

Delhi HC examines test of "related party" for deciding maintainability of application before SetCom

Summary – The High Court of Delhi in a recent case of Rockland Hotels Ltd., (the Assessee) held that a company would not qualify as "related party" of specified person for making application to Settlement Commission merely because one of its directors has a substantial interest in the specified person

- Under clause (a)(v) of the *Explanation* to section 245C(1), only if a director of the applicant company has a substantial interest in the specified person (company), then, the applicant company, its directors and relatives of its directors qualify as related parties.
- Under clause (a)(vi) of the said *Explanation*, the applicant-company would qualify as a related party, if a specified person (company) or any of its directors or any relative of any of its directors have a substantial interest in the applicant-company.
- The applicant-company would not qualify as a related party merely because any relative of one of its directors has a substantial interest in the specified person.
- Petitioner companies would not qualify as a related party merely because any relative of one of its directors has a substantial interest in the specified person.
- Further, the petitioner companies would qualify as a related party, if a specified person (company) or any of its directors or any relative of any of its directors have a substantial interest in the petitioner companies. A corporate entity is a separate legal entity.
- Merely because a director of the specified person holds shares in a company which in turn holds shares in the Petitioner would not make the director the beneficial holder of the shares of the Petitioner and thus qualify the petitioner as a related party.