

\* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% Order delivered on: 30<sup>th</sup> November, 2015

+ **CS (OS) 3400/2015**

TAXMANN ALLIED SERVICES PVT. LTD. .... Plaintiff  
Through Mr.Vivek Dhokalia, Adv.

versus

CASANSAAR WEB SOLUTION PVT. LTD. .... Defendant  
Through None

**CORAM:**  
**HON'BLE MR.JUSTICE MANMOHAN SINGH**

**MANMOHAN SINGH, J.**

**I.A. No.24453/2015 (exemption)**

Exemption allowed, subject to just exceptions.

The application is disposed of.

**CS(OS) No.3400/2015**

Let the plaint be registered as a suit.

Issue summons to the defendant, on filing of process fee and Regd. A.D. Covers within a week, returnable on 14<sup>th</sup> December, 2015.

**I.A. No.24452/2015 (u/o XXXIX R.1 & 2 CPC)**

1. Issue notice to the defendant, for the date fixed.
2. The plaintiff has filed a suit for permanent injunction restraining infringement of copyright (in editorial comments/ headnotes to cases) and unfair competition and for damages etc. against the defendant.

3. Brief facts of the case as per plaint are that the plaintiff is a company incorporated in 1972 under the Companies Act, 1956 and is a leading publisher known for high standard, accuracy and timely publishing of information and whose publications in the field of tax, corporate and commercial laws are well known and popular with its target readership comprising of Chartered Accountants, Cost Accountants, Company Secretaries, Finance, Tax and Legal Professionals, Judicial Officers, students studying for these courses, Enforcement Officials, competent administrative authorities and other Government functionaries.

4. Some of the well-known journals of the plaintiff which are highly popular and sold all over India are: taxman- The Tax Law Weekly; Selected Orders of ITAT, Income Tax Tribunal Decisions, Goods and Services Tax Cases, Corporate Professionals Today, SEBI and Corporate Laws, International Taxation. With the advent of the internet/web-technology in India, in 2007 the plaintiff also commenced the use of the on-line electronic medium for publishing and selling its publications (including case law reports on subscription basis) and online business of now constitutes a significant part of its business activity. Since 2010, the plaintiff has been publishing case law reports (decisions with its head notes) on its website [www.taxmann.com](http://www.taxmann.com) which is available to its paid subscribers.

5. Defendant is a private limited company which owns the website [www.casansaar.com](http://www.casansaar.com). The case of the plaintiff against the defendant is that towards the end of July, 2015 it came to the knowledge of the plaintiff that its editorial comments/ head notes (factual summary and case ratio given under the 'Held' section) had been fully copied by the defendant in large number of cases and these were available on its

free website of the defendant. A preliminary review by the plaintiff of the cases on defendant's website was limited to the period 2013 - July, 2015 which confirmed wholesale and extensive identical/verbatim copying done by the defendant in about 1487 cases out of about 2800 cases (with citations) uploaded by it in the last 4 years (that is, on average about 51% for 4 years since 2012 but higher in 2014 and 2015 being about 85%-90% in these 2 years).

6. Thereafter, the plaintiff issued legal notice dated 7<sup>th</sup> August, 2015 to the defendant which was returned undelivered with the remark 'Party not accepted'. On 7<sup>th</sup> October, 2015 the plaintiff issued another legal notice to the defendant. However, the defendant failed to comply with the notice.

7. Learned counsel for the plaintiff submits that these editorial comments/case head notes are developed independently by qualified and skilled editorial team consisting of Chartered Accountants, Company Secretaries and law graduates after expending considerable efforts and substantial expense and are proprietary material which qualify as original 'literary works' under Section 2(o) of the Copyright Act, 1957 and are entitled to copyright protection under Sections 13 and 14(a) of the Act and hence, the exclusive right to use thereof vests in the plaintiff only and no one else can use the same without the authority of the plaintiff.

8. Learned counsel for the plaintiff has given the examples of two cases in this regard which reads as under:-

Plaintiff's Head Notes	Defendant's Head Notes
Akzo Nobel Coatings India (P.) Ltd.	

v.

Deputy Commissioner of Income-tax,  
LTU, Bangalore

Section 43(6), read with sections 32 and 43(1), of the Income-tax Act, 1961 Written down value-Assessment years 2001-02 to 2007-08-Assessee purchased plant and machinery in 1996 at a price of Rs. 13.48 crore for which it took loan of same amount from a group concern -'Actual cost' was shown in books and depreciation was claimed-In 2000 parent company waived loan and such waiver was shown as a capital receipt in balance sheet; however assessee did not make any adjustment in its books recognising writing off of amount payable for purchase of plant and machinery and continued to claim depreciation which was being allowed till 2004-05 when Assessing Officer came to know about waiver of loan- Consequently, Assessing Officer reopened assessment for

Section 43(6), read with sections 32 and 43(1), of the Income-tax Act, 1961 -Written down value-Assessment years 2001-02 to 2007-08-Assessee purchased plant and machinery in 1996 at a price of Rs. 13.48 crore for which it took loan of same amount from a group concern- 'Actual cost' was shown in books and depreciation was claimed- In 2000 parent company waived loan and such waiver was shown as a capital receipt in balance sheet; however assessee did not make any adjustment in its books recognising writing off of amount payable for purchase of plant and machinery and continued to claim depreciation which was being allowed till 200405 when Assessing Officer came to know about waiver of loan- Consequently, Assessing Officer reopened assessment for

<p>assessment years 2001-02 to 2003-04 and reworked w.d.v. by reducing it to extent of waived loan invoking provisions of section 43(6)(c)- Whether since there was no sale or discarding or demolishing or destruction of any assets comprising in block of assets during previous year, provisions of section 43(6)(c)(i)(B) could not have been invoked on ground of waiver of loan- Held, yes- Whether further since concept of 'actual cost' as defined under section 43(1) is applicable only in year of purchase of assets, actual cost of Rs. 13.48 crore recorded in 1997-98 could not have been disturbed in 2001-02-Held, yes- Whether in that regard there was a lacuna in law inasmuch as on one hand assessee got waiver of monies payable on purchase of machinery and claimed such receipt to be not taxable in view of it being capital receipt and on other hand assessee claimed</p>	<p>assessment years 2001-02 to 2003-04 and reworked w.d.v. by reducing it to extent of waived loan invoking provisions of section 43(6)(c) -Whether since there was no sale or discarding or demolishing or destruction of any assets comprising in block of assets during previous year, provisions of section 43(6)(c)(i) (B) could not have been invoked on ground of waiver of loan- Held, Yes- Whether further since concept of 'actual cost' as defined under section 43(1) is applicable only in year of purchase of assets, actual cost of Rs.13.48 crore recorded in 1997-98 could not have been disturbed in 2001-02 Held, yes- Whether in that regard there was a lacuna in law inasmuch as on one hand assessee got waiver of monies payable on purchase of machinery and claimed such receipt to be not taxable in view of it being capital receipt and on other hand assessee claimed</p>
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<p>depreciation on value of machinery for which it did not incur any cost- Held, yes- Whether, therefore, under law revenue had no remedy and, therefore, disallowance of depreciation could not be sustained- Held, yes [Para 22] [Partly in favour of assessee] Circulars &amp; Notifications : Circular No. 469, dated 23-9-1986 and Circular No. 772, dated 23-12-1998.</p>	<p>depreciation on value of machinery for which it did not incur any cost Held, yes Whether, therefore, under law revenue had no remedy and, therefore, disallowance of depreciation could not be sustained- Held,yes [Para 22] [Partly in favour of assessee] Circulars &amp; Notifications : Circular No. 469, dated 23-9-1986 and Circular No. 772, dated 23-12-1998.</p>
<p>Pothina Venkateswara Swamy v. Assistant Commissioner of Income-tax, Central Circle, Vijayawada</p>	
<p>Section 69B, read with section 147, of the Income-tax Act, 1961- Undisclosed investments (Construction expenses) - Assessment year 1992-93 - Assesseees jointly constructed a godown and showed certain cost of construction in their returns - Assessments were made accordingly- Thereafter,</p>	<p>Section 69B, read with section 147, of the Income-tax Act, 1961 -Undisclosed investments (Construction expenses) - Assessment year 1992-93 - Assesseees jointly constructed a godown and showed certain cost of construction in their returns - Assessments were made accordingly- Thereafter,</p>

<p>Assessing Officer reopened assessments on ground that valuation cell of department determined cost of construction at higher figure- He made addition under section 69B of amount of difference between cost of construction admitted in assessment and value determined by valuation cell - Whether reopening of assessment was justified -Held, yes [Para 7] [In favour of revenue] Section 254 of the Income-tax Act, 1961- Appellate Tribunal -Powers of (Power to rectify mistake)- Assessment year 1992-93-Whether Tribunal should be deemed to have taken into account every aspect of appeal that is placed before it, and if on any aspect of appeal appellate forum is silent, it can be deemed to have concurred with view expressed by forum from which order under appeal has arisen and it would not be deemed to be mistake apparent</p>	<p>Assessing Officer reopened assessments on ground that valuation cell of department determined cost of construction at higher figure- He made addition under section 69B of amount of difference between cost of construction admitted in assessment and value determined by valuation cell - Whether reopening of assessment was justified -Held, yes [Para 7][In favour of revenue] Section 254 of the Income-tax Act, 1961- Appellate Tribunal -Powers of (Power to rectify mistake) -Assessment year 1992-93 Whether Tribunal should be deemed to have taken into account every aspect of appeal that is placed before it, and if on any aspect of appeal appellate forum is silent, it can be deemed to have concurred with view expressed by forum from which order under appeal has arisen and it would not be deemed to be mistake apparent</p>
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from record- Held, yes [Paras 11 & 13][In favour of revenue].	from record-Held, yes [Paras 11 & 13][In favour of revenue].
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9. Perusal of the above cases shows that the head notes of the defendant are almost similar to that of the plaintiff.

10. Thus, the plaintiff has been able to make out a strong *prima facie* case for grant of ad interim injunction. Hence, till the next date, the defendant is restrained from continuing with the infringement of plaintiff's copyright in its editorial comments/case Head-notes. They are directed to remove the existing infringing material from its website [www.casansaar.com](http://www.casansaar.com), which may amount to infringement of plaintiff's copyright as claimed.

11. Compliance of Order XXXIX Rule 3 CPC be made within one week.

**(MANMOHAN SINGH)  
JUDGE**

**NOVEMBER 30, 2015**