IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH "I-2" NEW DELHI

BEFORE SHRI AMIT SHUKLA, JUDICIAL MEMBER
&
Dr. B.R.R. KUMAR, ACCOUNTANT MEMBER

I.T.A. No.635/DEL/2021
Assessment Year 2016-17

Yorkn Tech Pvt. Ltd., 17, Kemkunt Colony, Opp. Nehru Place, Greater Kailash, New Delhi.	v.	DCIT, Circle-25(1), New Delhi.
TAN/PAN: AABCO86061		
(Appellant)		(Respondent)

Appellant by:	Shri Ajay Wadhwa, Adv. and Ms. Ragini Handa, CA		
Respondent by:	Ms. Meera Srivastava, CIT-DR and Shri M. Baranwal, Sr.D.R.		
Date of hearing:	27	07	2021
Date of pronouncement:	18	08	2021

O R D E R

PER AMIT SHUKLA, JM:-

The aforesaid appeal has been filed by the assessee against the impugned order dated 26.04.2021, passed u/s.143(3) r.w.s. 144C(13) r.w.s. 144B in pursuance of direction given by the ld. Dispute Resolution Panel-2, New Delhi u/s.144C(5) vide order dated 09.03.2021 for the Assessment Year 2016-17. In the grounds of appeal, the assessee has challenged the adjustment of Rs.6,93,89,490/- on account of Specified Domestic Transaction (hereinafter referred to as 'SDT) pertaining to purchase of office space as inventory by the assessee from its holding company. In the

grounds of appeal, the assessee has challenged the validity of reference to TPO for Domestic Transfer Pricing on the ground that, *clause (i)* of Section 92BA has been omitted by the Finance Act, 2017, and therefore, any reference made post omission of the provision is bad in law; and secondly, no addition on account of SDT can be made. Besides this, on merits also various grounds have been challenged that the purchase of office space was in accordance with valuation report submitted by the assessee.

2. The facts in brief are that the assessee is a subsidiary of Uphill Farms Pvt. Ltd. (Uphill) which is engaged in real estate development and in the business of construction and development of real estate projects in India. During the year under consideration, the Assessee has acquired a real estate business located at Plot No. B-36, Sector 132, Noida -201301 (including its assets and liabilities and other obligations) from its holding company, Uphill by way of slump sale as a going concern, with effect from 28th March 2016, for a lump sum consideration of Rs. 220,50,00,000. The Assessee has discharged the purchase consideration partly by issuing 93,50,000 fully paid up equity shares of face value of Rs. 10/- each at a premium of Rs. 220/- per equity share and balance of Rs. 5,45,00,000 in cheque (Rs. 2,50,00,000 paid on 28.03.2016 and balance Rs. 2,95,00,000 payable on or before 30.09.2016). The same was duly reported in Form No. 3CEB as follows:

S. No.	*Nature of Transactions*	*Amount (Rs. In*

1.	*Purchase of office space*	*22,463.38*
2.	*Purchase of diesel*	*9.32*

For the purpose of benchmarking the transaction, the Assessee has valued the property by using "Other Method" prescribed in Rule 10AB of the Income-tax Rules, 1962 ("the Rules"] and reported as under:

Purchase of office space as inventory

Particulars	*Amount (Rs. in lakhs)*
Value of property as on 28.03.16 as per report dated 13.09.16 of the	*22,176.24*
Add: Cost of interior expenses incurred by the seller as certified by	*287.13*
Total	*22,463.37*

Particulars	*Amount (Rs. in lakhs)*
Value of property as on 28.03.16 as per circle rate of Noida	*20,215.18*
Add: Cost of interior expenses incurred by the seller as certified by management	*287.13*
Total	*20,502.31*

Particulars	*Amount (Rs. in lakhs)*
Minimum value of property as per resale rate available on 99acres.com	*26,498.92*
Maximum value of property as per resale rate available on 99acres.com	*28,751.08*
Average resale price	*27,625*

The Arithmetic mean of the above three is Rs. 23,530.23 lakhs. The Assessee has adopted rate of Rs. 22,463.38 lakhs which is less than the arithmetic mean and is close to the slump sale price."

3. The return of income was filed on 03.09.2016 declaring income of Rs.3,77,140/-. The said return was selected for limited scrutiny assessment under the E-assessment Scheme, 2019. Accordingly, notice u/s. 143(2) was issued on 21.07.2017. The ld. Assessing Officer noted that assessee had shown purchase of office space inventory at Rs.222,46,33,839/-, whereas as per the balance sheet the value of inventory was shown at Rs.224,72,68,554/-. The ld. Assessing Officer asked the assessee to file all the supporting documents in respect of acquisition of real estate project of NOIDA from holding company M/s. Uphill Farms P. Ltd. in pursuant to Slump Sale and copies of all documents /certificates, etc. as to how the value of the real estate project has been arrived as a Slump Sale exercise. Secondly, whether value of SDT has been correctly shown in Form No. 3CEB in the return of income? In response, the assessee vide reply dated 16.11.2018 had filed copy of 'business transfer agreement' dated 28.03.2016 along with all the annexures and copy of Form No.3CEB relating to SDT, return of valuation of immovable property and copy of Transfer Pricing Report. The ld. Assessing Officer sent a proposal to the PCIT, New Delhi to Additional CIT, Range-27 for seeking approval of

making reference to the TPO for determination of Arm's Length Price as per the provision of Section 92BA r.w.s. 92C in respect of SDT with the holding company M/s. Uphill Farms Pvt. Ltd. The approval was granted for making reference to the TPO vide letter dated 28.11.2018 by the Pr. CIT. The TPO computed the value adopting the method of NOIDA Authority vide order dated 31st October, 2019 passed u/s.92CA(3) and proposed and adjustment of Rs.38,70,19,094/- after valuing the property at Rs.166,80,68,357/-. The reasons given by the TPO for rejecting the value adopted by the assessee were as under:

i. The TPO rejected rates of 99acres.com stating that the Assessee had furnished only 4 listings with hugely varying rates from Rs. 5,600-14,200 per sq ft. whereas Ld. TPO had stated rates as per magic bricks which were between Rs. 3,379- Rs. 8,182 per sq. ft.

ii. He also rejected rates of 99acres.com wrongly stating that rates are for the FY 2019-20 and not the year of purchase.

iii. The TPO rejected rate of Rs. 107,000 per sq. meter in the valuation report stating that the basis of arriving at the rate by the Government approved valuer was not given.

iv. He has stated that the Assessee has itself requested not to take this rate for the purpose of verifying the validity of the transaction.

v. The TPO has valued the property as per circle rate of Noida Authority and adopted the value of Rs.1,85,89,18,945. The dispute in the valuation was mainly regarding the area. The TPO has calculated the super area by just adding service area to the covered area and omitted to consider the actual area as per the sale deeds, the car parking, the maintenance receipts, machinery and equipment and the cost of interiors. All this was objected by the assessee on facts and material brought on record.

vi. TPO has also rejected the slump sale valuation stating that the requirements as per section 2(42C] of the Act, requiring the values not being assigned to individual assets and liabilities in such sales was not fulfilled in the present case.

9. Thereafter, the Ld. AO has passed draft assessment order on 14.11.2019.

10. Aggrieved by the Draft Assessment Order dated 14.11.19, the Assessee filed objections before the Hon'ble DRP against the variation proposed to be made in the Draft Assessment Order.

11. The Assessee also filed additional evidence vide letter dated 20.08.2020 before the Hon’ble DRP which were admitted by the Hon’ble DRP after considering remand report dated 10.12.2020 by the TPO. The Hon'ble DRP vide directions dated 9.03.2021 issued under section 144C(5) of

the Act held the Fair Market Value of the property to be Rs. 213,56,10,510/- and restricted the adjustment to Rs. 6,93,89,490/-. The following were the reasons given by the Hon'ble DRP:

i. DRP held that clause (i) of section 92BA of the Act has been omitted by Finance Act 2017 and is not applicable in the impugned AY.

ii. DRP rejected value as per website 99acres.com

iii. DRP also rejected rate as per Valuation Report

iv. DRP accepted the super area of the Assessee.

v. DRP accepted only 289 car parking and rejected 216 car parking.

vi. DRP has not taken into account the cost of maintenance equipments.

vii. DRP has not taken into account the value of maintenance receipts

viii. DRP has not allowed appropriate adjustments of cost of interiors incurred by holding company on the property sold.

12. The Ld. TPO passed the appeal effect order on 16.04.2021 and consequently, the Ld. AO passed order dated 26.04.2021 under section 143(3] read with section 144C [13] and 144B of the Act giving effect to the directions of Hon'ble DRP and made addition of Rs. 6,93,89,490/- and raised demand of Rs. 3,70,09,330/-

(including interest]. In view of the above, the Ld. AO computed the income of the Assessee as under:-

Returned income as declared by the Assessee company	*Rs.*	*3,77,140/-*
Add: Adjustment on account of specified domestic transaction as directed by DRP	*Rs.*	*6,93,89,490/-*
Total Income	*Rs.*	*6,97,66,630/-*

14. Before us, ld. counsel for the appellant-assessee, Mr. Ajay Wadhwa submitted that since *clause* (*i*) of Section 92BA have been omitted by the statute from the Finance Act, 2017 w.e.f. 01.04.2017, therefore, it is deemed that the said clause was never part of the Act. The proceedings initiated after an omitted section cannot be made unless there is saving clause provided in the Act at the time of omission. Here in this case notice u/s.143(2) for selecting the case of scrutiny was issued on 21.07.2017, i.e., after the omission of *clause (i)* of Section 92BA and reference to the TPO was itself made on 29.11.2018. Thus, the effect of such an omission is that no proceeding under the omitted provision can commence after the date of the omission of the provision and, hence, decision taken by the Hon'ble DRP or Ld. TPO/ Ld. AO under clause (i) of section 92BA and reference made to the Ld. TPO under section 92CA was invalid and bad in law.

5. He also referred to Section 6 and 6A of General Clauses Act and submitted that the Finance Act 2017, while deleting *clause (i)* of section 92BA did not specify whether proceeding

initiated or action taken on this section will continue or not. Since there was no express saving clause or provision, stating whether the pending proceedings shall continue, it is deemed that the said clause has been deleted since its inception. Accordingly, any pending proceedings are null and void. In the instant case, even the proceedings were initiated after the deletion of clause from the Act. The first notice was issued under section 143(2] on 21st July 2017, whereas the clause has been deleted w.e.f 01.04.2017. Reliance was also placed on the following case laws wherein the following was held:

- The effect of omission of a provision without any saving clause of General Clauses Act means that the said provision was not in existence or never existed in the statute book.
- If a provision of a statute is unconditionally omitted without a saving clause in favour of pending proceedings, all actions must stop where the omission finds them, and if final relief has not been granted before the omission goes into effect, it cannot be granted afterwards.
- The omission in clause (i) of section 92BA is unconditional, that is, it does not say that pending proceedings under the clause would continue in future even after its omission on 01.04.2017. Therefore, in the absence of such condition/ saving clause it would be presumed that clause [i] of section 92BA had obliterated from the inception, that is, it would be presumed that clause [i] of section 92BA never existed in the statute book,

it had never been passed and to be considered as a law never been existed.

- The effect of repealing a statute or deleting a provision is to obliterate it from the statute-book as completely as if it had never been passed, and the statute must be considered as a law that never existed.

The only decision by the Hon'ble High Court squarely on the issue is as under:

a. <u>Principal Commissioner of Income Tax -7 vs. Texport Overseas P. Ltd. (2020) 114 taxmann.com 568 (Karnataka)</u>

"5. Having heard learned Advocates appearing for parties and on perusal of records in general and order passed by tribunal in particular it is clearly noticeable that Clause (i) of section 92BA of the Act came to be omitted w.e.f. 01.04.2019 by Finance Act, 2014. As to whether omission would save the acts is an issue which is no more res intigra in the light of authoritative pronouncement of Hon'ble Apex Court in the matter of Kolhapur Canesugar Works Ltd. v. Union of India AIR 2000 SC 811 where under Apex Court has examined the effect of repeal of a statute vis-a-vis deletion/addition of a provision in an enactment and its effect thereof. The import of section 6 of General Clauses Act has also been examined and it came to be held:

"37. The position is well known that at common law, the normal effect of repealing a statute or deleting a provision is to obliterate it from the statute-book as completely as if it had never been passed, and the statute must be considered as a law that never existed. To this rule, an exception is engrafted by the provisions of section 6(1). If a provision of a statute is unconditionally omitted without a saving clause in favour of pending proceedings, all actions must stop

where the omission finds them, and if final relief has not been granted before the omission goes into effect, it cannot be granted afterwards. Savings of the nature contained in section 6 or in special Acts may modify the position. Thus the operation of repeal or deletion as to the future and the past largely depends on the savings applicable. In a case where a particular provision in a statute is omitted and in its place another provision dealing with the same contingency is introduced without a saving clause in favour of pending proceedings then it can be reasonably inferred that the intention of the legislature is that the pending proceedings shall not continue but fresh proceedings for the same purpose may be initiated under the new provision."

6... In the matter of General Finance Co. v.ACIT, which judgment has also been taken note of by the tribunal while repelling the contention raised by revenue with regard to retrospectivity of section 92BA(i) of the Act. Thus, when clause (i) of Section 92BA having been omitted by the Finance Act. 2017, with effect from 01.07.2017 from the Statute the resultant effect is that it had never been passed and to be considered as a law never been existed. Hence, decision taken by the Assessing Officer under the effect of section 92BA and reference made to the order of Transfer Pricing Officer-TPO under section 92CA could be invalid and bad in law."

b. M/s. Bhartia-SMSIL (JV) v. ITO, ITA No.117/Gau/2019 (Assessment Year 2014-15)

"9. We see no reasons to take any other view of the matter than the view so taken by the Division Bench of the Tribunal in the case of Swastik Coal Corporation Pvt. Ltd (Supra vide order dated 26.07.2019 In this order, the Tribunal has inter alia observed as follows:

"8. We find that the above view of the Ld. Pr. CIT is not correct. In view of the aforesaid discussion, moreover, the coordinate bench has also examined the issue in

the case of Texport Overseas Pvt. Ltd. in IT(TP)A No.l 722/Bang/2017. Admittedly, in this case, the order has been revised purely on the basis that the assessing officer has not referred to determine the arm's length price to the TPO. Since the provision itself stood omitted at the time when the order was passed hv the Ld. Pr.

CIT. under these undisputed facts in the light of the Judgement of the Hon'ble Supreme Court rendered in the case of General Finance Company (supra) as well as the order of the coordinate bench rendered in the case of Texport Overseas Pvt. Ltd. [supra]. the impugned order cannot be sustained, hence is hereby quashed. The order impugned is thus quashed and the grounds raised in the appeal are allowed."

10. On the very identical facts, the Coordinate Bench of IT AT Kolkata in the case of M/s Raipur Steel Casting India Pvt Ltd, in 1TA No.895/Kol/2019, for A.Y. 2014-15, order dated 10.06.2020 held as follows:

"12... We note that Id PCIT issued the above show cause notice u/s 263 in respect of specified domestic transactions referred to in clause (i) of section 92BA of the Act which was omitted with effect from 01.04.2017 and effect of such "omission" of clause (i) of section 92BA means that this provision was never existed in the statute book, since clause (i) of section 92 BA was never existed in the statute book therefore, ld PCIT cannot exercise his jurisdiction under section 263 of the Act in respect of specified domestic transactions referred to in clause (i) of section 92BA of the Act. In other words, since the clause (i) of section 92BA was omitted with effect from 01.04.2017 by the Finance Act 2017. Therefore, in the Act, clause (i) of section 92BA stood "omitted" from the Act as if it was never in the statute book. Therefore, "omission" means the above provisions was not in existence or never existed in the statute book. To support this, we find useful a the judgment of the Hon'ble Supreme Court in the case of Rayala Corporation (PI Ltd (1970 AIR 494) wherein the Hon'ble Supreme Court has defined the terminology

"omission" and "Repeal" and distinguished these terminologies also. The relevant para of the judgment is reproduced below:

13 Case before us is that the clause (i) of section 92BA is unconditionally omitted without a saving Clause in favour of pending proceedings therefore Id PCIT cannot exercise the jurisdiction under section 263 of the Act.

17.... Having gone through the concluding para, as mentioned above, we note that Hon'ble Supreme Court in the case of M/s. Shree Bhagwati Steel Rolling Mills [supra], has not decided the issue in favour of Revenue. Therefore, the contention of Id. D.R. that Hon'ble Supreme Court has interpreted the issue in favour of Revenue, is not tenable. In fact, the concluding para No. 44 of the said judgment clearly speaks that the appeals filed by the Revenue are dismissed and the appeals filed by the assessees are allowed. The said judgment of the Hon'ble Supreme Court also advocates that omitted provision being treated as if it never existed and as Section 6 of the General Clauses Act would not then apply to allow the previous operation of the provision so omitted or anything duly done or suffered thereunder. Nor may a legal proceeding in respect of any right or liability be instituted, continued or enforced in respect of rights and liabilities acquired or incurred under the enactment so omitted. Therefore, considering the judgment of the Hon'ble Supreme Court in the case of M/s. Shree Bhagwati Steel Rolling Mills(supra), it can be Page / 12 M/s. Bhartia-SMSIL (JV) ITA No.ll7/Gau/2019 Assessment Year:2014-15 said that since clause(i) of section 92BA was omitted w.e.f. 01.04.2017 therefore, it would be treated that said since clause(i) of section 92BA was never existed in the statute book."

ll. Therefore based on the above judgements of the Coordinate Benches.[in the case of Swastik Coal Corporation Pvt Ltd and in the case of M/s Raipur Steel Casting India (p) Ltd-supra)] we hold that since clause (il section 92 A was omitted with effect from 1st April. 2017 and the effect of such omission is that the said

clause(i) was never existed in the statute. Hence. Ld. PC1T can not exercise the jurisdiction u/s 263 of the Act."

C. M/s. Raipur Steel Casting India fPl I.td. v. P.C.I.T. ITA No. 895/Kol/2019 AY 2014-15 and M/s. Srinath li Furnishing Pvt. Limited v. P.C.I.T. ITA No.l035/Kol/2019

"11 As we noticed that clause (i) of section 92BA has been 'omitted" with effect from 01.04.2017. The effect of such omission without any saving clause of General Clauses Act, means that the above provision was not in existence or never existed in the statute hook. If it is held that effect o f such "omission" of clause (i) of section 92BA means that this provision was never existed in the statute book, then in that situation the exercise of jurisdiction by the Id PCIT [in respect of above said clause (i) of section 92 BA] under section 26.1 of the Act would fail.

12. We note that Id PCIT issued the above show cause notice u/s 263 in respect of specified domestic transactions referred to in clause fi) of section 92BA of the Act which was omitted with effect from 01.04.2017 and effect of such "omission" of clause (i1 of section 92BA means that this provision was never existed in the statute book, since clause fit of section 92BA was never existed in the statute book therefore. Id PCIT cannot exercise his jurisdiction under section 26.1 of the Act in respect of specified domestic transactions referred to in clause (il of section 92BA of the Act. In other words, since the clause fi) of section 92BA was omitted with effect from 01.04.2017 bv the Finance Act 2017. Therefore, in the Act, clause (i) of section 92BA stood "omitted" from the Act as if it was never in the statute bonk. Therefore, "omission" means the above provisions was not in existence or never existed in the statute book.....

....Argument advanced by Shri Viiav Shankar. (CIT-DR). on behalf of the Revenue was that the prosecution

/penalty in respect of clause fi) of section 92BA of the Act, was in force in assessment year 2014-15 and therefore it is valid even after 01.04.2017. [when the clause was omitted]. We do not agree with Id DR for the Revenue because omitted clause (i) of section 92BA of the Act, does not contain any condition/ saving clause to the effect that a legal proceeding could be instituted even after the omission of clause (il of section 92BA of the Act. It is clear that when clause (i1 o f section 92BA was omitted, the Legislature did not make any provision that any prosecution/penalty committed under clause (i) of section 92BA of the Act, would continue to remain punishable even after its omission w.e.f. 01.04.2017. therefore, in the absence of such condition/saving clause it would be presumed that clause (il of section 92BA had obliterated from the inception, that is. it would be presumed that clause till of section 92BA was never existed in the statute book.

17….. First, we take the judgment of Hon'ble Supreme Court in the case of M/s Shree Bhagwati Steel Rolling Mills vs. C.I.T. Excise & Others - 2015(3261 ELT 209(S.C.l. the relevant paras of the said judgment are reproduced below:

…….

….The said judgment of the Hon'ble Supreme Court also advocates that omitted provision being treated as if it never existed and as Section 6 of the General Clauses Act would not then apply to allow the previous operation of the provision so omitted or anything duly done or suffered thereunder. Nor may a legal proceeding in respect of any right or liability be instituted, continued or enforced in respect of rights and liabilities acquired or incurred under the enactment, so omitted. Therefore, considering the judgment of the Hon'ble Supreme Court in the case of M/s. Shree Bhagwati Steel Rolling Mills supra. it can be said that since clause (i) of section 92BA was omitted w.e.f. 01.04.2017 therefore, it would be treated that said since clause (i) of section 92BA was never existed in the statute hook.

20. We are of the view that at this juncture it is necessary to examine, the meaning of saving clause? As Per the law.Com Law Dictionary & Black's Law Dictionary 2nd Ed. the saving clause has been defined as follows:

> *"A saving clause in a statute is an exception of a special thing out of the general things mentioned in the statute; it is ordinarily a restriction in a repealing act which is intended to save rights pending proceedings penalties etc. from the annihilation which would result from an unrestricted repeal. In contracts it is a clause that states that ambiguities should not render a contract void or voidable but the contract should be enforced in all other respects provided it can still exist as a valid and binding agreement."*

Thus, the Saving clause means a clause which denotes a reservation or exception. As per Find Law Legal dictionary, saving clause means a clause in a statute exempting something from statute's operation.

Having discussed the meaning of saving clause, it has become quite clear that at the time of omission of clause (i) of section 92BA with effect from 01.04.2017 the Legislature did not mention any terms and conditions to the effect that after omission of clause [i] of section 92BA. pending proceedings/penalties etc, till the date of omission (01.04.20171 will survive. That is. the Legislature did not insert new section in the Income Tax Act to the effect that pending proceedings/penalties etc in relation to clause Li) of section 92BA will survive even after omission. [that is. after 01.04.2017). Hence, we note that these terms and conditions, as discussed above, are absent in case of omitted clause [i] of section 92BA of the Act, therefore as per the law laid down by the Hon'ble Supreme Court in the case of Rayala Corporation [supra] and Kohlapur Cane Sugar [supra], it will be presumed that clause [i] of section 92BA never existed in the Statute Book, meaning thereby it is obliterated from the very beginning and hence the jurisdiction exercised by the Ld. PCIT u/s. 263 of the Act invoking clause [i] of

section 92BA, for reference by A.O. to TPO is null in the eye of Law, as clause [i] of section 92 BA is "omitted" and not "repeated" and there is no provision in any other section of the Income Tax Act saving the pending proceedings initiated under the omitted provision [[clause [i] of sec, 92BA]] as the said clause [i] was omitted on 01.04.2017, therefore, subsequent revision proceedings by Id. PCIT u/s. 263 on dated 08.03.2019 would be invalid...."

21. We note that the Coordinate Bench oflTAT Indore in the case of Swastik Coal Corporation Pvt. Ltd, in ITA No. 486/lnd/2018, order dated 26.07.2011, has quashed the order of Id PCIT under section 263 of the Act, on the identical facts, as narrated above. The findings of the Coordinate Bench is reproduced below:

"8. We find that the above view of the Ld. Pr. CIT is not correct. In view of the aforesaid discussion, moreover, the coordinate bench has also examined the issue in the case ofTexport Overseas Pvt. Ltd. in IT[TP]A No.l722/Bang/2017. Admittedly, in this case, the order has been revised purely on the basis that the assessing officer has not referred to determine the arm's length price to the TPO. Since the provision itself stood omitted at the time when the order was passed by the Ld. Pr. CIT, under these undisputed facts in the light of the Judgement of the Hon'ble Supreme Court rendered in the case of General Finance Company [supra] as well as the order of the coordinate bench rendered in the case of Textport Overseas Pvt. Ltd. [supra], the impugned order cannot be sustained, hence is hereby quashed. The order impugned is thus quashed and the grounds raised in the appeal are allowed."

22. To conclude: If a provision of a statute is unconditionally omitted without a saving Clause in favour of pending proceedings, all actions must stop where the omission finds them, and if final relief has not been granted before the omission goes into effect, it cannot be granted afterwards.

Savings of the nature contained in Section 6 of General Clauses Act or in special Acts may modify the position. Thus, the operation of repeal or deletion as to the future and the past largely depends on the savings applicable. In a case where a particular provision in a statute is omitted and in its place another provision dealing with the same contingency is introduced without a saving clause in favour of pending proceedings then it can be reasonably inferred that the intention of the legislature is that the pending proceeding shall not continue but a fresh proceeding for the same purpose may be initiated under the new provision.

In this case. Clause (il of section 92BA was omitted w.e.f 01.04.2017. and after its omission the Id. PCIT passed order u/s. 263 on 28.03.2019. Since clause (il of section 92BA was unconditionally omitted without a saving clause in favour of Pending Proceedings therefore Id. PCIT ought not to have proceeded u/s. 263 of the Act, since the omission took place prior to 08.03.2019 and such omission in clause fil of section 92BA is unconditional, that is. it does not sav that Pending Proceedings under clause (il of section 92BA would continue in future, even after its omission on 01.04.2017. Therefore. Id. PCIT erred in exercising his jurisdiction u/s. 263 of the Act, so far clause (il of section 92 BA is concerned, reason being, in the eyes of law after omission of clause (il of section 92BA. it would he treated as if it never existed in the Statute Book. In other words, clause fil of section 92BA. was omitted w.e.f 1.4.2017 unconditionally and without a saving clause therefore section 6 of the General Clauses Act has no application.

We note that Id PCIT issued the above show cause notice u/s 263 in respect of specified domestic transactions referred to in clause (i) of section 92BA of the Act which was omitted with effect from 01.04.2017, and effect of such "omission" of clause (i) of section 92BA means that this provision never existed in the statute book, since clause (i) of section 92BA never

existed in the statute book therefore, Id PCIT cannot exercise his jurisdiction under section 263 of the Act in respect of specified domestic transactions referred to in clause (i) of section 92BA of the Act. Therefore, the action of the Assessing Officer cannot be held to be erroneous as well as prejudicial to the interest of the revenue, in the facts and circumstances as narrated above. Thus, the usurpation of jurisdiction of exercising revisional jurisdiction by the Principal CIT is "null" in the eyes of law and, therefore, we are inclined to quash the very assumption of jurisdiction to invoke revisional jurisdiction u/s 263 of the Act by the Principal CIT. Therefore, we quash the order of the Principal CIT dated 08.03.2019 being ab initio void."

d. Swastik Coal Corporation Pvt. Ltd. v. Pr. CIT-2 ITA No.486/Ind /2018

"8. We find that the above view of the Id. Pr. CIT is not correct. In view of the aforesaid discussion, moreover, the coordinate bench has also examined the issue in the case of Texport Overseas Pvt. Ltd. in IT(TP)A No.l722/Bang/2017. Admittedly, in this case, the order has been revised purely on the basis that the assessing officer has not referred to determine the arm's length price to the TPO. Since the provision itself stood omitted at the time when the order was passed bv the Ld. Pr. CIT. under these undisputed facts in the light of the ludaement of the Hon'hle Supreme Court rendered in the case of General Finance Company (supra) as well as the order of the coordinate bench rendered in the case ofTexport Overseas Pvt. Ltd. (supra), the impugned order cannot be sustained, hence is hereby quashed. The order impugned is thus quashed and the grounds raised in the appeal are allowed."

8. Reliance has been placed on the following judgements of the Hon'ble Apex Court wherein the following was held:

- *repeal can be by way of an express omission*

- *If a part of a statute is deleted, Section 6 of General clauses Act would nonetheless apply*
- *"omission" is nothing but a particular form of words evincing an intention to abrogate an enactment or portion thereof*
- *"delete" and "omit" are used interchangeably, so that when the expression "repeal" refers to "delete" it would necessarily take within its kin an omission as well.*
- *Both delete and repeal lead to the same result, namely, that an "omission" being tantamount to a "deletion" is a form of repeal*

e. Shree Bhagwati Steel Rolling v. Commissioner of Central Excise. f20161 3 SCC 643

""12. From this it is clear that when Section 6 of the General Clauses Act speaks of the repeal of any enactment, it refers not merely to the enactment as a whole but also to any provision contained in any Act. Thus, it is clear that if a part of a statute is deleted. Section 6 would nonetheless apply. Secondly, it is clear, as has been stated by referring to a passage in Halsbury's Laws of England in Fibre Board judgment, that the expression "omission" is nothing but a particular form of words evincing an intention to abrogate an enactment or portion thereof. This is made further clear by the Legal Thesaurus (Deluxe Edition) by William C. Burton, 1979 Edition. The expression "delete" is defined by the Thesaurus as follows:

*"**Delete:- Blot out, cancel, censor, cross off, cross out, cut, cut out, dele, discard, do away with drop edit out, efface, elide, eliminate, eradicate, erase, excise, expel, expunge, extirpate, get rid of. leave out, modify bv excisions, obliterate, omit, remove, rub out, rule out, scratch out, strike off, take out, weed, wipe out.**"*

And the expression "repeal" is defined as follows:

"Repeal:- Abolish, abroaare. abrogate, annul, avoid, cancel, countermand, declare null and void, delete,

eliminate, formally withdraw, invalidate, make void, negate, nullify, obliterate, officially withdraw.

override, overrule, quash, recall, render invalid, rescind, rescindere. retract, reverse, revoke, set aside, vacate, void, withdraw."

13. On a conjoint reading of the three expressions "delete", "omit", and "repeal", it becomes clear that "delete" and "omit" are used interchangeably, so that when the expression "repeal" refers to "delete" it would necessarily take within its ken an omission as well. This being the case, we do not find anv substance in the argument that a "repeal" amounts to an obliteration from the very beginning, whereas an "omission" is only in futuro. If the expression "delete" would amount to a "repeal", which the appellant's counsel does not deny, it is clear that a conjoint reading of Halsburv's Laws of England and the Legal Thesaurus cited hereinabvove both lead to the same result, namely, that an "omission" being tantamount to a "deletion" is a form of repeal.

18. We also find that Section 6 could not possibly apply to the facts in Rayala Corporation's case for yet another reason. Clause 2 of the amendment rules which was referred to in paragraph 14 of the judgment in Rayala Corporation reads as follows:-

"In the Defence of India Rules, 1962, rule 132A (relating to prohibition of dealings in foreign exchange) shall be omitted except as respects things done or omitted to be done under that rule."

19. A cursory reading of clause 2 shows that after omitting Rule 132A of the Defence of India Rules, 1962, the provision contains its own saving clause. This being the case, Section 6 can in any case have no application as Section 6 only applies to a Central Act or regulation "unless a different intention appears". A different intention clearly appears on a reading of clause 2 as only a very limited savings clause is incorporated therein. In fact, this aspect is noticed by the

Constitution Bench in paragraph 18 of its judgment, in which the Constitution Bench states:-

"As we have indicated earlier, the notification of the Ministry of Home Affairs omitting Rule 132-A of the D.I.Rs. did not make any such provision similar to that contained in Section 6 of the General Clauses Act."

20. It was then urged before us that Section 31 of the Prevention of Corruption Act, 1988 would also lead to the conclusion that Parliament itself is cognizant of the fact that an omission cannot amount to a repeal. Section 31 of the Prevention of Corruption Act, 1988, states as follows:-

"Section 31 - Omission of certain sections of Act 45 of 1860 Sections 161 to 165A (both inclusive) of the Indian Penal Code, 1860 (45 of 1860) shall be omitted, and section 6 of the General Clauses Act, 1897 (10 of1897), shall apply to such omission as if the said sections had been repealed by a Central Act."

21. It is settled law that Parliament is presumed to know the law when it enacts a particular piece of legislation. The Prevention of Corruption Act was passed in the year 1988, that is long after 1969 when the Constitution Bench decision in Rayala Corporation had been delivered. It is, therefore, presumed that Parliament enacted Section 31 knowing that the decision in Rayala Corporation had stated that an omission would not amount to a repeal and it is for this reason that Section 31 was enacted. This again does not take us further as this statement of the law in Rayala Corporation is no longer the law declared by the Supreme Court after the decision in the Fibre Board's case. This reason therefore again cannot avail the appellant.

23. Fibre Board case is a recent judgment which, as has correctly been argued by Shri RadhaKrishnan, learned Senior Counsel on behalf of the Revenue, clarifies the law in holding that an omission would amount to a repeal. The converse view of the law has led to an omitted provision being treated as if it never

existed, as Section 6 of the General Clauses Act would not then apply to allow the previous operation of the provision so omitted or anything duly done or suffered thereunder. Nor may a legal proceeding in respect of any right or liability be instituted, continued or enforced in respect of rights and liabilities acquired or incurred under the enactment so omitted. In the vast majority of cases, this would cause great public mischief, and the decision of Fibre Board case is therefore clearly delivered by this Court for the public good, being, at the very least a reasonably possible view. Also, no aspect of the question at hand has remained unnoticed. For this reason also we decline to accept Shri Aggarwal's persuasive plea to reconsider the judgment in Fibre Board case. This being the case, it is clear that on point one the present appeal would have to be dismissed as being concluded by the decision in Fibre Board case."

34. Shri Radhakrishnan, learned senior advocate appearing on behalf of the revenue found it extremely difficult to argue that the aforesaid judgment was wrong. He therefore asked us to limit the effect of the judgment when it further held that after omission of the aforesaid Rules with effect from 1.3.2001 no proceedings could have been initiated thereunder. In this submission he is correct for the simple reason that the Gujarat High Court followed Rayala Corporation in holding that "omissions" would not amount to "repeals", which this Court has now clarified is not the correct legal position."

f- Fibre Boards (PI Ltd.. Bangalore v. Commissioner of Income Tax. Bangalore. f20151 10 SCC .333: "31. First and foremost, it will be noticed that two reasons were given in Rayala Corporation (P) Ltd. for distinguishing the Madhya Pradesh High Court judgment. Ordinarily, both reasons would form the ratio decidendi for the said decision and both reasons would be binding upon us. But we find that once it is held that Section 6 of the General Clauses Act would itself not apply to a rule which is subordinate legislation as it applies only to a Central Act or Regulation, it would be wholly

unnecessary to state that on a construction of the word "repeal" in Section 6 of the General Clauses Act, "omissions" made by the legislature would not be included. Assume, on the other hand, that the Constitution Bench had given two reasons for the non-applicability of Section 6 of the General Clauses Act. In such a situation, obviously both reasons would be ratio decidendi and would be binding upon a subsequent bench. However, once it is found that Section 6 itself would not apply, it would be wholly superfluous to further state that on an interpretation of the word "repeal", an "omission" would not he included. We are, therefore, of the view that the second socalled ratio of the Constitution Bench in Ravala Corporation (PI Ltd. cannot be said to he a ratio decidendi at all and is really in the nature of obiter dicta.

32. Secondly, we find no reference to Section 6A of the General Clauses Act in either of these Constitution Bench judgments. Section 6A reads as follows:

"6A. Repeal of Act making textual amendment in Act or Regulation - Where any Central Act or Regulation made after the commencement of this Act repeals any enactment by which the text of any Central Act or Regulation was amended by the express omission, insertion or substitution of any matter, then, unless a different intention appears, the repeal shall not affect the continuance of any such amendment made by the enactment so repealed and in operation at the time of such repeal."

33. A reading of this Section would show that a repeal by an amending Act can be by way of an express omission. This being the case, obviously the word "repeal" in both Section 6 and Section 24 would, therefore, include repeals bv express omission. The absence of any reference to Section 6A, therefore, again undoes the binding effect of these two judgments on an application of the 'per incuriam' principle.

34. Thirdly, an earlier Constitution Bench judgment referred to earlier in this judgment, namely,

State of Orissa v. M.A. Tulloch & Co., [1964) 4 SCR 461 has also been missed. The Court there stated:

"....Now, if the legislative intent to supersede the earlier law is the basis upon which the doctrine of implied repeal is founded could there be any incongruity in attributing to the later legislation the same intent which Section 6 presumes where the word 'repeal' is expressly used. So far as statutory construction is concerned, it is one of the cardinal principles of the law that there is no distinction or difference between an express provision and a provision which is necessarily implied, for it is only the form that differs in the two cases and there is no difference in intention or in substance. A repeal may be brought about by repugnant legislation, without even any reference to the Act intended to be repealed, for once legislative competence to effect a repeal is posited, it matters little whether this is done expressly or inferentially or by the enactment of repugnant legislation. If such is the basis upon which repeals and implied repeals are brought about it appears to us to be both logical as well as in accordance with the principles upon which the rule as to implied repeal rests to attribute to that legislature which effects a repeal by necessary implication the same intention as that which would attend the case of an express repeal. Where an intention to effect a repeal is attributed to a legislature then the same would, in our opinion, attract the incident of the saving found in Section 6 for the rules of construction embodied in the General Clauses Act are, so to speak, the basic assumptions on which statutes are drafted " (At page 484) 35. The two later Constitution Bench judgments also did not have the benefit of the aforesaid exposition of the law. It is clear that even an implied repeal of a statute would fall within the expression "repeal'' in Section 6 of the General Clauses Act. This is for the reason given by the Constitution Bench in M.A. TuIIoch & Co. that only the form of repeal differs but there is no difference in intent or substance. If even an implied repeal is covered by the expression "repeal", it is clear that repeals may take any form and so long as a

> *statute or part of it is obliterated, such obliteration would be covered by the expression "repeal" in Section 6 of the General Clauses Act."*

6. On the other hand, ld. CIT-DR strongly relied upon the order of the DRP and submitted that the provision of Section 92BA sub-clause (i) has been omitted by the Finance Act, 2017 w.e.f. 01.04.2017, i.e., for the Assessment Year 2017-18. Here the transaction pertains to Assessment Year 2016-17 and during that period the provision of Section 92BA sub-clause (1) was there in the statute. If the provision has been omitted from a particular date then it applies prospective and not retrospective. In support, she relied upon the judgment of **Sobha City vs. ACIT in ITA No.2936/Bang/2018** in which the case was restored to the file of the Assessing Officer with the direction to examine the claim of expenditure in accordance with the provision of Section 40A(2) of the IT Act. She also placed reliance upon the decision rendered by the Mumbai Bench of Tribunal in the case of **Firemenich Aromatics India Pvt. Ltd. vs. ACIT in ITA No. 348/Mum/2014 dated 15.07.2020** in which the decision rendered by the Hon'ble Apex Court in the case of Fiber Bores Pvt. Ltd. (2015) 52 Taxmann.com 135. Further, she placed reliance in the case of **M/s. Shree Bhagwati Steel Rolling Mills Ltd. (CA No.4280/2007 dated 24.11.2015** which were not considered by the Tribunal as well as the by Hon'ble High Court in the case of Texport Overseas Pvt. Ltd. in ITA No.392/2018 dated 12.21.2019.

7. We have heard the rival submissions and also perused the relevant facts arising out from the records on the legal issue raised by the ld. counsel. It is an undisputed fact that the SDT for purchase of office space as inventory was by way of Slump Sale of a going concern w.e.f. 28th March, 2016. The assessee's case was selected for scrutiny on 21.07.2017 and reference to the TPO was made for determination of Arm's Length Price of SDT after seeking approval of PCIT on 29.11.2018. The core argument of the ld. counsel is that, once the reference which has been made under clause (i) of Section 92BA, itself has been omitted from the statute, therefore, it is deemed that the said clause was never part of the Act and any proceedings commenced under the omitted provision cannot be enforced or action can be taken thereafter. In support, the judgment of Hon'ble Karnataka High Court has been relied upon in the case of **PCIT vs. Textport Overseas Pvt. Ltd., reported in (2020) 114 taxmann.com 568 (Karnataka)** and catena of ITAT Judgments cited supra, the relevant text of which have already been incorporated above. The Finance Act 2017 has omitted SDT whereby any expenditure in respect of which payment has been made or has to be made to a person referred to in clause (b) of sub-Section (ii) of Section 40. It has been omitted w.e.f. 01.04.2017. This precise issue had come up for consideration before the Hon'ble Karnataka High Court wherein the Hon'ble High Court have held that when *clause (i)* of Section 92BA have been omitted by the Finance Act, 2017

w.e.f. 01.04.2017 from the statute, the resultant effect is that, it had never been passed and to be considered as a law never been existed and therefore order of TPO u/s.92BA could be invalid and bad in law, While coming to this conclusion the Hon'ble High Court has referred and relied upon the judgment of Hon'ble Supreme Court in the case of **Kolhapur Canesugar Works Ltd. & Anr. v. Union of India & Ors., (2000) 2 SCC 536.**

8. Though, this judgment of **PCIT vs. Textport Overseas Pvt. Ltd** (supra) clearly clinches the issue in favour of the assessee and will apply mutatis mutandis in the present appeal also. However, we deem fit to deal with the relevant law on this point. The amendment made in the Act which has the effect of omitting a clause from the statute has to be read in light with Section 6 of the General Clauses Act. As per section 6 of the General Clauses Act, if an amendment for omission has a provision therein that pending proceedings shall continue then such a proceeding will continue. However, in the absence of any such provision in the statue or in the rule, the pending proceeding will lapse. Section 6 and 6A of the General Clauses Act for sake of ready reference are reproduced herein below:-

> *"6 Effect of repeal. Where this Act, or any [Central Act] or Regulation made after the commencement of this Act, repeals any enactment hitherto made or hereafter to be made, then, unless a different intention appears, the repeal shall not*
>
> *(a) revive anything not in force or existing at the time at*

which the repeal takes effect; or

(b) affect the previous operation of any enactment so repealed or anything duly done or suffered thereunder; or

(c) affect any right, privilege, obligation or liability acquired, accrued or incurred under any enactment so repealed; or

(d) affect any penalty, forfeiture or punishment incurred in respect of any offence committed against any enactment so repealed; or

(e) affect any investigation, legal proceeding or remedy in respect of any such right, privilege, obligation, liability, penalty, forfeiture or punishment as aforesaid,

and any such investigation, legal proceeding or remedy may be instituted, continued or enforced, and any such penalty, forfeiture or punishment may be imposed as if the repealing Act or Regulation had not been passed."

[6A. Repeal of Act making textual amendment in Act or Regulation.—Where any [Central Act] or Regulation made after the commencement of this Act repeals any enactment by which the text of any [Central Act] or Regulation was amended by the express omission, insertion or substitution of any matter, then, unless a different intention appears, the repeal shall not affect the continuance of any such amendment made by the enactment so repealed and in operation at the time of such repeal.

9. Ergo, for the purpose of present issue involved, clause (a) of Section 6 of the General Clauses Act is applicable which provides that the effect of the repeal shall not revive anything not in force or existing at the time of repeal takes effect. Section 6A provides that where any Act or Regulation repeals any enactment by which the text of any Act or Regulation is

amended by express omission and unless a different intention appears, the repeal shall not affect the continuance of any such amendment made by the enactment so repealed and in operation at the time of such repeal. There is absolutely no saving clause while omitting *(i)* of Section 92BA by the Finance Act, 2017. The Constitutional Bench of **Hon'ble Supreme Court in the case of Kolhapur Canesugar Works Ltd. & Anr. v. Union of India & Ors., (2000) 2 SCC 536** has observed and held as under:

> *"37. The position is well known that at common law, the normal effect of repealing a statute or deleting a provision is to obliterate it from the statute-book as completely as if it had never been passed, and the statute must be considered as a law that never existed. To this rule, an exception is engrafted by the provisions of Section 6(1). If a provision of a statute is unconditionally omitted without a saving clause in favour of pending proceedings, all actions must stop where the omission goes into effect, it cannot be granted afterwards. Savings of the nature contained in section 6 or in special Acts may modify the position. Thus the operation or repeal or deletion or to the future and the past largely depends on the savings applicable. In a case where a particular provision in a statute is omitted and in its place another provision dealing with the same contingency is introduced without a saving clause in favour of pending proceedings then it can be reasonable inferred that the intention of the legislature is that the pending proceedings shall not continue but fresh proceedings for the same purpose may be initiated under the new provision."*

10. Thus, if a provision or statute is unconditionally omitted without any saving clause in favour of the pending proceedings, all actions must stop where such an omission is

found, especially when action has been taken after the provision has been omitted. During the course of argument a reference was made to the judgment of Hon'ble Supreme Court in the case of **Fiber Boards (P) Ltd., Bangalore v. Commissiioner of Income Tax, Bangalore, (2015) 10 SCC 333** and **Shree Bhagwati Steel Rolling v. Commissioner of Central Excise (2016) 3 SCC 643** to convass the point that the earlier judgments of Constitutional Bench in the case of **Rayala Corporation Pvt. Ltd., 1970 SCR 1 (69)** and **Kohlapur Cane Sugar [supra]** have been not followed or have been overruled. First of all, nowhere the Hon'ble Apex Court in both the judgments have overruled earlier two judgment of the Constitutional bench of the Hon'ble Apex Court rather they have explained it in detail and went on to held that the word repealed in both section of 6A and Section 24 of General Clauses Act would include repeals by expression 'omission' and the expression 'delete and omission' are used interchangeably.

11. However, it would be apposite to understand the judgments relied upon in terms of their facts and ratio and thereafter apply the same to the facts of the appellant. In the case of Fibre Boards (P) Ltd. Bangalore v. Commissioner of Income Tax, Bangalore, (supra) the appellant had an industrial unit at Thane which was a notified urban area. With a view to shift its industrial undertaking from an urban area to a non-urban area, it sold its land, building and plant and machinery situated at Thane and earned capital gain and

claimed exemption under section 54G. Chapter XXII-B of the Income Tax Act, prior to 1.4.1988, contained section 280ZA which when read with the definition of "urban area" in section 280Y(d) and notification dated 22.9.1967 issued under section 280Y(d) by which Thane had been declared to be an urban area for the purpose of Chapter XXII- B, gave to a person who shifted from an urban area to another area, a tax credit certificate with reference to the tax payable by the company on income-tax chargeable under capital gains and would be given relief accordingly. The Appellant contended that section 54G was inserted on 1.4.1988 and at the same time section 280ZA was omitted and that therefore Section 24 of the General Clauses Act would be attracted to the notification dated 22.09.1967. That notification would inure to the benefit of the appellant for the purpose of claiming exemption under Section 54G. Section 280Y (d) which was omitted with effect from 1990, had been so omitted because it had been rendered redundant with the omission of section 280ZA. The revenue relied upon Rayala Corporation (P) Ltd. 1970 SCR (1) 639 and M.R. Pratap v. Director of Enforcement, New Delhi, (1969) 2 SCC 412 which was followed in Kolhapur Canesugar Works Ltd. & Anr. v. Union of India & Ors., (2000) 2 SCC 536 and argued that an "omission" would not amount to "repeal" and that since the present case was concerned with the omission of Section 280ZA, section 24 of general clauses act would have no application as it only applied to `repeals' and not 'omissions', and also that it saved rights that

were given by subordinate legislation, and as the notification dated 22.9.1967 did not by itself confer any right on the appellant, section 24 of the General Clauses Act would not be attracted.

11.1 The Apex Court in the case of Fibre Boards (supra) was of the view that there is no need for the later enactment to state in express terms that an earlier enactment has been repealed by using any particular set of words or form of drafting but that if the legislative intent to supersede the earlier law is manifested by the enactment of provisions as to effect such supersession, then there is in law a repeal notwithstanding the absence of the word 'repeal' in the later statute. Repeals may take any form and so long as a statute or part of it is obliterated, such obliteration would be covered by the expression "repeal" in Section 6 of the General Clauses Act. All that is required is that an intention to abrogate the enactment or portion in question should be clearly shown.

11.2 The Apex Court held that the idea of omitting section 280ZA and introducing Section 54G on the same date was to do away with the tax credit certificate scheme together with the prior approval required by the Board and to substitute the repealed provision with the new scheme contained in Section 54G.Once Section 280ZA is omitted from the statute book, section 280Y (d) having no independent existence would for all practical purposes also be "dead". On this reasoning, the Apex Court decided in favour of the appellant by holding that omission of section 280ZA and its re-enactment with

modification in section 54G, section 24 of the General Clauses Act would apply, and the notification dated 22.9.1967 would be continued under and for the purposes of Section 54G.

11.3 The Apex court while rendering its decision in the aforesaid case held that in Rayala Corporation, what fell for decision was whether proceedings could be validly continued on a complaint in respect of a charge made under Rule 132A of the Defence of India Rules, which ceased to be in existence before the accused were convicted in respect of the charge made under the said rule. It stated that once it is held by the constitution bench in Rayala that section 6 itself would not apply, it would be wholly superfluous to further state that on an interpretation of the word "repeal", an "omission" would not be included and therefore the second so- called ratio of the Constitution Bench in Rayala Corporation cannot be said to be a *ratio decidendi* at all and is really in the nature of obiter dicta. The Apex Court was of the opinion that the word "repeal" in both section 6 and section 24 would include repeals by express omission. An implied repeal is covered by the expression "repeal" and repeals may take any form and so long as a statute or part of it is obliterated, such obliteration would be covered by the expression "repeal" in section 6 of the General Clauses Act. The Apex Court also stated that there is no reference to Section 6A of the General Clauses Act in either of these Constitution Bench judgments (Rayala Corp (supra) and Kolhapur Canesugar Works Ltd. (supra)) and the absence of any reference to section 6A, therefore, again

undoes the binding effect of these two judgments on an application of the '*per incuriam'* principle.

12. Same view has been reiterated by the Hon'ble Supreme Court in the case of **Shree Bhagwati Steel Rolling v. Commissioner of Central Excise, (2016) 3 SCC 643**. In this case, the appellant took a rolling mill on lease from 1997 to 2000 and manufactured rerolled non-alloyed steel products. On 1.9.1997 the compounded levy scheme was introduced by insertion of section 3A of the Central Excise Act. The appellant opted for the aforesaid scheme under Rule 96ZP of the Central Excise Rules. When the lease expired, the appellant surrendered its registration certificate on 1.6.2000. Section 3A was omitted in 2001. On 19.8.2005 notice was issued to the appellant demanding interest for delayed payment of central excise duty under section 3A of the Central Excise Act for the period 1997 to 2000.

12.1 The question framed before the Hon'ble High Court was whether "omission" of the compounded levy scheme in 2001 wipes out the liability of the assessee for the period during which the scheme was in operation. The Hon'ble High Court held that on omission of section 3A, the liability of the assessee was not wiped out.

12.2 The appellant contended that there is a fundamental distinction between "repeal" and an "omission", in the case of a "repeal" the statute is obliterated from the very beginning whereas in the case of an "omission" what gets

omitted is only from the date of "omission" and not before. This being the case, it is clear that things already done in the case of an "omission" would be saved. However, a "repeal" without a savings clause like section 6 of the General Clauses Act would not so save things already done under the repealed statute. He further argued that "repeal" is normally used when an entire statute is done away with, as opposed to an "omission" which is applied only when part of the statute is deleted. The appellant further contended that section 6A which was relied upon in Fibre Board's case did not state that an "omission" would be included within the expression "repeal", but that if section 6A were carefully read, an "omission" would only be included in an "amendment" which, under the section, can be by way of omission, insertion or substitution. Therefore, it is fallacious to state that section 6A would lead to the conclusion that "omissions" are included in "repeals" and for various reasons Fibre Boards requires a relook and ought to be referred to a larger Bench of three Judges. The appellant further contended that the true ratio *decidendi* of the Constitution Bench decision in Rayala Corporation is that an "omission" cannot amount to a "repeal".

12.3 The revenue supported the judgment in the Fibre Board's case.

12.4 The Apex Court held that when section 6 of the General Clauses Act speaks of the repeal of any enactment, it refers not merely to the enactment as a whole but also to

any provision contained in any Act and if a part of a statute is deleted, section 6 would nonetheless apply. The Apex court referred to Fibre Board (supra) wherein it is stated that the expression "omission" is nothing but a particular form of words evincing an intention to abrogate an enactment or portion thereof. I was held that the expression "delete" and "omit" are used interchangeably, so that when the expression "repeal" refers to "delete" it would necessarily take within its kin an omission as well. It was further held that there is no substance in the argument that "repeal" amounts to an obliteration from the very beginning, whereas an "omission" is only in futuro.

12.5 The Apex Court was of the view that when the court referred to section 6A in Fibre Board's case and held that section 6A shows that a repeal can be by way of an express omission, obviously what was meant was that an amendment which repealed a provision could do so by way of an express omission. Hence section 6A undisputedly leads to the conclusion that repeal would include repeal by way of an express omission. The Apex Court arrived at the conclusion that an "omission" would amount to a "repeal" for the purpose of Section 24 of the General Clauses Act. Since the same expression, namely, "repeal" is used both in Section 6 and Section 24 of the General Clauses Act, the construction of the said expression in both sections would, therefore, include within it "omissions" made by the legislature.

12.6 The Court was also of the view that merely because the Constitution Bench in case of Rayala Corporation referred to a repeal not amounting to an omission this would not undo the effect of decision in Fibre Board's case and the statement of the law in Rayala Corporation is no longer the law declared by the Hon'ble Supreme Court after the decision in the Fibre Board's case. Fibre Board (supra) is a recent judgment which clarifies the law in holding that an omission would amount to a 'repeal'.

13. The converse view of the law led to an omitted provision being treated as if it never existed, as section 6 of the General Clauses Act would not then apply to allow the previous operation of the provision so omitted or anything duly done or suffered thereunder. Nor may a legal proceeding in respect of any right or liability be instituted, continued or enforced in respect of rights and liabilities acquired or incurred under the enactment so omitted. Hence, section 6 would apply to omission of section 3A.

14. Further, it is a very well recognized rule of interpretation of statutes that where a provision of an Act is omitted by an Act and the said Act simultaneously re-enacts a new provision which substantially covers the field occupied by the repealed provision with certain modification, in that event such re-enactment is regarded having force continuously and the modification or changes are treated as amendment

coming into force with effect from the date enforcement of the re-enacted provision.

15. The issue for consideration before us is clause (*i*) of Section 92BA which has been omitted from 01.04.2017 and there is no re-enactment with modification or any Saving Clause in any other Sections of the Act. Thus, without any Saving Clause or similar enactment, then it has to be held that Clause (i) of Section 92BA did not come into operation whenever any action has been taken especially after such omission. Accordingly, we hold that no Transfer Pricing Adjustment can be made on a domestic transaction which has been referred to by the Assessing Officer after the omission of the said clause by the Finance Act, 2017 even though transaction has undertaken in the Assessment Year 2016-17.

16. Further, our decision is equally fortified by the judgment of ITAT Kolkata Bench in the case of M/s. Raipur Steel Casting India (P) Ltd. vs. PCIT which pertained to the Assessment Year 2014-15, and catena of other judgments as relied upon by the Ld. Counsel of the assessee cited *extenso* in the foregoing paragraphs.

17. Accordingly, the appeal of the assessee is allowed.

Order pronounced in the open Court on 18th August, 2021.

Sd/-	Sd/-
[Dr. B.R.R. KUMAR]	**[AMIT SHUKLA]**
ACCOUNTANT MEMBER	**JUDICIAL MEMBER**

DATED: 18th **August, 2021**

PKK: