-11 and 2012-13.

**Assessment Year: 2009-10**

14. That the Assessing Officer passed the Assessment Orders dated 30.12.2016 for Assessment Year 2009-10 under Section 147 of the Act, against the Company M/s. Golden Forest India Limited.

The AO was of the view that the assessee has not brought to tax the entire amount of interest Income on the FORs. The AO stated as follows:- "all the assets and liabilities of the Committee-GFIL is

basically that of the assessee Company. During the year under consideration, the Committee-GFIL has filed its return declaring total income of Rs. 57,34,169/- and claimed refund of Rs. 69,01,143/- on account of <sup>TDS.</sup> TOS. In the Income and Expenditure statement of the Committee, it has declared bank interest from fixed deposits and savings account deposits of the committee amounting to Rs. 41,26,214/-. In the Balance sheet of the Committee- GFIL, it has declared interest accrued from Fixed deposits of bid money amounting to Rs. 5,61,74,985/-. However, this has not been included for the computation of the income of the assessee committee. The Committee has not declared the interest on the pretext that the FDRs have not matured and has not been received.

This version of the committee is not acceptable because, the Committee is following mercantile system of accounting and all incomes accruing to it during a F.Y. have to be considered as taxable income of the year irrespective of the fact it is received or not. Besides that, tax has been deducted at source by the banks on the entire interest accruing to the assessee- committee during the year. Thus, income has to be recognized at the point of interest and not on the date of maturity of the FDRs.

In view of the above, the interest income of 5,61,74,985/- was added to the income of the assessee company on a substantive basis and on a protective basis on the Petitioner.

True copy of order dated 30.12.2016 passed by Assessing Officer for the year 2009-10 is annexed herewith and marked as ANNEXURE: P-5.

**Assessment Year: 2010-11**

15. That for the A.Y. 2010-11, the Assessing Officer passed the Assessment Order dated 30.12.2016 wherein it is stated that "all

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the assets and liabilities of the Committee-GFIL is basically that of the assessee Company. During the year under consideration, the Committee-GFIL has filed its return declaring total income of Rs. 46,22,107/- and claimed refund of Rs. 51,29,933/- on account of TD8. As request but no return has been filed by MIs. Golden Forest India Ltd. In the Income and Expenditure statement of the Committee, it has declared bank interest from fixed deposits and savings account deposits of the committee amounting to Rs. 41,20,320/-. In the Balance sheet of the Committee-GFIL, it has declared interest accrued from Fixed deposits of Bid money amounting to Rs. 5,15,11,821/-. However, this has not been included for the computation of the income of the assessee committee. The Committee has not declared the interest on the pretext that the FDRs have not matured and has not been received.

This version of the Committee is not acceptable because, the Committee is following mercantile system of accounting and all incomes accruing to it during a F.Y. have to be considered as taxable income of the year irrespective of the fact that it is received or not. Besides that, tax has been deducted at source by the banks on the entire interest accruing to the assessee-committee during the year. Thus, income has to be recognized at the point of accrual of interest and not on the date of maturity of the FDRs.

In view of the above, the interest income of Rs. 5,15,11,821/- was added to the income of the assessee company on a substantive basis and on a protective basis on the Petitioner.

True copy of order dated 30.12.2016 passed by Assessing Officer for the Assessment Year 2010-11 is annexed herewith and marked as **Annexure P-6**.

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Assessment Year: 2012-13

16.(a) Similarly, for the A.Y. 2012-13, interest income of Rs. 33,83,93,409/- was added to the income of the Company on substantive basis and on the Petitioner on protective basis.

(b) Addition on account of capital gains arising out of sale proceeds of the properties taken into custody by the Committee from the Company was made in the hands of the Company. The Committee Golden Forests appointed by the Supreme Court was treated as representative of the Company. The two properties sold by the Committee in the assessment year 2012-13 were agricultural lands situated in village Jaswantgarh, District Panchkula (Haryana) and agricultural land in village Kot, District Panchkula (Haryana). The assessing officer has passed an erroneous order, contrary to the facts that the properties sold were liable to the provisions of capital gains as the property situated in village Kot was within municipal committee limit and second property of village Jaswantgarh though not in M.C. limit but was within 8 kms from Panchkula M.C. limit. The long term capital gains of sale proceeds of the properties during the year amounting to 1,11,00,00,000.00 was computed at 50 in the absence of details of cost and date of acquisition of properties sold. Thus the long term capital gain was computed at 55,50,00,000/- and was added to the income of the Company Golden Forest India Limited.

True copy of order dated 30.12.2016 passed by Assessing Officer for the Assessment Year 2012-13 is annexed herewith and marked as Annexure P-7.

17. That the Assessing Officer has erroneously held that the two properties sold are not agricultural as the distance of above two villages from district Panchkula is 16 kms and 14 kms

respectively. The sale of the said lands would not attract capital gains in view of the fact that 'agricultural land' is excluded from the definition of capital asset as per Section 2 (14) (iii) of the Act based on its proximity to a municipality or cantonment board. True copies of the notifications regarding distance of above two villages from district Panchkula and the CBDT Circular 17/2015 dated 6<sup>th</sup> October, 2015 are annexed herewith and marked as **Annexure P-8 (Colly.) and Annexure P-9 respectively.**

18. That thereafter, Notices of Demand dated 30.12.2016 under Section 156, Income Tax Act and Notices under Section 274 read with Section 271 of the Act were issued to the Committee through the Company Golden Forest India Limited through the Petitioner for the Assessment Years 2009-10, 2010-11 and 2012-13.

19. That aggrieved by the Orders of the AO for the Assessment Years 2009-10, 2010-11 and 2012-13, the Petitioner preferred appeals before the Commissioner of Income Tax (Appeals).

20. That consequently, in reply to the penalty notice, the Petitioner requested for the stay on penalty proceedings as an appeal has been preferred before the CIT(A) for A. Y. 2009-10, 2010-11 and 2012-13.

True copy of demand notices dated 30.12.2016 and notices under Section 274 read with Section 271 and request for stay of penalty proceedings are annexed herewith and marked as **Annexure P- 10 (Colly), Annexure P- 11 (Colly) and Annexure P- 12 (Colly) respectively.**

21. That the Petitioner had preferred W. P. (C) No. 1631/2014 under Article 226 & 227 of the Constitution for seeking quashing

of the Show Cause Notice dated 24.12.2013 issued by the ACIT asking the Committee to deposit Capital Gains Tax.

Subsequently, the Committee preferred a C.M. No. 6838/2015 in W.P. (C) 1631/2014, titled 'Committee Golden Forests India Ltd. vs. Assistant Commissioner of Income Tax' before the Hon'ble High Court of Delhi, being aggrieved by the Notice under Section 156 of the Act for A.Y.s 2007-08 & 2011-12. Further, the notices issued under Section 274 of the Act for the relevant periods were also challenged. The Hon'ble Delhi High Court issued notice in the aforesaid matter vide order dated 20.04.2015.

22. That the Hon'ble Court vide Order dated 05.05.2015 held that the impugned notices should not be enforced till final decision in the appeal before the CIT(A). Further, the Petitioner was directed to deposit 10% of the demanded amount within a period of six weeks. True copy of the order dated 05.05.2015 passed by the Hon'ble Court is annexed herewith and marked as **Annexure P-13**.

23. That the Committee vide letter dated 12.06.2015 informed the Respondent No. 2 that in compliance of the order dated 05.05.2015 of the Hon'ble Court, the following amounts have been deposited:-

- I. A.Y. 2007-08 - Rs. 6,00,137/-
- II. A.Y. 2011-12 - Rs. 1,12,77,926/-

Copy of the letter dated 12.06.2015 by the Petitioner is annexed herewith and marked as **Annexure P-14**.

24. That the Petitioner had preferred W. P. (C) No. 2574/2016 under Article 226 & 227 of the Constitution for seeking quashing

of the Assessment Orders passed under Section 147 of the Act dated 30.03.2015, 07.01.2016 and 30.03.2015 respectively for the Assessment Years 2007- 08, 2008-09 and 2011-12 respectively, besides praying for quashing of orders dated 28.01.2016 for rectification under Section 154 for AY 2007-08 and 2011-12.

25. That the Hon'ble Court vide Order dated 01.04.2016 directed that no coercive steps shall be taken against the Committee Golden Forest India Limited pursuant to the orders under challenge. The said matter is pending consideration before the Hon'ble Court. True copy of the order dated 01.04.2016 passed by the Hon'ble High Court is annexed herewith and marked as **Annexure P-15**.

26. That in the meantime, the Respondent No.1 issued a notice dated 07.02.2017 for recovery of demand against the Petitioners for the assessment years 2008-09, 2011-12, 2012-13, 2013-14. Further, regarding the assessments completed in the FY 2016-17, viz. AY 2014-15, 2009-10, 2010-11, also the said notice of recovery of demand was issued. The Assessing Officer has extracted the demands for AYs 1996-97, 1997-98, 2007-08, 2008-09, 2011-12, and Block Asst. 1999-2000, as also those completed in the FYs 2016-17 for AYs 2012-13, 2010-11 and 2009-10 against the Company, Golden Forest India Limited in the said notice for recovery of demand. The Committee was requested to pay 10% of the demand in respect of the demands created in the FY 2016-17 by 17.02.2017. True copy of the notice for recovery of demand dated 07.02.2017 is annexed hereto and marked as **Annexure P - 16**.

27. That the notices of hearing were issued on 09.02.2017 by the CIT (Appeals-I) for AYs 2007-08, 2008-09, 2011-12 against the

Company, Golden Forest India Limited and for the Assessment Years 2008-09, 2011-12 and 2012-13 against the Committee, Golden Forest. True copy of notices are annexed hereto and marked as **Annexure P- 17. (Colly).**

28. That Justice R.N Aggarwal (Retd) (erstwhile Chairman of the Committee) vide letter dated 17.02.2017 informed the CIT (Appeals-I) that the Committee has resigned and a new Committee has been constituted by the Delhi High Court. True copy of letter dated 17.02.2017 is annexed hereto and marked as **Annexure P- 18.**

29. That by notice dated 01.03.2017 for recovery of demand, the Respondent No.1 directed the Petitioner to make a payment of 15% of demand in terms of CBDT Circular dated 29th February, 2016 for the AYs 2009-10, 2010-11 and 2012-13. True copy of letter dated 01.03.2017 alongwith CBDT circular dated 29.02.2017 is annexed hereto and marked as **Annexure P-19 (Colly.).**

30. That by notice dated 02.03.2017 for recovery of demand, the Respondent No.1 directed the Petitioner to make a payment of 15% of demand in terms of CBDT Circular dated 29th February, 2016 for the assessments completed against the Company during the current financial year i.e. FY 2016-17 viz. AYs 1996-97, 1997-98, 2008-09 Block Asst. 1999-2000. True copy of letter dated 02.03.2017 is annexed hereto and marked as **Annexure P-20.**

31. That by notice dated 03.03.2017 for recovery of demand, the Respondent No.1 directed the Petitioner to make a payment of 15% of demand in terms of CBDT Circular dated 29 February, 2016 for the assessments completed against the Company during the

current financial year i.e. FY 2016-17 viz. AYs 2007-08 and 2011-12. True copy of letter dated 03.03.2017 is annexed hereto and marked as **Annexure P-21**.

32. That the Respondent No.1 issued notices dated 20.03.2017 under Section 226 (3) of the Act to UCO Bank, State Bank of Patiala and Oriental Bank of Commerce for payment of a sum of Rs. 45,35,30,130/- each for the same period of AYs 2009-10, 2010-11 and 2012-13 against the Company on account of income-tax /penalty / fine. True copy of notices dated 03.03.2017 are annexed hereto and marked as **Annexure P-22 (Colly.)**

33. That the aforesaid notice was delivered by hand at 5.27 pm on 20/3/2017 to UCO Bank (Respondent no 3.) The committee has deposited hundred and eleven (111) crores in one FOR and 45 crores in another FOR with UCO Bank. The said FDRS had been sent to the Bank for renewal on 21.3.2017. The committee was not informed about notice much less served with the notice under Section 226(3) by the Respondent No.1. UCO Bank Respondent No. 3 utilized the <sup>FDR</sup>FOR of 111 crores and instead of renewing it, and on 22.3.2017 made a demand draft for an amount of Rs 45,35,30,130/- for remittance to Respondent No.1. The balance amount was converted into <sup>FDR</sup>FOR by UCO Bank. On 23.3.2017 the Demand Draft was deposited with Income tax authority under receipt.

34. That the petitioner was not informed by Respondent No.1 of the action under Section 226(3). The notice was delivered on the office of the committee on 23.3.2017 in the afternoon by post by which time recovery had already been made from UCO Bank. The Respondent No.1 has deliberately not served the Petitioner in

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accordance with the provisions of the Act and has not provided an opportunity as contemplated under the Act.

35. That the State Bank of Patiala (Respondent No.4), and Oriental Bank of Commerce were also served by hand, on 20.3.2017.

36. That the officers of Respondent No.4 were not informed by Respondent No.1 that UCO Bank has already issued a pay order/ demand draft dated 22.03.2017 for Rs. 45,35,30,130/- to the Respondent No.1. The Respondent No.1 has however, withdrawn the notices against State Bank of Patiala and Oriental bank of Commerce.

37. That the Hon'ble Court has jurisdiction to entertain the present petition in view of the Order dated 03.02.2010 passed by the Hon'ble Supreme Court in transferred TC (C) No. 2/2004, along with all other tagged cases, to this Hon'ble Court for passing further orders in those cases. Therefore, the Committee is competent to approach this Hon'ble Court for issue of an appropriate direction. Copy of Order dated 03.02.2010 passed by the Hon'ble Supreme Court in TC (C) No. 2/2004 is annexed herewith and marked as **Annexure P- 23**.

38. That the present petitioner had challenged the said assessment orders and notices before the Hon'ble Delhi High Court by way of WP(C) No. 4598 of 2017 and the said petition was disposed off vide order dated 24.05.2017 whereby it was stated that the petitioner should approach the Hon'ble Punjab and Haryana High Court at Chandigarh in accordance with law. A copy of the order dated 24.05.2017 is annexed herewith as **Annexure P-**

24. Hence, the present petitioner is being filed the present writ petition before this Hon'ble Court.

39.

GROUNDS

- A) That the Assessing Officer has taken coercive action against the Committee appointed by the Supreme Court for recovery of the entire illegal demand of Rs. 45,35,30,130/- by attachment of its bank accounts, when similar issues raised by the Committee are pending consideration before the Hon'ble Delhi High Court for AY 2007-08, 2008-09, 2011-12 and interim order has been passed by this Hon'ble Court, restraining the department from taking coercive action.
- B) That the Assessing Officer has erroneously and in a high handed manner taken co-ercive action against the Committee in recovering illegal demands from banks by attaching accounts where more than Rs. 663,28,10,099/- crores have been deposited by Committee from sale of properties as a custodia legis appointed by Supreme Court.
- C) That the Hon'ble Supreme Court in the case of Bank of India Vs Vijay Transport 2000(8)SCC512 has held that property in custodia legis means that the property is kept in the possession and under protection of court. The amounts obtained by the Committee from sale of properties and placed in FDRs as directed by the Hon'ble Supreme are held as Custodia legis and no co-ercive action can be taken by the Income Tax Authorities against such deposits without permission from the Court.

D) That the Assessing Officer (Respondent No.1) has acted illegally and arbitrarily in passing and enforcing an order holding the Committee liable to pay Capital Gains on the sale of Agricultural Lands (for AY 2012-13) by erroneously holding that the property is not agricultural. The Assessing Officer has passed a palpably wrong order in rejecting the claim of the Petitioner that the lands sold were agricultural, and has not substantiated the same or carried out any verification or investigation. The sale of agricultural land would not attract capital gains in view of the fact that 'agricultural land' is excluded from the definition of capital asset as per Section 2(14) (iii) of the Act based on its proximity to a municipality or cantonment board.

E) Section 2(14) (iii) of the Income Tax Act 1961, specifically exempts the agricultural lands in India from the provisions of the 'Capital Gains' as they are not treated as capital asset.

Clause (iii) read as follows:

- iii) Agricultural land in India other than the following:-
  - (i) Land situated in any area within the jurisdiction of municipality, municipal corporation, notified area Committee, town area Committee, town Committee, or a cantonment board which has a population of not less than 10,000 according to the figures published before the first day of the previous year based on the last preceding census.
  - (ii) Land situated in any area around the above referred bodies upto a distance of 8 kilometers from the local limits of such bodies as notified by the Central Government.

It is submitted that the properties which are sold by the Committee are agricultural lands and, therefore, exempt from the provisions of Capital Gains.

- F) Because the Assessing Officer (Respondent No.1) has erred in assessing capital gains tax on an amount of Rs. 55,50,00,000/- for A Y 2012-13 on sale of agricultural lands in Villages Kat and Jaswantgarh on estimate. The AO has erroneously held that the two lands sold in the A Y 2012-13 were not agricultural. However, the villages Kot and Jaswantgarh are respectively situated 16 kms. and 14 kms. away from Panchkula which is district headquarter for both villages, and as such are agricultural lands. The sale of the said lands would not attract capital gains in view of the fact that 'agricultural land' is excluded from the definition of capital asset as per Section 2 (14) (iii) of the Act based on its proximity to a municipality or cantonment board.
- G) Because in view of the CBDT Circular 17/2015 dated 6<sup>th</sup> October, 2015 the amendment by Finance Act, 2013 with effect from 01.04.2014 (prescribing that the measurement of the distance from the municipality/cantonment board is to be taken aerially), applies prospectively. Moreover, in view of the judgments in the case of CIT vs. Vijay Singh Kadan of the Delhi High Court and of the Bombay High Court dated 30.03.2015 in ITA No. 1510f 2013 in the case of Smt. Maltibai K. Kadu, the distance is to be measured from the agricultural land in question to the outer limit of the municipality and not by the straight line or the aerial route, for the Assessment Years 2009-10, 2010-11, 2012-13 for the purpose of Section 2 (14) (iii) (b) of the Act. As such, the

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distance between village Kot, and Panchkula is 16 kms and that between village Jaswantgarh and Panchkula is 14 kms and thus both lands are agricultural.

- H) The Assessing Officer has further erred in issuing notices of demand on the basis of the erroneous assessment orders for AY 2009-10, 2010-11 and 2012-13.
- I) Further, the Assessing Officer has sought to enforce the illegal demand and has issued notices dated 20.3.2017 under Section 226(3) of the Act to three banks namely UCO Bank, State Bank of Patiala and Oriental Bank of Commerce demanding a payment of a sum of Rs. 45,35,30,130/- from each of them, for the same period being AYs 2009-10, 2010-11 and 2012-13 on account of *income-tax/penalty / fine*.
- J) The aforesaid notices were delivered by hand to the banks. The aforesaid notice was delivered on 20/3/2017 to UCO Bank (Respondent No 3.) The committee has deposited hundred and eleven (111) crores in one FDR and 45 crores in another FOR with UCO Bank. The said FDRS had been sent to the Bank for renewal on 21.3.2017. The committee was not informed about notice much less served with the notice under Section 226(3) by the Respondent No.1. UCO Bank Respondent No. 3 utilized the FOR of 111 crores and instead of renewing it, and on 22.3.2017 made a demand draft for an amount of Rs 45,35,30,130/- for remittance to Respondent No.1. The balance amount was converted into FDR by UCO Bank. On 23.3.2017 the Demand Draft was deposited with Income tax authority under receipt.

- K) The petitioner was not informed by Respondent No.1 of the action under Section 226(3). The notice was delivered at the office of the committee on 23.3.2017 in the afternoon by post by which time recovery had already been made from UCO Bank. The Respondent No.1 has deliberately not served the Petitioner in accordance with the provisions of the Act and has not provided an opportunity as under the Act.
- L) The State Bank of Patiala (Respondent No.4), and Oriental Bank of Commerce were also served by hand, on 20.3.2017.
- M) The officers of Respondent No.4 were not informed by Respondent No.1 that UCO Bank has already issued a pay order/ demand draft dated 22.03.2017 for Rs. 5,35,30,130/- to the Respondent No.1.
- N) Moreover this Hon'ble Court is in seisin of the issue as to whether the Committee is liable to pay Capital Gains on such sales in Writ Petition (C) No. 2574/2016 for the AY 2007-08, 2008-09, 2011-12 pending consideration before this Hon'ble Court. This Hon'ble Court vide Order dated 01.04.2016 directed that no coercive steps shall be taken against the Committee Golden Forest India Limited, pursuant to the orders under challenge. Despite the above, the Respondent No.1 has in a high handed manner sought to take co-ercive action against the Committee for subsequent assessment years.
- O) By notice dated 01.03.2017 for recovery of demand, the Respondent No.1 erroneously relying on CBDT Circular dated 29th February, 2016 directed the Petitioner to make a

payment of 15 of demand for the AYs 2009-10, 2010-11 and 2012-13. The sale of agricultural properties does not attract capital gains tax and the assessment order is liable to be set aside as also the notice of demand dated 1.3.2017.

P) By notice dated 02.03.2017 for recovery of demand, the Respondent No.1 directed the Petitioner to make a payment of 15 of demand in terms of CBDT Circular dated 29 February, 2016 for the assessments completed against the Company during the current financial year i.e. FY 2016-17 viz. AYs 1996-97, 1997-98, 2008-09 Block Asst. 1999-2000. For the AY 2008-09 the Petitioner had instituted a Writ Petition (C) No. 2574/2016 wherein by order dated 1.4.2016, this Hon'ble Court had directed that no coercive action was to be taken.

Q) By notice dated 03.03.2017 for recovery of demand, the Respondent No.1 directed the Petitioner to make a payment of 10 of demand for the assessments completed against the Company during the current financial year i.e. FY 2016-17 viz. AYs 2007-08 and 2011-12. The Committee however, vide letter dated 12.06.2015 had informed the Respondent No.2 that in compliance of the order dated 05.05.2015 of this Hon'ble Court, the following amounts had been deposited:

III. A.Y. 2007-08 - Rs. 6,00,137/-

IV. A.Y. 2011-12 - Rs. 1,12,77,926/-

Further, for AY 2007-08, and Ay 2011-12, the Petitioner had instituted a Writ Petition (C) No. 2574/2016 wherein by order dated 1.4.2016, this Hon'ble Court had directed that no coercive action was to be taken. The Respondent No.1 has issued the aforesaid notices of demand dated 2.3.2017 and

3.3.2017 in violation of the orders passed by this Hon'ble Court.

- R) Further, the Assessing Officer has sought to enforce the illegal demand and has issued notices dated 20.3.2017 under Section 226(3) of the Act to three banks namely UCO Bank, State Bank of Patiala and Oriental Bank of Commerce demanding a payment of a sum of Rs. 45,35,30,130/- from each of them, for the same period being AYs 2009-10, 2010-11 and 2012-13 on account of income-tax/ penalty / fine. The three accounts held by the Committee in the aforesaid three banks were attached. However, the Respondent No.1 has subsequently withdrawn the said two notices issued to Oriental Bank of Commerce and State Bank of Patiala. The Committee has FDRs to the extent of more than Rs. 200 crores in each of these banks. The Committee has sold properties of the company Golden Forest India Ltd as directed by the Hon'ble Supreme Court (most of which are agricultural) and placed the amounts obtained in FDRs. The disbursement of the aforesaid amounts to the investors can only be done as per the directions of this Hon'ble Court. The purpose of constitution of Committee would be frustrated if the sale proceeds are taken away by the Income Tax Department, by way of illegal demands on account of Capital Gains Tax.
- S) The Copy of the Notice under Section 226(3) of the Act was not served on the Petitioner till illegal recovery of the entire amount was made from UCO Bank during pendency of Appeal before the CIT(A).

- T) The Petitioner apprehends that if these kind of measures are allowed the Respondent No.1 would appropriate all the funds of the Committee with the Banks. The said funds are held by the Committee as a custodian and have ultimately to be distributed to the investors.
- U) The notices under Section 226 (3) to the three banks are liable to be quashed and the amount disbursed by UCO bank is liable to be refunded and the FDR in the name of the Committee with the UCO Bank ought to be restored. The State Bank of Patiala and Oriental Bank of Commerce and UCO bank would be required to be restrained from making any further payment to the Respondent No.1 in pursuance to the illegal and arbitrary demands and notices under Section 226(3) of the Act.
- V) That the Ld. Assessing Officer erred in holding that the Petitioner is a Representative Assessee of the Company M/s Golden Forest India Ltd. and its group.
- W) That the Ld. Assessing Officer erred in passing the Assessment Orders for the Assessment Years 2009-10, 2010-11 and 2012-13 as the Respondent had never, in any of the notices issued to the Petitioner, informed the Petitioner that it is being treated as Representative Assessee of the Company M/s Golden Forests (India) Ltd. and is required to file Income Tax Returns, Audit Reports, etc. on behalf of the Company M/s Golden Forests (India) Ltd.
- X) That the Ld. Assessing Officer erred in treating the Petitioner as a Representative Assessee under Section 160 of the

Income Tax, 1960. It is submitted that Section 160(1 )(iii) of the Income Tax Act applies to a case where the property is managed on behalf of another. The Committee held the property for and on behalf of the Court and not on behalf of the Company. Therefore, the Committee could not be treated as Representative Assessee of the Company. Thus, the Committee was not liable to pay tax on capital gains arising from disposal of the properties.

Y) That section 160(1 )(iii) of the Act has no application to the Committee; by the sale of the Company's properties, no gain could be said to have arisen in the hands of the Committee and as the properties of the Company had been held by the Committee, which it sold for the benefit of the investors, to be disbursed amongst the investors. The position of the Committee was not such that he was acting for and on behalf of the Company.

Z) That the Committee is the Custodian of the property. The Custodian does not become the owner of the property nor does it step into the shoes of a Notified party. Therefore, there is no vesting of properties in the Custodian. The Custodian is neither an agent nor a guardian nor a manager nor an administrator nor a trustee of the Notified party.

The Custodian is merely an officer of this Hon'ble Court. It is submitted that the Committee is merely an officer of this Court to deal with the property as per the directions of Hon'ble this Court. The Committee is dealing with the properties of the Company on behalf of the Court and therefore, is not liable to pay Capital Gains Tax. It is submitted that the Petitioner is not required to file the return

of the Company as no such mandate has been given by the Hon'ble Supreme Court while appointing the Petitioner.

The Bombay High Court has in the case of Assistant **Commissioner of Income Tax vs A.K.Menon** in Misc. Application No. 585 of 1994, on 19.4.1995, held that the Custodian is not managing any properties or assets of notified parties and - custodian was neither an Administrator General nor an official Trustee. Hence, custodian is not liable to pay income tax on behalf of notified parties.

AA) The Bombay High Court in the above decision has also rejected the argument that the custodian is a Representative Assessee. The custodian is merely an officer of the court and nothing more. He has to deal with the property as per the directions of the court.

BB) That no Capital Gains Tax could be levied on the sale of the land as the property belonged to the Company, who had defrauded the investors, who ceased to be the owner of the land on passing of the order by this Hon'ble Court and that the investors had stepped into the shoes of the Company and that as the Custodian, the Committee was under an obligation to sell the property and distribute the sale proceeds among the investors. Thus, the Committee held the property for and on behalf of the Court and not on behalf of the Company. In these circumstances, the Petitioner cannot be treated as the Representative Assessee of the Company under Section 160 of the Income Tax Act.

- CC) That the Hon'ble Supreme Court has not, in any of the orders passed by it, said that the Committee-GFIL shall represent any of the companies of GFIL group and shall be responsible for the financial affairs and/or Income Tax Returns! Audit Reports of the financial affairs of any of the Companies of Golden Forest group.
- DD) That the Committee is working under the directions of the Hon'ble Supreme Court of India (now, this Hon'ble Court) and there is no direction to the Committee till date to pay Capital Gains Tax on the amounts realised from the properties auction-sold by the Committee and confirmed by this Hon'ble Court. It is submitted that if Capital Gain Tax is paid to Income Tax Department, the funds available for disbursement shall be reduced to about 2/3<sup>rd</sup> of the sale proceeds, thus slicing away a major chunk of relief to be provided to the hapless investors who have been waiting for refund for about 14 years or so.
- EE) Section 46 of the Income Tax Act, 1960 pertains to Capital Gains in the context of liquidation. Section 46 is as follows:-
- "46. Capital gains on distribution of assets by companies in liquidation*
- (1) *Notwithstanding anything contained in section 45, where the assets of a company are distributed to its shareholders on its liquidation, such distribution shall not be regarded as a transfer by the company for the purposes of section 45.*
- (2) *Where a shareholder on the liquidation of a company receives any money or other assets from the company, he shall be chargeable to income-tax under the head"*

*Capital gains", in respect of the money so received or the market value of the other assets on the date of distribution, as reduced by the amount assessed as dividend within the meaning of sub- clause (c) of clause (22) of section 2 and the sum so arrived at shall be deemed to be the full value of the consideration for the purposes of section 48.*

It is submitted that the Petitioner is entitled to exemption under Section 46 of the Act, in view of the admitted position that the functions of the Committee is akin to the functions of the Official Liquidator.

FF) That the status of the Petitioner/ Committee is not that of an Official Liquidator; yet the functions of the Committee are akin to those of an Official Liquidator. The only difference is in the designation or nomenclature. The whole purpose of appointing the Committee was to get hold of properties of the Company and to payoff the investors/creditors.

GG) That where the assets of a Company are distributed on its liquidation, such distribution shall not be regarded as a transfer by the Company for the purposes of section 45 of the Income Tax Act. It is submitted that the properties sold by the Company is not sale but merely transfer of property. Further, the purpose of the Committee is to pay off the investors/ creditors, who have been duped of their hard earned money.

HH) That the Ld. Assessing Officer erred in not taking into consideration Section 46 of the Act. It is submitted that

when the Committee distributes the assets of a Company, he is performing a legal and statutory function and in such a distribution or refunding of the assets or adjustment of rights of the contributories! investors, no element of sale, transfer, exchange or relinquishment is involved.

In a case of liquidation, the property of the Company does not vest in the Official Liquidator and therefore no question of relinquishment will arise. The interest the Official Liquidator has is ephemeral in nature and it is so because he holds such assets only in a fiduciary capacity and not in the capacity of an owner to transfer the same. It is an admitted position that the status of the Committee is akin to the Official Liquidator and thus, there is no transfer as per Section 45 of the Act.

- II) The Assessing Officer has erred in holding the Committee as the Representative of the Company-GFIL. The AO has himself held:

*"The Committee is also designated with the work of devising a scheme for paying off the creditors of the assessee Company. Hence, the Committee, though not declared as an official liquidator, has and performs functions which are similar to that of an official liquidator or receiver. The Honorable Delhi High Court has categorically stated that the role of the Committee is akin to that of an 'Unofficial'*

- JJ) That Respondent No. 1 erred in treating the Petitioner to be the Representative Assessee of the Company. It is submitted that the Petitioner is representing the Court and not the

Company. The property sold by the Committee is not owned by it, and thus, such transfer of the property of the Company cannot be treated to be Income in the hands of the Petitioner.

KK) That since inception of the Committee being appointed by the Hon'ble Supreme Court, the banks have deducted Income Tax on the interest earned by the Committee on FDRs. Till date approx. Rs. 30 crores are lying in the TDS Account of the Committee with the Income Tax Department. It is submitted that the Order of the Assessing Officer is silent on this aspect in all the Assessment Orders passed by it.

40. That following law points are involved in this writ petition which need adjudication by this Hon'ble Court:-

a) Whether the Assessing Officer can take coercive action against the Committee appointed by the Supreme Court for recovery of the entire illegal demand of Rs. 45,35,30,130/- by attachment of its bank accounts, when similar issues raised by the Committee are pending consideration before this Hon'ble Court for AY 2007-08, 2008-09, 2011-12 and wherein an interim order has been passed by this Hon'ble Court restraining the department from taking coercive action?

b) Whether the Assessing Officer can take coercive action against the Committee in recovering illegal demands in a high handed manner from banks by attaching accounts where more than Rs. 600 crores have been deposited by

Committee from sale of properties in the capacity of custodia egis appointed by Supreme Court?

c) Whether the amounts obtained by the Committee from sale of properties and placed in FDRs as directed by the Hon'ble Supreme are held as Custodia egis and no coercive action can be taken by the Income Tax Authorities against such Deposits?

d) Whether the sale of agricultural land would attract capital gains in view of the fact that agricultural land is excluded from the definition of capital asset as per Section 2(14)(iii) of the Act based on its proximity to a municipality or cantonment board?

e) Whether in view of the CBDT Circular 17/2015 dated 06<sup>th</sup> October 2015, the amendment by Finance Act, 2013 coming into effect from 01.04.2015 (prescribing that the measurement of the distance from the municipality/cantonment board is to be taken aerially) does not apply prospectively?

f) What is the status of a Custodia Legis, and whether it is liable to pay income tax?

g) What is the status of Custodia Legis where property is kept in its possession under Protection of Court?

h) Whether enforcement of illegal demands against funds collected by Committee is not in violation of orders of

Supreme Court limiting the functions/ duties of the Committee (by order dated 05.09.2006 and 15.10.2008)?

i) Whether the Committee appointed by the Supreme Court, is entitled to exemption from Capital Gains Tax, granted to Official Liquidator under Section 46 of the Income Tax Act, 1960 in the sale of properties taken into custody under the orders of this Hon'ble Court, in view of the fact that the functions of the Committee are akin to those of an Official Liquidator?

j) Whether the Income Tax liability of the Company can be recovered from the Committee appointed by the Supreme Court for the limited purpose of sale of property for payment of dues of investors?

41. That the petitioner has been left with no other statutory remedy even by way of an appeal or revision except to invoke the extra-ordinary writ jurisdiction of this Hon'ble Court under Articles 226/227 of the Constitution of India against the order.

42. That the petitioner has not filed any other such or similar writ petition earlier in this Hon'ble Court or in the Hon'ble Supreme Court of India. No such or similar petition is pending adjudication before any competent court of law.

It is, therefore, respectfully prayed that this Hon'ble Court may kindly summon the records of the case and after perusing the same, may kindly be pleased to;

i) Issue a writ in the nature of certiorari quashing the impugned assessment order dated 30.12.2016 for Assessment years 2009-10,

2010-11 and 2012-13 (Annexures P-5, P-6 and P-7 respectively) under section 147 of the Income Tax Act and demand notices under section 156 of the Act dated 30.12.2016 for the Assessment years 2009-10, 2010-11 and 2012-13 (Annexure P-10 (colly.);

- ii) Issue a writ in the nature of certiorari quashing the impugned notices dated 07.02.2017 (Annexure P-16), 01.03.2017 (Annexure P-19(colly.), 02.03.2017 (Annexure P-20) and 03.03.2017 (Annexure P-21) and also impugned notice dated 20.03.2017 (Annexure P-22 (colly.) under section 226(3) of the Act issued to UCO Bank, State Bank of Patiala and Oriental Bank of Commerce respectively for recovery;
- v. Issue any other appropriate writ, order or direction that this Hon'ble Court may deem fit in the circumstances of the present case.
- vi. pass any such other or further orders as this Hon'ble Court may deem fit and in the facts and circumstances of the present case.
- vii. Dispense with the issuance of the advance notice to the respondents under the High Court Rules and orders;
- viii. Dispense with the filing of true typed copies and certified copies and photocopies of Annexures and permit the petitioner to file the photocopy of second set of writ petition before this Hon'ble Court;


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- ix) Award the costs of the present writ petition of the petitioner;

Chandigarh

Dated: 08.08.17

Through counsels

  
Petitioner

(B.M. BEDI)

(Alok Mittal) (Abhishek Sanghi)

Advocates

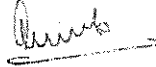
Counsels for the Petitioner

Verification:-

Verified that the contents of paras 1 to 39 and para Nos. 41 & 42 of the above writ petition are true and correct to my knowledge. The legal submissions as made out in para No. 40 of the above writ petition are believed to be true and correct being made on advice of the counsel. No part of it is false and nothing has been kept concealed therefrom.

Chandigarh

Dated: 08.08.17

  
Petitioner

(B.M. BEDI)

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IN THE HIGH COURT FOR THE STATES OF PUNJAB & HARYANA  
AT CHANDIGARH

CWP No. 17713 of 2017

Committee - Golden Forest India Ltd., Chandigarh.

..Petitioner

Versus

Assistant Commissioner of Income Tax, Chandigarh and others

...Respondents

Affidavit of Mr. B.M. Bedi son of Sh. S.R.

Bedi aged about 67 years- Member

Committee Golden Forest India Limited.

I, the above named deponent do hereby solemnly affirm and  
declare as under:-

1. That deponent is filing the accompanying Civil Writ  
Petition in this Hon'ble Court and is well conversant with the facts  
of the writ petition.

2. That the contents of paras 1 to 11 and para Nos. 11 & 12 of the  
above writ petition are true and correct to my knowledge. The legal  
submissions as made out in para No. 40 of the above writ petition  
are believed to be true and correct being made on advice of the  
counsel. No part of it is false and nothing has been kept concealed  
therefrom.

Place: Chandigarh

Dated: 02/08/17

hms  
Deponent

Verification:-

Verified that the contents of para Nos. 1 and 2 of my above  
affidavit are true and correct to my knowledge. No part of it is false  
and nothing material has been concealed therein.

Place Chandigarh

Date: 02/08/17

hms  
Deponent

ANNEXURE-R-3

CWP no. 17713 of 2017 (O&M) 1

IN THE HIGH COURT OF PUNJAB AND HARYANA AT  
CHANDIGARH

CWP no. 17713 of 2017 (O&M)

Date of Decision: 08.01.2019

Committee- Golden Forest India Ltd.

Versus

.....Petitioner(s)

Assistant Commissioner of Income Tax and others

Respondent(s)

CORAM : HON'BLE MR. JUSTICE MAHESH GROVER  
HON'BLE MR. JUSTICE ANIL BATRA

Present : Mr. Akshay Bhan, Advocate with  
Mr. Alok Mittal, Advocate for the petitioner(s)

Ms. Urvashi Bhatnagar, Advocate for respondents

MAHESH GROVER, J. (CORAM)

It is stated before us that the issue which has been raised substantively in the present petition is being debated before the Hon'ble Supreme Court where certain orders have been passed protecting the right of the petitioner and restraining the respondents from taking any coercive action against him.

We are of the opinion that since the issues raised in the present petition are substantively similar and the petitioner and the respondents would have right to agitate their grievance in those proceedings, the present petition, therefore, need not be kept alive and the same is disposed of, leaving the parties to their remedies before the Hon'ble Supreme Court.

Needless to say that the petitioner's remedy against the

assessment orders in accordance with the law would be available to him.

(Mahesh Grover)  
Judge

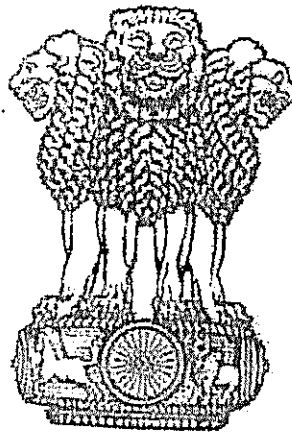
08.01.2019  
rekha

(Lalit Batra)  
Judge

Whether speaking/reasoned  
Whether reportable

Yes/No  
Yes/No

HIGH COURT OF PUNJAB AND HARYANA



सत्यमेव जयते



2602  
13/2/19

ANNEXURE - R-4.

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GOVERNMENT OF INDIA  
INCOME TAX DEPARTMENT

Office of Asst. Commissioner of Income Tax, Circle- 3(1), Room No. 314, Aayakar Bhawan, Sector 17-E, Chandigarh.

कार्यालय सहायक आयकर आयुक्त, सर्कल-3(1), कमरा नं. 314, आयकर भवन, सेक्टर - 17 ई, चण्डीगढ़

F.No. ACIT/Circle-3(1)/Chd/2018-19/ 431

Dated : 12.02.2019

To,

M/s Golden forest India ltd.  
Through committee golden forest india ltd.  
House no. 1065, 1<sup>st</sup> floor, sector 39 chandigarh.

Sir/Madam,

**Sub : Pending; outstanding demand for recovery- Reg-**

As per records of this office, outstanding demands pending for recovery as on date w.r.t A.Y's written below are as under:-

Sr. No	Assesment Year	Demand Raised	Outstanding demands
A	B	C	D
1.	1996-97	23269151	23269151 + interest u/s 220(2)
	1996-97	207192550	207192550 + interest u/s 220(2)
2.	1997-98	36885795	36885795 + interest u/s 220(2)
	1997-98	16306200	16306200 + interest u/s 220(2)
3.	Block Asst. ending 07.09.1995	11671075	7837918 + interest u/s 220(2)
4.	Block Asst. ending 07.09.1995	20580611	490500 + interest 220(2)
5.	Block Asst. 08.09.1995 to 31.03.1996	23269151	23269151 + interest u/s 220(2)
6.	Block Asst.(1995-00)	42559752	7159752 + interest u/s 220(2)

2. Further, as per records of this office, there are no pending appeals w.r.t. Sr. No. 1-6. You are requested to please furnish information, with proof, if any appeals are pending before any appellate authority against the demands stated above. Further, it has been noticed that demand of Rs. 3.54 crore has been collected, relevant to A.Y. Block Assessment (1995-2000). You are requested to furnish proof of payment of same.

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3. It should be noted that above information is required to be filed before Hon'ble Supreme Court. Your reply should be received in this office on or before 15.02.2019 at 11:00 A.M.

Yours faithfully,

*Sonia Nain*

(Sonia Nain)

Asstt. Commissioner of Income Tax,  
Circle-3(1), Chandigarh.

Encl. As Above

Copy to:-

1. The Addl. Commissioner of Income Tax Range-3, Chandigarh.



*Sonia Nain*

(Sonia Nain)

Asstt. Commissioner of Income Tax,  
Circle-3(1), Chandigarh.

Seen - Mr. Prashant Chaudhary, Adv to prepare response -  
*Klun*  
13.2.19

# COMMITTEE - GOLDEN FORESTS (INDIA) LIMITED

(Appointed by the Hon'ble Supreme Court of India)

ANNEXURE-R-5

Chairman's Off : 1065/1, Sector 39-B, Chandigarh-160 036 Tel : 0172-2695065

E-mail : committee\_gfil@rediffmail.com www.goldenforestcommittee.com

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COM/CHD/45/2019/373

February 14, 2019

Ms. Sonia Nain,  
Assistant Commissioner of Income Tax,  
Circle-3(1), Room No. 314, Aayakar Bhawan,  
Sector 17-E, Chandigarh.

**Subject: Pending outstanding demand for recovery.**

Please take reference of your letter No. F. No. ACIT/Circle-3(1)/Chd/2018-19/431 dated 12.02.2019 on the subject mentioned above. Our response is as under:

1. This Committee was appointed by the Hon'ble Supreme Court vide its order dated 19.8.2004 passed in the matter of T.C.(Civil) No. 2 of 2004, "SEBI Versus GFIL" with the directions to invite claims from the creditors of the Company, scrutinize them and file report to it.
2. This Committee is functioning under the orders and guidance of the Hon'ble Supreme Court of India. Being a Committee appointed by the Hon'ble Supreme Court, the powers and functions of this Committee are in the nature of a custodian of the properties of Golden Forests (India) Limited (the company). Therefore, it is not understood how the above referred letter could be addressed to the Committee. The Committee is not a Representative Assessee at all in respect of assessment of Golden Forests (India) Limited, which is entirely a different entity. However, without prejudice to the correct legal position regarding the status of the Committee as "CUSTODIA LEGIS", we would like to bring your attention to the following points:
3. The Committee invited claims through an advertisement dated 25.10.2004 and 20.02.2005 in response to which Income Tax Department filed claim vide No. 6507-08 dated 19/20.1.2005. As per the claim filed by the Income Tax Department the demand is found to be raised from three companies Golden Forests (India) Ltd., Golden Projects Ltd., and Golden Tourist Resorts & Developer Ltd., for the years 1995 to 1999.

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*Final*  
14/02/2019

4. As per claim letter dated 19/20.1.2005, the nature of demand was bifurcated into (1) Regular demand, Penalty under Section 271-D, 271C & 201(1) and interest. Total demand was calculated as Rs.52,81,43,520/- however, Regular Demand with respect to the company Golden Forests (India) Ltd., was Rs.71,60,033/- (date of order 21.4.1997), Regular demand in respect of the company Golden Projects Ltd., was Rs.4,33,34,517/- (date of order 19.11.2001), and Rs.43,67,499/- (date of order 18.12.2002) and regular demand with respect to the company M/s. Golden Tourist Resort & Developer Ltd., was Rs.1,41,66,992/- (date of order 31.3.2003). The total Regular Demand of all the three companies comes to Rs.6,90,29,041/- which has been raised to Rs. 52,81,43,520/-. Copy of the claim dated 19/20.1.2005 is annexed as Annexure 1.

5. The Committee filed Status Report dated 29.11.2006 regarding the total liability of the company before the Hon'ble Supreme Court and apprised the Hon'ble Court about the regular demand of the Income Tax Department against the three companies. The Committee vide its letter No. 748, dated 06.01.2007 informed the Income Tax Department about it. Copies of Status Report is annexed herewith as Annexure 2 and copy of Committee letter dated 06.01.2007 is annexed as Annexure 3. The Hon'ble Supreme Court did not pass any order regarding payment to this category of creditors.

6. Shri Subir Chatterji, Joint Commissioner, and Ms. Kanika Aggarwal Assistant Commissioner of Income Tax, Chandigarh held a meeting with the Chairman of the Committee on 27.8.2013 on which date the Chairman answered the queries of the Joint Commissioner and pointed out about the TDS amount deducted by the banks, which was lying with the Income Tax Department and not refunded to the Committee. The Joint Commissioner was also told that the claim made by Income Tax Department could not be treated on priority basis without the order of the Hon'ble Supreme Court. Copy of minutes of meeting dated 27.8.2013 is annexed as Annexure 4.

7. The Hon'ble Supreme Court vide its order dated 30.7.2018 has directed this Committee to disburse 70% of principal amount of the investment made by investors and claims filed with the Committee. Till date the Hon'ble Supreme has not passed any order regarding claims filed by creditors including Income Tax Department. In fact the Hon'ble Court has on 05.09.2018 directed that "Let the Income tax Department not to make any further attachment of account, without prior permission of this Court." Copy of the order is annexed as Annexure -5.


Kee

8. It is pertinent to mention here that the Income Tax Department has raised demands in the nature of capital gain tax against the Company Golden Forests India Ltd for the assessment years 2007-08 onwards. In some cases substantive assessments have also been done and this Committee has been held to be Representative Assessee. The Committee has filed appeals before the Commissioner of Income Tax, Chandigarh which are pending.

9. The Committee has now received similar claim from Income Tax Department vide No. 431 dated 12.2.2019 pertaining to the period 1995 to 2000. However, no bifurcation has been given company-wise moreover; the demand raised is vague as it does not reveal penalty part.

10. It may be noted that while appraising the claims of creditors to the Hon'ble Supreme Court, the Committee specifically mentioned in the status report filed on 29.11.2006 (Annexure 2) that the claims are no proven claims therefore, in case the Hon'ble Supreme Court directs this Committee to consider your claim, it shall be open to the Committee to scrutinize the claim at that time and send its recommendations to the Hon'ble Court.

11. In view of the above you are requested to let this Committee know the details of appeals filed by the company before Commissioner of Income Tax and Income Tax Appellate Tribunal, Chandigarh as mentioned in your earlier letter dated 19/20.1.2005 and the outcome also.

  
Justice K.S. Garewal (Retd)  
Chairman

7.8

No. 6507-08

Office of the  
Asstt. Commissioner of I. Tax,  
Circle 1(1), SCO 45-47, Sec. 17A,  
Chandigarh.

Dated:- 19.1.2005

20

To

The Chairman,  
Committee-GFIL (Appointed by the Supreme Court of India),  
Main Building,  
Golden Forests (India) Ltd.,  
VPO-Jharmari, Via Lalru,  
Chandigarh - Ambala National Highway 22,  
Tehsil Derabassi,  
Distt. Patiala - 140 501..

Sir,

Sub:- Filing of claim for recovery of arrear demand outstanding in the  
Golden Forest Group of cases - reg.

Kindly refer to your notice inviting claim in the case of M/s Golden forests (India)  
Ltd. in the newspaper dated 25.10.04.

It is submitted that the following companies of this group are assessed with this  
Circle and a total demand of Rs.52,81,43,520/- is outstanding in this group of cases as  
per details given in Annexure "A" enclosed.

- 1) M/s Golden Forest (India) Ltd.
- 2) M/s Golden Project Ltd.
- 3) M/s Golden Tourist Resorts & Developer Ltd.

No recovery could be effected by this office as these companies are in liquidation.  
Interest u/s 220(2) of the Income Tax Act, 1961 has been charged till date. Notices u/s  
221(1) in these cases are enclosed herewith. You are requested to please make the  
payment of the above outstanding demand as and when the claims are decided. The  
copies of assessment order/penalty orders passed in these cases are enclosed.

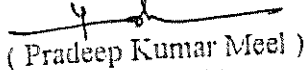
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- 2 -

Assessee's appeals against the assessment orders are pending before the various appellate authorities/courts as under:-

- |    |  |  |
|----|--|--|
| 1) | M/s Golden Forest (India) Ltd. -                 | With Income Tax Appellate Tribunal<br>Chandigarh Bench, Chandigarh |
| 2) | M/s Golden Projects Ltd. -                       | With Commissioner of Income Tax<br>(Appeals), Chandigarh           |
| 4) | M/s Golden Tourist Resorts<br>& Developer Ltd. - | -do-   |


Yours faithfully,

  
( Pradeep Kumar Meel )

Asstt. Commissioner of Income Tax.  
Circle 1(1), Chd.

Encl.-as per list enclosed.

Copy to the Addl. Commissioner of I.Tax. Range \_ I, Chandigarh for information.

  
( Pradeep Kumar Meel )

Asstt. Commissioner of Income Tax.  
Circle 1(1), Chd.

o/c

# DEMAND IN THE CASE OF GOLDEN FOREST GROUP OF CASES

80

## M/S Golden Forest India Ltd.

Asstt. year	Nature of demand	Date of order	Demand	Interest	Total
1996-97	Penalty u/s 271D*	30.3.2000	20,71,92,550	14,91,78,636	35,63,71,186
1996-97	Penalty 271C*	30.3.2000	2,32,69,151	1,67,53,789	4,00,22,940
1996-97	201(1)	21.3.2000	1,51,07,566	1,08,77,447	2,59,85,013
Block asstt. For the period ending 7.9.95	Regular demand	21.4.97	71,60,033*	1,26,31,745	1,97,91,778
			*Original demand 4,25,59,750		
				Total (1)	44,21,70,917

## M/S Golden Project Ltd.

Asstt. year	Nature of demand	Date of order	Demand	Interest	Total
1998-99	Regular demand	19.11.01	4,33,34,517 after cash collection of Rs.4,24,714 on 28.1.02	10,93,981	4,44,28,498
			Intt. On balance payment till date	1,78,35,105	1,78,35,105
1998-99	-do-	18.12.02	43,67,499	18,45,267	62,12,766
				Total (2)	6,84,76,369

## M/S Golden Tourist Resorts & Developer Ltd.

Asstt. year	Nature of demand	Date of order	Demand	Interest	Total
1998-99	Regular demand	31.3.2003	1,41,66,992	33,29,242-	1,74,96,234
				Total (3)	1,74,96,234

Total (1) - 44,21,70,917/-  
 Total (2) - 6,84,76,369/-  
 Total (3) - 1,74,96,234/-  
 Grand Total - 52,81,43,520/-

IN THE HON'BLE SUPREME COURT OF INDIA AT NEW DELHI  
CIVIL ORIGINAL JURISDICTION

81

T.C. (Civil) No. 68 of 2003

IN THE MATTER OF

National Investor Forum (Regd.)

.... Petitioner

Vs

Golden Forests (India) Ltd.

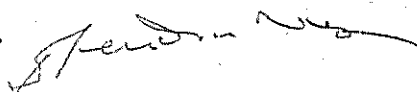
.... Respondent

RE: THE ORDER DATED 15/11/2006 OF HON'BLE  
SUPREME COURT REQUIRING THE COMMITTEE TO  
FURNISH PARTICULARS REGARDING THE TOTAL  
LIABILITY OF THE GOLDEN FORESTS (INDIA) LTD.

Most Respectfully Showeth:

1. The calculation of the total liability of the company inter - alia  
falls under following heads:

- a. Investors Liability, as detailed in Annexure A.
- b. Income Tax, Punjab State Electricity Board, Haryana State  
Electricity Board, Employees Provident Funds, Etc as  
detailed in Annexure B.

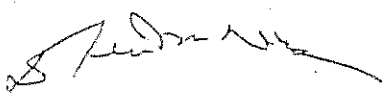


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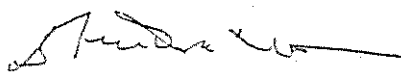
82

2. The investors claims liability has been calculated upto 10/08/2006. A number of claims from the investors have been received after 10/8/2006. But, as per the orders of the Hon'ble Supreme Court dated 05/9/2006, these claims have been excluded from consideration, and their fate hinges on any further order of the Hon'ble Supreme Court, their number till date is 410. It be made clear that in case the Hon'ble Supreme Court decides to entertain the claims received after 10/8/2006, this order shall have to be advertised.

3. The Committee in its earlier Status Reports and Applications has stated that a number of investment schemes were floated by both Golden Forests (India) Ltd and Golden Projects Ltd. The most attractive scheme, it seems, was long term (25 years) scheme which provided a return of Rs. 222000- on an investment of Rs. 1000-. It appears from the list of the investors that a number of investors fell a prey to this attractive scheme and they invested money in multiples of Rs. 500, Rs. 1000- upto Rs. 5000-, and there are few cases even of Rs. 10000-. Copy of the scheme is annexed as Annexure C. The number of investors in this class is about 60% to 70%. The management had over Six Lakhs agents and other higher officials who formed teams to induce the public to invest money in these schemes. The management was able to mobilise influential persons from various sections of the society to become agents because of huge commission.



4. The claims received by the Committee were computerised. During scrutiny a very large number of claims were found to be filed in duplicate. The claims which are accompanied by original/photocopy receipts number 1326730 and their principal amount invested amounts to Rs. 703.80 Crores. As will be seen from **Annexure A**, the Committee has worked out the liabilities on both the invested principal amount and the maturity amount. The maturity amount has been divided in to two periods, that is, (1) The maturity amount upto 31/12/2006 and (2) The maturity amount on the investments after 31/12/2006. The Committee also has tentatively worked out the maturity value of the claims on an estimated rate of interest that the Hon'ble Supreme Court may decide to allow, that is, from 6 to 10% per annum from the date of investment upto 31/12/2006. It be clarified that the maturity amount as mentioned in the receipts has not been taken into account as a large number of claims mature after 31/12/2006 upto the year 2026.
5. The Committee has not been able to verify the claims made by the Employees Provident Funds and other creditors since it does not have the relevant record to ascertain the validity of those claims. The Income Tax Demand largely comprises of the "Penalties" imposed on the actual amount of Income Tax. The Income Tax due from Golden Forests (India) Ltd is Rs. 71,60,033-, from Golden Projects Ltd. Rs. 43,67,499- and from Golden Tourist Resorts and Developers Ltd Rs. 1,41,66,992-. It is for the Hon'ble Supreme Court to decide on the demand



4 84  
raised by the Income Tax Department. Copy of the claim made by the Income Tax Department and Provident Fund Department are Annexures D and E.

6. The Committee has taken care to include disbursement expenses, that shall have to be incurred whether the Hon'ble Supreme Court accepts or not the offer made by the management. The Committee has included distribution expenses, contingent, and other unforeseen expenses. The estimated distribution expenses are detailed in Annexure F.
7. The Committee received a number of bids regarding the properties advertised for sale. The bids were received in closed envelopes, which were opened in the presence of the bidders and their representatives on 22/11/2006. The auction proceedings are in progress.

Chairman, Committee- GFIL



Through

Filed On: \_\_\_\_\_

New Delhi

(SURUCHI AGGARWAL)

Advocate of the Committee.

LIABILITY OF GFL TOWARDS INVESTORS / DEPOSITORS  
(AS ON 31-12-2006)

ANNEXURE - A

A - Maturity Value contemplated in the various schemes offered by the Company.						
Sr. No.	Nature of Claims	No. of Claims	Principal Amount (Rs. In Crores)	Maturity Amount (Rs. In Crores) as on 31/12/2006 with 17% per annum interest on the cases maturing after 31/12/2006.		
				Maturity Amount upto 31/12/2006*	Maturity Amount after 31/12/2006**	Total maturity Amount as on 31/12/2006
1	Claims with Original / Photocopy Receipts	1326730	703.80	1463.00	321.50	1784.50
2	Claims without Original / Photocopy Receipts & with clear proof of deposit	2737	3.13	4.69	0.68	5.40
3	Settlement Cases (Under Scrutiny)	13151	9.50	---	---	40.00
Total		1342618	716	1468	322	1830
B - Maturity Value calculated @ 6 % p.a. from the date of deposit						
Sr. No.	Nature of Claims	No. of Claims	Principal Amount (Rs. In Crores)	Maturity Amount (Rs. In Crores) with 6% per annum interest from the date of investment upto		Remark
				Interest Amount	Total maturity as on 31/12/2006	
1	Claims with Original / Photocopy Receipts	1326730	703.80	364.00	1067.80	With an increase of 1% in the interest rate, the maturity amount increases by Rs. 61 Crores.
2	Claims without Original / Photocopy Receipts & with clear proof of deposit	2737	3.13	1.50	4.63	
3	Settlement Cases (Under Scrutiny)	13151	9.50	4.75	14.25	
Total		1342618	716	370	1087	

\*Maturity value taken as per face value of the receipt for the claims matured before 31/12/2006.

\*\* Maturity Value calculated as on 31/12/2006 @ 17% p.a. interest on the claims maturing after 31/12/2006.

85

ANNEXURE - B

86

Approx. Amount  
(Rs. In Crores)

S. No.	Liability towards other creditors	Approx. Amount (Rs. In Crores)
1	Income Tax (Regular Demand only)	6.50
2	Electricity Charges (PSEB and HSEB)	0.30
3	Employees Provident Fund (without interest and damages)	10.75 <i>70.5</i>
4	Salary of employees of the company	0.61
5	Bank over draft (without interest)	0.06
6	Security charges of the agency hired by the Company	0.38
7	Office Rent	0.11
TOTAL =		18.71

Note: The above claims are not proven claims.

*X2 Rejected  
by the committee*

**LUMP SUM UNIT INVESTMENT PLAN Rs. 1000/- Multiples & Maturity Value thereof year wise (Table No. 24)**

Invested Amount (Rs.)	1 Year Rs.	3½ Years Rs.	6 Years Rs.	7 Years Rs.	12 Years Rs.	20 Years Rs.	25 Years Rs.
500	—	1,000	1,500	2,125	5,000	40,000	1,11,000
1,000	1,170	2,000	3,000	4,250	10,000	80,000	2,22,000
5,000	5,850	10,000	15,000	21,250	50,000	4,00,000	11,10,000
10,000	11,700	20,000	30,000	42,500	1,00,000	8,00,000	22,20,000
50,000	58,500	1,00,000	1,50,000	2,12,500	5,00,000	40,00,000	1,11,00,000
1,00,000	1,17,000	2,00,000	3,00,000	4,25,000	10,00,000	80,00,000	2,22,00,000

**RECURRING INVESTMENT PLAN & Maturity value thereof year wise (Table No. 25)**

Invested Amount	1 Year Rs.	2 Years Rs.	3 Years Rs.	4 Years Rs.	5 Years Rs.	6 Years Rs.	7 Years Rs.	8 Years Rs.	9 Years Rs.	10 Years Rs.
50	—	1,450	2,400	3,540	4,910	6,600	8,650	11,125	14,125	17,750
100	1,320	2,900	4,800	7,080	9,820	13,200	17,300	22,250	28,250	35,500
200	2,640	5,800	9,600	14,160	19,640	26,400	34,600	44,500	56,500	71,000
500	6,600	14,500	24,000	35,400	49,100	66,000	86,500	1,11,250	1,41,250	1,77,500
1,000	13,200	29,000	48,000	70,800	98,200	1,32,000	1,73,000	2,22,500	2,82,500	3,55,000

**REGULAR MONTHLY RETURN ON LUMP SUM INVESTMENT**

1 Year – 2 Years	15% P.A.	11 Years – 19 Years	20% P.A.
3½ Years – 10 Years	18% P.A.	20 Years – 25 Years	24% P.A.

**ANTICIPATED INVESTMENT PLAN (PERIOD 6 YEARS) (Table No. 26/6)**

Monthly Investment (Rs.)	Total Investment (Rs.)	Maturity Amount Payable After				Net Return (Rs.)
		2 Years (Rs.)	4 Years (Rs.)	6 Years (Rs.)	Total	
100	7,200	1,000	1,500	9,000	11,500	4,300
200	14,400	2,000	3,000	18,000	23,000	8,600
500	36,000	5,000	7,500	45,000	57,500	21,500
1,000	72,000	10,000	15,000	90,000	1,15,000	43,000

**ANTICIPATED INVESTMENT PLAN (PERIOD 10 YEARS) (Table No. 26/10)**

Monthly Investment (Rs.)	Total Investment (Rs.)	Maturity Amount Payable After				Net Return (Rs.)
		3 Years (Rs.)	6 Years (Rs.)	10 Years (Rs.)	Total	
100	12,000	2,000	5,000	18,000	25,000	13,000
200	24,000	4,000	10,000	36,000	50,000	26,000
500	60,000	10,000	25,000	90,000	1,25,000	65,000
1,000	1,20,000	20,000	50,000	1,80,000	2,50,000	1,30,000

URGENT

No. 3929

Office of the  
Asstt. Commissioner of Income tax,  
Circle 1(1),  
SCO 45-47, Bassi Building-2,  
Sector 17-A, Chandigarh

Telephone (O - 726623)

Dated: 12.9.2003  
(S)

To

Hon'ble Justice Sh. R.N. Aggarwal,  
Official Liquidator,  
K.No. 60, Sector 4,  
Chandigarh

Sir,

Sub: Arrear demand in case of Golden Forest Group of Cases- Reg.  
\*\*\*

From the press report, it is learnt that you have been appointed as official liquidator w.r.t. liquidation/winding up proceedings in the case of M/s Golden Forest of India, Chandigarh. As per the provisions of sub-section (1)(b) of section 178 of the I.T. Act, 1961, a liquidator has to give a notice of his appointment within 30 days after his appointment as such to the Assessing Officer, who is entitled to assess the income of the company. However, no such notice has been received by the undersigned till date.

The above said group of cases are being assessed with the undersigned wherein demand of Rs. 51,78,97,722/- (including interest w/s 220(2) till date) is outstanding, details of which is enclosed as per Annexure A. Notices w/s 221 of the Income tax Act, 1961 to this effect are also being enclosed.

Yours faithfully,

*B.S. Pathania*

(B.S. Pathania)

Asstt. Commissioner of Income tax,  
Circle 1(1), Chandigarh  
Circle 1(1), Chandigarh

Encl: As above.

Copy submitted to the Additional Commissioner of Income tax, Range-1,  
Chandigarh for information.

(B.S. Pathania)  
Asstt. Commissioner of Income tax,  
Circle 1(1), Chandigarh

Annexure A(1) M/s Golden Forest India Ltd.

Asstt. Year	Nature of Demand	Date of order	Demand	Interest U/s 220(2)	Total
1996-97	Penalty u/s 271D	30.3.2000	207192550	116027828	323220378
1996-97	Pen. U/s 271C	30.3.2000	23269151	13030725	36299876
1996-97	201(1)	21.3.2000	15107566	8460237	23567803
Block Asstt.		21.4.97	42559750*	11486140	54045890
			(* Balance 71,60,033)		
		Total			437133947

(2) M/s Golden Projects Ltd.

1998-99	Regular Demand	19.11.01	43759231*	1093981	44853212
	(* Amount Recovered so far = 4,24,714)				
			4333451	10833629	15167080
1998-99	-do-	18.12.02	4367499	1146468	5513967
		Total			65534259

(3) M/s Golden Tourist Resorts & Developer Ltd.

1998-99	Regular Demand	31.3.2003	14166992	1062524	15229516
		Total (1+2+3)			15229516

Total demand of M/s Golden Forest India Ltd. and  
Its subsidiaries companies.

51,78,97,722

ANNEXURE - E

90

OFFICE OF THE  
REGISTRAR, PATIALA  
CHANDIGARH  
(Ministry of Labour) Govt. of India,  
BOP 4-7, SECTOR 17-3, CHANDIGARH

8-10-06

Dated: 8-10-06

No. PW/13582/C-11

8441

To

The Chairman,  
Committee - GFIL,  
Banglow No. 60, Sector 4,  
Chandigarh.

Sub:- Liquidation of PF amount in respect of M/s Golden Forest India  
Ltd., Chandigarh Delhi Highway, Milestone No. 26, Lalru Distt,  
Patiala.

Sir,

This is with reference to the advertisement dated 14.10.06 in The Tribune in which bids were invited for the sale of the properties of the company on "As is, where is, whatever thereis" basis from the interested parties. In this connection it is to bring to your kind notice that an amount of Rs. 160687173.00 is due and outstanding against M/s Golden Forest India Ltd., Chandigarh Delhi Highway, Milestone No. 26, Lalru Distt, Patiala. It is now learnt that the Committee - GFIL Incharge of the assets of the establishment is disposing of the same, the claim in respect of EPF and PF dues on prescribed form No. 66 for RS. 160687173.00 is submitted herewith as PREFERENTIAL CLAIM as per section 11(2) of the EPF & MP Act 1952 for your kind consideration. A copy of the order dated 20.04.06 under Section 17A & Recovery certificate is also enclosed for record.

Yours faithfully

Encls: as above.

*M. K.*  
Assistant P.F. Commissioner

## SCHEDULE

Particulars of account referred to:-  
(Credit should be given for contra account)

	CONSIDERATION	AMOUNT	REMARKS
1.	<u>P.F.DUES:-</u> <ul style="list-style-type: none"> <li>&gt; RRC amount for the period 3/95 to 07/01 In r/o A/c No. PN/13882</li> </ul>	107469901.00	Balance amount
2.	<u>AMOUNT OF DAMAGES:-</u> <ul style="list-style-type: none"> <li>&gt; Damages leviable under section 14B for the period 5/2K to 05/01</li> </ul>	190321.00	
3.	<u>AMOUNT OF 7Q INTEREST LEVIABLE:-</u> <ul style="list-style-type: none"> <li>&gt; 7Q Interest of RRCs for the period 3/95 to 31.3.06</li> <li>&gt; 7Q Interest for the period 5/2K to 5/01</li> </ul>	52955917.00 71034.00	
	Grand Total	160687173.00	

Solemnly affirmed at Chandigarh on this      day of      2006.

Before me

Commissioner.

*Hkan*  
DEPONENT'S SIGNATURE

S. No. Estimated Distribution Expenses

- 1 Office Expenses
- 2 Correspondence with investors. Each investor is to be contacted and some of the letters may come back for various reasons.
- 3 Additional Account staff with a Chartered Accountant to manage the affairs of amounts distribution
- 4 Expenses on Engaging Computer vendor for preparation of Cheques & envelops and for data management.
- 5 Printing of cheques by the bank
- 6 Advertisement for the information of the investors
- 7 Legal charges
- 8 Other contingency, unforeseen claims and expenses etc.

Total of the above expenses is expected to be about Rs. 30 Crores

OFFICE OF THE CHAIRMAN  
Committee - Golden Forests (India) Ltd.  
(Appointed By The Hon'ble Supreme Court Of India)  
Bungalow No. 60, Sector - 4,  
Chandigarh, Tel: 0172- 2740134

ANNEXURE - 3

93

06/01/2007

COM/CHD/2007/ 748

Asstt. Commissioner of Income Tax  
Circle No. 1, (1)  
Office of Income Tax Circle 1.  
SCO 45-47. Sec-17-A  
Chandigarh.

**Sub: Claim of recovery of arrear demand outstanding in the Golden Forest  
Group of cases-regarding.**

Dear Sir,

The committee is in receipt of your letter no. ACIT/C-1(1) Chd.7665 dated 29-12-2006/2-01-2007, received in this office on 4<sup>th</sup> January 2007.

The Hon'ble Supreme Court had passed an order for determining the liabilities, only of Golden Forests (India) Ltd, there was no order with regard to the Golden Projects Ltd. However, the Committee in its report filed on 29<sup>th</sup> November 2006 regarding the liabilities of Golden Forests (India) Ltd in Para 5 has written as follow:-

"The Committee has not been able to verify the claims made by the Employees Provident Funds and other creditors since it does not have the relevant record to ascertain the validity of those claims. The Income Tax Demand largely comprises of the "Penalties" imposed on the actual amount of Income Tax. The Income Tax due from Golden Forests (India) Ltd is Rs. 71,60,033-, from Golden Projects Ltd. Rs. 43,67,499- and from Golden Tourist Resorts and Developers Ltd Rs. 1,41,66,992-. It is for the Hon'ble Supreme Court to decide on the demand raised by the Income Tax Department. Copy of the claim made by the Income Tax Department and Provident Fund Department are Annexures D."

Annexure D is the letter in which you have raised the demand of arrears of income tax in the amount of Rs. 52,81,43,520/- and further in Annexure A to the letter gives the details of the demand, which relate to Golden Forests (India) Ltd, Golden Projects Ltd and Golden Tourist Resorts and Developers Ltd. The last mentioned company is a subsidiary of Golden Forests (India) Ltd. The committee had in the statement regarding the liabilities, clubbed the arrears of tax of all the companies. The committee

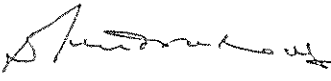
OFFICE OF THE CHAIRMAN  
Committee - Golden Forests (India) Ltd.  
(Appointed By The Hon'ble Supreme Court Of India)  
Bungalow No. 60, Sector - 4,  
Chandigarh, Tel: 0172- 2740134

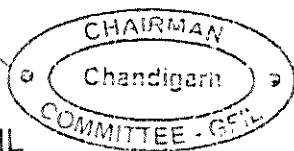
94

had separated the regular demand from the penalties and interest etc. You will notice from Para 5 that the Committee has left it to the Hon'ble Supreme Court to decide on the demand raised by the Income Tax Department. You will further notice that in the list of liabilities towards other creditors "Annexure-B", the Committee has included only the regular demand of Income tax, rest has been left out for the decision of the Hon'ble Supreme court.

As pointed out in your letter regarding the omission of the demand of tax for the year 1998-1999 against M/s Golden Projects Ltd., the same shall be pointed out, as and when the Committee asked to determine the liabilities of the Golden Projects Ltd. The Committee shall inform you when the liabilities of Golden Project Ltd. are determined. It would be at that point of time for you to take legal advice to proceed accordingly.

You shall please keep in mind that there are Lakhs of claimants whose investments are involved and they are waiting for years for their return. The Hon'ble Supreme Court shall determine how the payments are to be made after sale of the properties and availability of funds. The committee shall keep you informed of the developments.

  
R. N. Aggarwal  
Chief Justice (Retd.)  
Chairman, Committee - GFIL



2/2/2013

ANNEXURE-4

**OFFICE OF THE CHAIRMAN**  
**Committee - Golden Forests (India) Ltd.**  
**(Appointed By The Hon'ble Supreme Court Of India)**  
**Bungalow No. 60, Sector - 4, Chandigarh,**  
**www.goldenforestcommittee.com**

CHD/COM/45/2013/

27.08.2013

Meeting with Sh. Subir Chatterjee, Joint Commissioner Income Tax, and Ms. Kanika Aggarwal, Assistant Commissioner accompanied by an Inspector Income Tax office, Range-3, Sector-17, Chandigarh.

Sh. Subir Chatterjee, Joint Commissioner and Ms. Kanika Aggarwal, Assistant Commissioner met the Chairman of the Committee-GFIL in connection with claim filed by the Income Tax Department against Golden Forest (India) Ltd. and other Group of companies.

Sh. Chatterjee made certain queries which were answered and explained to him by the Chairman, Committee-GFIL. The Chairman also pointed out to Sh. Chatterjee about the 'TDS amounts' deducted by the banks and deposited with the Income Tax Department, and further no amount deposited by the Committee by way of 'TDS' have been refunded to it.

Sh. Chatterjee was also told that the claim made by Income Tax Department could not be treated on priority basis without the order of the Hon'ble Supreme Court and or the Hon'ble High Court of Delhi, and for that purpose Income Tax Department shall have to move the Supreme Court / the Delhi High Court.

Whatever, copies of the documents were desired by Sh. Chatterjee were given

/supplied.

  
R.N. Aggarwal  
Chairman, Committee-GFIL



ANNEXURE-R-6

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ITEM NO. 3

COURT NO.4

SECTION XVIA

SUPREME COURT OF INDIA  
RECORD OF PROCEEDINGS

888975

I.A. Nos. 28, 36, 42, 43 & 44 in  
TRANSFER CASE (CIVIL) NO. 2 OF 2004

THE SECURITIES & EXCHANGE BD. OF INDIA

Petitioner (s)

VERSUS

THE GOLDEN FORESTS (I) LTD.

Respondent (s)

(For directions, intervention and stay and for clarification/modification of Court's order dated 19.8.2004 and appln. for modification of Court's order dated 17.08.2004 and impleadment)

with I.A. Nos. 5-6, 7-11 & 13 in T.C. (C) No. 68/2003.

(for directions by the Committee appointed by this Hon'ble Court and impleadment)

Dated: 29/07/2005 This Petition was called on for hearing today.

CORAM:

HON'BLE MR. JUSTICE S.N.VARIAVA

HON'BLE MR. JUSTICE TARUN CHATTERJEE

For Petitioner (s)  
For M/s Drive in  
Tourist

Mr. Gopal Subramaniam Sr. Adv.  
Mr. Alok Gutpa, Adv.

Mr. Manoj Swarup, Adv.  
Mr. Sameer Kr. Singh, Adv.  
Mr. Pradeep Kr. Malik, Adv.  
Mr. Bhargava V. Desai, Adv.

Mr. P.D.Sharma, Adv.

Mr. C. Balakrishnan, Adv.

Mr. Somnath Mukherjee, Adv.

Mr. Ranjan Mukherjee, Adv.  
Ms. Minakshi Vij, Adv.

Ms. Varuna Bhandari Gugani, Adv.  
Mr. Rameshwar Prasad Goel, Adv.

## For Respondent (s)

Mr. Swaraj Kaushal, Sr. Adv.  
Mr. Sanjeev K. Pabbi, Adv.  
Ms. Naresh Bakshi, Adv.

Ms. Chitra Markandaya, Adv.  
Mr. K.C. Dua, Adv.  
Ms. Kiran Suri, Adv.  
Mr. M.C. Dhingra, Adv.

Mr. Neeraj Kumar Jain, Adv.  
Mr. Aditya Kr. Chaudhary, Adv.  
Mr. Bharat Singh, Adv.  
Mr. Sanjay Singh, Adv.  
Mr. Umang Shankar Pd. Adv.  
Mr. Ugra Shankar Prasad, Adv.

Mr. Mohd. Saud, Adv.  
Mr. S. Wasim A. Qadri, Adv.

Mr. Somnath Mukherjee, Adv.  
Mr. Ranjan Mukherjee, Adv.

Ms. Minakshi Vij, Adv.

Mr. K.S.Rana, Adv.

M/s I.M. Nanavati Associates, Adv.

Mr. Khwairakpam Nobin Singh, Adv.

Mr. Ashim Aggarwal, Adv.  
Ms. Suruchii Aggarwal, Adv.

Mr. Subramonium Prasad, Adv.  
Mr. Abhijit Sengupta, Adv.

Mr. Pijush K. Roy, Adv.  
Mr. G. Ramakrishna Prasad, Adv.

Mr. Rameshwar Prasad Goyal, Adv.  
Mr. Alok Gupta, Adv.

Mr. Bhargava V. Desai  
Ms. Naresh Bakshi

Mr. Rajeev Dutta, Adv.  
Ms. Shikha Roy, Adv.  
Mr. S.K.Sabharwal, Adv.

## For state of Punjab :

Mr. Ranbir Yadav, Adv.

For State of  
Uttanchal :

Mr. Avatar Singh Rawat, Addl. Adv. Gen.  
Mr. Jitendra Kr. Bhatia, Adv.

For State of W.B.

Mr. Tara Chandra Sharma, Adv.  
Ms. Neelam Sharma, Adv.

UPON hearing counsel the Court made the following

### ORDER

Pursuant to our Order dated 29<sup>th</sup> April, 2005 a bid has been called for by the Committee. The highest offer has been received from M/s Oberoi Banquets Pvt. Ltd. M/s Drive in Tourist Resorts had agreed to meet the highest offer. Today in the Court M/s. Oberoi Banquets Pvt. Ltd. has offered a sum of Rs.3.55 lakhs per month. M/s Drive in Tourist Resorts state that they are willing to meet that offer. Accordingly, Drive in Tourist Resorts is appointed as an agent of the Committee for purpose of their running the Resort on a loyalty of Rs.3.55 lakhs a month. M/s Drive in Tourist Resorts to file the usual undertaking before the Committee. The monthly compensation to be paid on or before the 10<sup>th</sup> day of the month for which the amount is due. The arrears, if any, from 29<sup>th</sup> April, 2005 to be paid within a period of four weeks from today. We clarify that M/s Drive in Tourist Resorts will be permitted to deduct TDS from the amount payable but must give to the Committee a certificate of deduction of TDS.

It is pointed out to us that the Committee is taking decisions on its own regarding properties of the Company. It therefore become necessary to clarify that the Committee can not take any decision on its own. If any decision is to be taken, the Committee must file an

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application to this Court. It is this Court which will take the decision. List the matter after four weeks.

Unregistered IA taken out by M/s Oberoi Banquets Pvt. Ltd. does not survive.

IA Nos. 41,42/2005

Issue notice.

Sukhwinder

Sd/- 2/8/05  
(Jasbir Singh)  
Court Master

ANNEXURE-R-7

100

**Bombay High Court**  
**Assistant Commissioner Of Income ... vs A.K.**  
**Menon on 19 April, 1995**  
**Equivalent citations: 1995 (4) BomCR 416**  
**Author: S Variava**  
**Bench: S Variava**

JUDGMENT S.N. Variava, J.

1. The points raised by this application have already been answered by an order dated 20th February, 1995. In that order the Court has inter alia held as follows:

"82. Dr. Balasubramanian also submitted that by virtue of sections 2 and 11 of the Special Courts Act, in effect a Notified Party was put into a civil death. He submitted that the Notified Party has an absolute disability. He submitted that the Custodian became a Representative Assessee on behalf of the Notified Parties. He submitted that now it was the duty and the obligation of the Custodian to file returns and pay taxes.

83. At this stage Mr. Bobde interrupted and informed Court that these must not be deemed to be arguments on behalf of the Income Tax Department. One Mr. K.V. M. Pai, Commissioner of Income Tax, II Circle also asked Mr. Bobde to inform Court that Dr. Balasubramanian was not instructed by the Tax Department to make any such submissions on their behalf. Dr. Balasubramanian then stated that he was merely assisting the Court. In my view this last submission of Dr. Balasubramanian i.e. that the Custodian is a Representative Assessee, merely needs to be stated to be rejected. All that has happened is that the properties stand attached under the provisions of the Special Courts Act. There is no vesting of properties in the Custodian. The Custodian is neither an agent nor a guardian nor a manager nor an administrator nor a trustee of the Notified parties. The Custodian does not become the owner of the property nor does he step into the shoes of a Notified party. The Custodian is

merely an Officer of this Court and nothing more. He has to deal with the property as per the directions of the Court.

2. Mr. Bobde however requested the Court to reconsider certain aspects. He submitted that the decision of the Court that the Custodian is not a Representative Assessee is not correct. He submitted that under section 160(1)(iii) of the Income Tax Act any person who manages property on behalf of another and receives income on behalf of another is a Representative Assessee. He submitted that under section 3 and 4 of the Special Court (Trial of Offences Relating to Transactions in Securities) Act, the Custodian was authorised to deal with the properties which were attached. He submitted that after notification the Notified Parties were under a disability as all their properties were now under the control of the Custodian. He submitted that the Custodian was receiving income on behalf of the Notified Parties and therefore the Custodian was a manager as contemplated by section 160(1)(iii) of the Income Tax Act. Mr. Bobde relied on the case of Emperor v. B.H. Desouza, reported in I.L.R. Vol. 35 Bom. 412, wherein on page 417 it has been held that it is a recognised rule with regard to interpretation of clauses of comprehensive nature that they are not to be taken as strictly defining what the meaning of a word must be under all circumstances, but merely as declaring what things may be comprehended within the term where the circumstances require that they should.

3. Mr. Bobde submitted that therefore what the Court has to see is what is required under section 160(1)(iii) of the Income Tax Act. He submitted that under section 160(1)(iii) of the Income Tax Act any person who manages property and/or receives income would be included. He submitted from this point of view the Custodian was a Representative Assessee.

4. On the other hand Mr. Mistry and Mr. Joshi submitted that Custodian could never be a Representative Assessee. They submitted that before section 160(1)(iii) of the Income Tax Act could apply certain conditions had to be fulfilled viz.,

a) that a person should have been appointed by or under the order of the Court. They submitted that this also becomes clear from the categories of person mentioned in section 160(1)(iii) of the Income Tax Act.

b) that the person should be managing the property on behalf of another.

c) Income should be received and

d) the income should be received under a right to receive income and for and on behalf of the Notified Party.

5. In support of the submission that the appointment must be by or under the Order of Court reliance was placed upon the case of *Keshardeo Charmria v. Commissioner of Income Tax, Bengal*. In this case Consent Terms were entered into in a suit between two persons. Under these Consent Terms both parties were at liberty to jointly realise the rent, to meet necessary expenses and to even file suits in respect of property jointly held by them. They were also entitled to keep joint Custody of the documents of title and to jointly invest monies which came into their hands or divide the same equally. The Income Tax Officer assessed the share received by one of the parties as income of the party. That party claimed that he was merely a Representative Assessee under the provision of then section 41 of the then Income Tax Act 1922 (which was equivalent to section 160(1)(iii) of the Income Tax Act). The Privy Council *negatived this contention*. The Privy Council held that even though income was received under Consent Terms filed in Court, the parties had not been appointed managers by and under orders of the Court. The Privy

Council held that under these circumstances section 41 of the Income Tax Act could never apply.

6. Mr. Mistry and Mr. Joshi next submitted that 2nd condition is that the person should be managing the property on behalf of another. It was submitted that Custodian is not at all managing any properties. It is submitted that under Special Court (Trial of Offences Relating to Transactions in Securities) Act there is a Statutory attachment of all properties of Notified Parties. It is submitted that those properties can be dealt with only under directions of this Court. It was submitted that the Custodian has no power or right to manage or even deal with these properties on his own.

7. It was next submitted that before section 160(1)(iii) of the Income Tax Act can apply income must be received. It was submitted that the Custodian received no income at all. It was submitted that whatever income or returns were received were in the name of Notified parties and put into accounts of the Notified parties. It was submitted that there is no vesting of the properties in the Custodian and that the properties continue to belong to Notified parties. It was submitted that all that had happened was that there was a statutory freezing of the property so that Notified parties cannot dispose off the properties any further.

8. It was next submitted even if a income was received by the Custodian it was not on behalf of the Notified Party. It was submitted mere incidental receipt of the income was not sufficient. It was submitted that income should have been received in capacity as Administrator General or Receiver or Manager. It was submitted that the Custodian does not receive any income under any right to receive income or for and on behalf of the Notified Party nor as a Administrator General or Receiver or Manager. In support of this submission reliance is placed on authority in case of Administrative General of West

Bengal v. Commissioner of Income Tax, West Bengal, reported in 56, I.T.R. 34. In this case the question was whether the Administrator General who was appointed administrator and to whom Letters of Administration 'de bonis non' of the estate were granted was a representative assessee within the meaning of section 41 of the Indian Income Tax Act 1922. The Supreme Court held that the income was received by the Administrator General on his own behalf and not on behalf of the heirs. The Supreme Court held that the fact that section 41 expressly referred to Administrator General did not conclude the matter. The Supreme Court held that another condition was prescribed by section 41. The Supreme Court held that income must be received on behalf of a person or persons. The Supreme Court held that this condition must be fulfilled before section 41 becomes applicable.

9. I have considered these rival submissions. I see no reason to differ from what is already held in order dated 20th February, 1995. In my view Mr. Mistry and Mr. Joshi are absolutely correct. Section 160(1)(iii) of the Income Tax Act can only apply provided the person is appointed by and under any order of the Court. The Custodian is not appointed by the Court. The Custodian is appointed by the Central Government by virtue of the provisions of the Special Court (Trial of Offences Relating to Transactions in Securities) Act. The Custodian does not manage any of the properties or assets of the Notified Parties. In fact all Notified parties continue to use some assets in as much as they continue to reside in their flats, use their offices, cars etc. All that has happened is that by virtue of the Statutory Attachment they cannot dispose or alienate their properties and assets. The Custodian is therefore, neither a Administrator General nor a Official Trustee nor a person who is managing properties on behalf of another. Undoubtedly what one has to see is the substance of the section. However even then it is clear from the

wording of section 160(1)(iii) of the Income Tax Act that persons proposed to be included are only those who have been appointed by and under the order of a Court and who are managing the property and/or receiving income under some order or right. A mere incidental receipt of income or merely acting as a post office is not sufficient. Even if some debtors send monies or dividends to the Custodian, it is always in the name of Notified Parties. The same is then mechanically put into Bank Accounts maintained by the Notified Party. If payments have to be made, the Notified Party makes out and signs a cheque. The Court then directs the concerned Bank to release payments. The Custodian merely forwards the order of the Court to the Bank. The Custodian does not fulfill any of the conditions of section 160(1)(iii). I therefore still maintain the earlier ruling that the Custodian is not a Representative Assessee.

10. So far as prayer (b) is concerned, in my view, it is not for this Court to direct a Notified Party to file a return. It is for the Notified parties to decide what they want to do. The Court has already clarified that there is no disability under the Special Court (Trial of Offences Relating to Transactions in Securities) Act in filing a return and that the consequences of not filing a return will follow. In the order dated 20th February, 1995 the Court has held as follows :

98.....However where the Special Courts Act does not prevent a party from doing something required to be done under some other Act/contract and the Notified party does not perform his obligation he will be liable to pay interest and/or penalty. Just by way of example under the Income Tax Act penalty can be levied for not filing a return; penalty can be levied for failure to produce evidence to support the return of income. These are not matters where any disability is imposed on a Notified party by the Special Courts Act. There is nothing in the Special Court Act which prevents a Notified party from filing his returns within time.

There is nothing in the Special Court Act which prevents a party from producing evidence in support of his return. If a Notified party has failed to file his return in time and/or failed to produce evidence in support his return, he does so at his own peril. In this case, there is no conflict between the Special Court Act and the Income Tax Act. If there is no conflict, the provisions of the Income Tax Act will continue to apply. Of course in such cases, the Court may not release amounts for payment of interest/penalty or only release it after discharge of other liabilities. But merely because this Court may not release amounts does not mean that interest/penalty cannot be imposed. As stated above these are mere examples. In each case, the Court would have to examine whether there is a legal disability by reason of the Special Court Act. If the Special Court Act prevents a Notified Party from doing a certain thing, then there can be no interest/penalty. If on the other hand, the Special Court Act has not prevented or disabled a person nor abrogated any right, then the provisions of other Laws/contracts will continue to apply."

In my view apart from this clarification nothing further needs to be said. Prayer (b) stands rejected.

11. Mr. Bobde fairly states that in view of the order dated 20th February, 1995, prayer (c) cannot be pressed in this Court.

12. Application stands disposed off accordingly.

## IN THE COURT OF CIT APPEALS -1, CHANDIGARH

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Appeal No. 124/1/15-16(A.Y. 2007-08)

IN THE MATTER OF:

M/s Golden Forests India Ltd.

Through the Committee – GFIL

(Appointed by the Hon'ble Supreme Court)

.... Appellant

ADDITIONAL SUBMISSIONS ON  
BEHALF OF COMMITTEE-GFIL.RESPECTFULLY SHOWETH

1. On 11.9.2018, CIT Appeals -1, Chandigarh allowed the Committee-GFIL to file Additional Submissions with respect to the present appeal. Therefore the Committee is filing additional submissions in addition to the grounds and additional ground already taken. This shall be without prejudice to the rights of the Committee and issues raised in the appeal which are subject matter of adjudication.
2. The Ld. Assessing Officer has erroneously added Rs. 90,96,636/- in the income of the Company M/s Golden Forests (India) Limited. The Committee –GFIL under the orders of Hon'ble Supreme Court had received part of bid money which was deposited in the bank in the shape of FDR's and this amount has been earned as interest on those FDRs. The case of the Committee since beginning has been that the amount realized through bid money and interest thereon is not an income of the Committee as this amount is collected for the purpose of disbursement to investors only and therefore has not been and cannot be added as income. The addition of Rs 90,96,636/- is not justified and against the interest of lacs of investors. The amount does not belong to the Committee as the Committee is only a custodian of properties under the Hon'ble Supreme Court orders and is collecting funds for disbursement to investors.
3. Therefore, the Committee prays that:
  - (i) Additional submission may please be taken on record and
  - (ii) Pass order considering the grounds of appeal, additional ground of appeals and additional submission.

  
Appellant – Committee-GFIL

Through

  
Prashant Chauhan, AdvocateCounsel for the Appellant – Committee-GFIL  
(Appointed by the Hon'ble Supreme Court)

Date: 8/10/18

108

IN THE COURT OF CIT APPEALS -1, CHANDIGARH

Appeal No. 282/15-16 (A.Y. 2008-09)

IN THE MATTER OF:

M/s Golden Forests India Ltd.

Through the Committee – GFIL

(Appointed by the Hon'ble Supreme Court)

.... Appellant

ADDITIONAL SUBMISSIONS ON  
BEHALF OF COMMITTEE-GFIL.

RESPECTFULLY SHOWETH

1. On 11.9.2018, CIT Appeals -1, Chandigarh allowed the Committee-GFIL to file Additional Submissions with respect to the present appeal. Therefore the Committee is filing additional submissions in addition to the grounds and additional ground already taken. This shall be without prejudice to the rights of the Committee and issues raised in the appeal which are subject matter of adjudication.
2. The Ld. Assessing Officer has erroneously added Rs.3,52,72,651/- in the income of the Committee. The Committee –GFIL under the orders of Hon'ble Supreme Court auction sold the properties of Golden Forest Group companies and the sale consideration is deposited in the bank in the shape of FDR's. The amount in such FDRs earned interest. The case of the Committee since beginning has been that the amount realized through bid money and interest thereon is not an income of the Committee as this amount is collected only for the purpose of disbursement to investors and therefore has not been and cannot be added to the income of the Committee. The addition of Rs.3,52,72,651/- being interest on FDRs of sale proceeds is not justified to be considered as taxable income of the Committee. The amount does not belong to the Committee as the Committee is only a custodian of properties under the Hon'ble Supreme Court orders and is collecting funds for disbursement to investors.
3. During the year, under the orders of the Hon'ble Courts, the Committee has also refunded sale consideration along with interest earned on it pertaining to some of the properties auction-sold. The interest earned by the Committee on the FDRs of such sale proceeds and paid during the year to the bidders amounts to Rs.98,15,957/-. This amount should have been deducted from the total interest earned during the year. The Ld. Assessing officer has erred by not deducting this amount from the amount added to the returned income of the Committee-GFIL. Therefore the assessment order is liable to be quashed on this account alone.

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4. Therefore, the Committee prays that:

- (i) Additional submission may please be taken on record and
- (ii) Pass order considering the grounds of appeal, additional ground of appeals and additional submission.

*Kesamul*  
Appellant – Committee-GFIL

Through

*Prashant Chauhan*  
(Prashant Chauhan)  
Advocate

Date: 8 / 18 / 18

Counsel for the Appellant – Committee-GFIL  
(Appointed by the Hon'ble Supreme Court)

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IN THE COURT OF CIT APPEALS -1, CHANDIGARH

Appeal No. 1/10478/17-18 (A.Y. 2009-10)

IN THE MATTER OF:

M/s Golden Forests India Ltd.  
Through the Committee – GFIL  
(Appointed by the Hon'ble Supreme Court)

.... Appellant

ADDITIONAL SUBMISSIONS ON  
BEHALF OF COMMITTEE-GFIL.

RESPECTFULLY SHOWETH

1. On 11.9.2018, CIT Appeals -1, Chandigarh allowed the Committee-GFIL to file Additional Submissions with respect to the present appeal. Therefore the Committee is filing additional submissions in addition to the grounds and additional ground already taken. This shall be without prejudice to the rights of the Committee and issues raised in the appeal which are subject matter of adjudication.
2. The Ld. Assessing Officer has erroneously added Rs.5,61,74,985/- in the income of the Committee. The Committee –GFIL under the orders of Hon'ble Supreme Court auction sold the properties of Golden Forest Group companies and the sale consideration is deposited in the bank in the shape of FDR's. The amount in such FDRs earned interest. The case of the Committee since beginning has been that the amount realized through bid money and interest thereon is not an income of the Committee as this amount is collected only for the purpose of disbursement to investors and therefore has not been and cannot be added to the income of the Committee. The addition of Rs.5,61,74,985/- being interest on FDRs of sale proceeds is not justified to be considered as taxable income of the Committee. The amount does not belong to the Committee as the Committee is only a custodian of properties under the Hon'ble Supreme Court orders and is collecting funds for disbursement to investors.
3. Therefore, the Committee prays that:
  - (i) Additional submission may please be taken on record and
  - (ii) Pass order considering the grounds of appeal, additional ground of appeals and additional submission.

*Kamal*  
Appellant – Committee-GFIL

Through

*Prashant Chauhan*  
(Prashant Chauhan)  
Advocate

Date: 8/10/18

Counsel for the Appellant – Committee-GFIL  
(Appointed by the Hon'ble Supreme Court)

IN THE COURT OF CIT APPEALS -1, CHANDIGARH

Appeal No. 1/10476/17-18 (A.Y. 2010-11)

IN THE MATTER OF:

M/s Golden Forests India Ltd.  
Through the Committee – GFIL  
(Appointed by the Hon'ble Supreme Court)

.... Appellant

ADDITIONAL SUBMISSIONS ON  
BEHALF OF COMMITTEE-GFIL.

RESPECTFULLY SHOWETH

1. On 11.9.2018, CIT Appeals -1, Chandigarh allowed the Committee-GFIL to file Additional Submissions with respect to the present appeal. Therefore the Committee is filing additional submissions in addition to the grounds and additional ground already taken. This shall be without prejudice to the rights of the Committee and issues raised in the appeal which are subject matter of adjudication.
2. The Ld. Assessing Officer has erroneously added Rs.5,15,11,821/- in the income of the Committee. The Committee –GFIL under the orders of Hon'ble Supreme Court auction sold the properties of Golden Forest Group companies and the sale consideration is deposited in the bank in the shape of FDR's. The amount in such FDRs earned interest. The case of the Committee since beginning has been that the amount realized through bid money and interest thereon is not an income of the Committee as this amount is collected only for the purpose of disbursement to investors and therefore has not been and cannot be added to the income of the Committee. The addition of Rs.5,15,11,821/- being interest on FDRs of sale proceeds is not justified to be considered as taxable income of the Committee. The amount does not belong to the Committee as the Committee is only a custodian of properties under the Hon'ble Supreme Court orders and is collecting funds for disbursement to investors.
3. Therefore, the Committee prays that:
  - (i) Additional submission may please be taken on record and
  - (ii) Pass order considering the grounds of appeal, additional ground of appeals and additional submission.

*Kulwant*  
Appellant – Committee-GFIL

Through

*Prashant Chauhan*  
(Prashant Chauhan)  
Advocate

Date: 8/10/18

Counsel for the Appellant – Committee-GFIL  
(Appointed by the Hon'ble Supreme Court)

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IN THE COURT OF CIT APPEALS -1, CHANDIGARH

Appeal No. 122/1/15-16 (A.Y. 2011-12)

IN THE MATTER OF:

M/s Golden Forests India Ltd.  
Through the Committee – GFIL  
(Appointed by the Hon'ble Supreme Court)

.... Appellant

ADDITIONAL SUBMISSIONS ON  
BEHALF OF COMMITTEE-GFIL.

RESPECTFULLY SHOWETH

1. On 11.9.2018, CIT Appeals -1, Chandigarh allowed the Committee-GFIL to file Additional Submissions with respect to the present appeal. Therefore the Committee is filing additional submissions in addition to the grounds and additional ground already taken. This shall be without prejudice to the rights of the Committee and issues raised in the appeal which are subject matter of adjudication.
2. The Ld. Assessing Officer has erroneously added Rs.16,91,50,000/- towards Capital Gain and Rs.11,66,37,124/- towards interest income of the Committee. The Committee –GFIL under the orders of Hon'ble Supreme Court auction sold the properties of Golden Forest Group companies and the sale consideration is deposited in the bank in the shape of FDR's. The amount in such FDRs earned interest. The case of the Committee since beginning has been that the amount realized through bid money and interest thereon is not an income of the Committee as this amount is collected only for the purpose of disbursement to investors and therefore has not been and cannot be added to the income of the Committee. The addition of Rs.16,91,50,000/- towards Capital Gain and Rs.11,66,37,124/- towards interest income being interest on FDRs of sale proceeds is not justified to be considered as taxable income of the Committee. The amount does not belong to the Committee as the Committee is only a custodian of properties under the Hon'ble Supreme Court orders and is collecting funds for disbursement to investors.
3. During the year, under the orders of the Hon'ble Courts, the Committee has also refunded sale consideration along with interest earned on it pertaining to some of the properties auction-sold. The sale consideration and the interest earned on sale proceeds which were refunded during the year to the bidders amounts to Rs.24,27,00,000/- and Rs.91,31,143/- respectively. These amounts should have been deducted from the total sale consideration and interest earned during the year. The Ld. Assessing officer has erred by not deducting this amount from the amount added to the returned income of the Committee-GFIL. Therefore the assessment order is liable to be quashed on this account.

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4. The Ld. Assessing officer has also erred by assessing sale proceeds of the property Drive in 22 hotel belonging to M/s Golden Tourist Resorts & Developers Limited while assessing income of Golden Forests (India) Limited. This property has been sold for Rs. 30,00,00,000/-. It is totally illegal on the part of assessing officer to assess the sale proceed of a company which is different legal entity from M/s Golden Forests (India) Limited. Therefore the assessment order is defective and liable to be quashed.
5. The Ld. Assessing officer has levied capital gain tax @50% of sale proceeds without proper indexing and purely on the basis of presumptions and without giving justification/reasons for that rate. It may also be noticed that the assessing officer while assessing the income of the Committee on protective basis has levied capital gain tax @30%. The mismatch clearly shows the capital gain tax has been calculated without applying any legal basis and is purely on presumption. The assessment order is arbitrary and whimsical and cannot stand to judicial scrutiny. The assessment order has liable to be quashed on this ground alone.
6. Therefore, the Committee prays that:
  - (i) Additional submission may please be taken on record and
  - (ii) Pass order considering the grounds of appeal, additional ground of appeals and additional submission.

Through

*Kewal*  
Appellant – Committee-GFIL

Date: 8/10/18

*Prashant Chauhan*  
(Prashant Chauhan)  
Advocate  
Counsel for the Appellant – Committee-GFIL  
(Appointed by the Hon'ble Supreme Court)

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IN THE COURT OF CIT APPEALS -1, CHANDIGARH

Appeal No. 1/10477/17-18 (A.Y. 2012-13)

IN THE MATTER OF:

M/s Golden Forests India Ltd.

Through the Committee – GFIL

(Appointed by the Hon'ble Supreme Court)

.... Appellant

ADDITIONAL SUBMISSIONS ON  
BEHALF OF COMMITTEE-GFIL.

RESPECTFULLY SHOWETH

1. On 11.9.2018, CIT Appeals -1, Chandigarh allowed the Committee-GFIL to file Additional Submissions with respect to the present appeal. Therefore the Committee is filing additional submissions in addition to the grounds and additional ground already taken. This shall be without prejudice to the rights of the Committee and issues raised in the appeal which are subject matter of adjudication.
2. The Ld. Assessing Officer has erroneously added Rs.55,50,00,000/- towards Capital Gain and Rs.33,83,93,409/- towards interest income of the Committee. The Committee –GFIL under the orders of Hon'ble Supreme Court auction sold the properties of Golden Forest Group companies and the sale consideration is deposited in the bank in the shape of FDR's. The amount in such FDRs earned interest. The case of the Committee since beginning has been that the amount realized through bid money and interest thereon is not an income of the Committee as this amount is collected only for the purpose of disbursement to investors and therefore has not been and cannot be added to the income of the Committee. The addition of Rs.55,50,00,000/- towards Capital Gain and Rs.33,83,93,409/- towards interest income being interest on FDRs of sale proceeds is not justified to be considered as taxable income of the Committee. The amount does not belong to the Committee as the Committee is only a custodian of properties under the Hon'ble Supreme Court orders and is collecting funds for disbursement to investors.
3. The Ld. Assessing officer has levied capital gain tax @50% of sale proceeds without proper indexing and purely on the basis of presumptions and without giving justification/reasons for that rate. The assessment order is arbitrary and whimsical and cannot stand to judicial scrutiny.
4. Therefore, the Committee prays that:
  - (i) Additional submission may please be taken on record and
  - (ii) Pass order considering the grounds of appeal, additional ground of appeals and additional submission.

*Kelland*  
Appellant – Committee-GFIL

Through

*Prashant Chauhan*  
Prashant Chauhan, Advocate

Counsel for the Appellant – Committee-GFIL  
(Appointed by the Hon'ble Supreme Court)

Date: 8 | 10 | 18