Introduction

1. T-e A88,+(a$% (o$%es%s %-e "e(+s+o$ $o% %o *e$e9 -+s f+:e"4%e*# a88o+$%#e$%)e;o$" +%s e:8+*a%+o$ "a%e of 30 !$e 201&.

acts and procedural !istory

2. O$ ' 1a; 2009% %-e A88,+(a$% <o+$e" %-e I$%e*$a%+o$a, T*a"e Ce$%*e =>ITC?@ !$"e* a$ 114#o$%- s-o*%4%e*# a88o+$%#e$% as P*og*a##e Coo*"+$a%o* =L4A ,e/e,@ of %-e E$-a$(+$g A*a) Ca8a(+%; fo* T*a"e 8*og*a##e =>E$ACT?@. Effe(%+/e 1 !,; 2009% -+s a88o+$%#e$% 9as (o$/e*%e" %o f+:e"4%e*# as P*og*a##e Coo*"+$a%o* =P4A ,e/e,@% E$ACT.

3. As of 1 De(e#)e* 2012% %-e A88,+(a$% 9as ,a%e*a,,; %*a$sfe**e" %o %-e 8os+%+o$ of Se$+o* A"/+se* =P4A@% T*a"e .+a(e fo* s#a,, a$" #e"+!#4s+Be" e$%e*8*+ses =>S 1 Es?@% D+/+s+o$ of B!s+$ess a$" I$s%+%!%+o$ S!88o*% =>DBIS?@% ITC.

'. Effe(%+/e 1 a$!a*; 201A% %-e A88,+(a$% 9as a88o+$%e" %o a ,o9e*4,e/e, 8os% =P4'@ as Se$+o* P*og*a##e A"/+se*% Co#e$ a$" T*a"e P*og*a##e% DBIS% ITC% fo,,o9+$g %-e a)o,+%+o$ of %-e 8os% %-a% -e e$(!#)e*e" "!e %o ,a(D of f!$"+$g. T-e A88,+(a$% 9as inter alia *es8o$s+),e fo* a$ ITC 8*o<e(% %+%,e" >E(o$o#+(e#8o9e*#e$% of Co#e$ +$ %-e Pa(+f+(? =>Pa(+f+(P*o<e(%?@ f!$"e" e$%+*e,;); %-e go/e*$#e$% of a Do$o* Co!$%*; =>Do$o* Co!$%*;?@.

A. O$ 1 !,; 201E% %-e A88,+(a$%% %oge%-e* 9+%- %-e Pa(+f+(P*o<e(% 9as ,a%e*a,,; %*a$sfe**e" %o %-e D+/+s+o$ of 1a*De% De/e,o8#e$% =>D 1 D?@% ITC.

E. O$ 1 a$!a*; 201&% %-e A88,+(a$%Fs f+:e"4%e*# a88o+$%#e$% 9as *e$e9e" !$%+, 30 !$e 201&.

&. D!*+$g %-e #o$%- of .e)*!a*; 201&% %-e Do$o* Co!$%*; +$"+(a%e" %o %-e A88,+(a$% a$" o%-e* ITC Off+(+a,s +%s +$%e$%+o$ %o s%o8 f!$"+$g %-e 8*o<e(% +$!$e 201&. I$ %-+s (o$%e:% o$e of %-e A88,+(a$%Fs s!8e*/+so*s% $a#e,; %-e C-+ef% S!s%a+$a),e a$" I$(,!s+/e Va,!e C-a+$s =>SIVC?@% D+/+s+o$ of E$%e*8*+ses a$" I$s%+%!%+o$s =>DEI?@% ITC% *eG!es%e" -+# %o *ef*a+$ f*o# (o$%a(%+$g %-e Do$o*

13. O$ 30 Se8%e#)e* 201H6 %-e A88,+(a$% se8a*a%e" f*o# %-e se*/+(e of %-e O*ga$+Ba%+o$ fo,,o9+$g se/e*a, e:%e$s+o$s of -+s a88o+$%#e$% %o a,,o9 -+# %o e:-a!s% -+s s+(D ,ea/e e$%+%,e#e$%s.

1'. O$ 1E No/e#)e* 201H6 fo,,o9+$g a *e/+e9 of %-e T*+)!$a,Fs "o(De%6 %-e (ase 9as %*a$sfe**e" %o %-e T*+)!$a,Fs Ne9 3o*D Reg+s%*; a$" *eg+s%e*e" !$"e* Case No. UNDT/N3/201H/0E&.

1A. O$ 29 a$!a*; 2019 +$,+g-% of %-e Ge$e*a, Asse#),;Fs 22 De(e#)e* 201H "e(+s+o$ $o% %o e:%e$" %-e a" ,+%e# !"ge +$ Ne9 3o*D =see 8a*a. 3H of A/RES/&3/2&E@ a$" %-e A88,+(a$%Fs f+,+$g of a$o%-e* a88,+(a%+o$ 9+%- %-e Ge$e/a Reg+s%*; o$ 21 a$!a*; 2019% %-e (ase 9as %*a$sfe**e")a(D %o %-e ,a%%e* a$" *eg+s%e*e" !$"e* Case No. UNDT/GVA/2019/003.

1E. O$ 1 O(%o)e* 2020% %-e (ase 9as ass+g$e" %o %-e !$"e*s+g$e" !"ge.

Consideration

Applicable law

1&. S%aff *eg!,a%+o$ '.A=(@ a$" s%aff *!,e '.13=(@)o%- 8*o/+"e %-a% a f+:e"4%e*# a88o+$%#e$% "oes $o% (a**; a$; e:8e(%a$(;6,ega, o* o%-e*9+se6 of *e$e9a,.

1H. I$ Agha 20194UNAT491E6 a% 8a*as. 1E41&6 %-e A88ea,s T*+)!$a, *e(a8+%!,a%e" +%s ,o$g4s%a$"+$g (ase ,a9 (o$(e*$+$g (-a,,e$ges of "e(+s+o$s $o% %o *e$e9 f+:e"4%e*# a88o+$%#e$%s s%a%+$g %-a% +% +s a 9e,,4es%a),+s-e" 8*+$(+8,e %-a% f+:e"4%e*# a88o+$%#e$%s "o $o% (a**; a$ e:8e(%a%+o$ of *e$e9a,. I% s%a%e" %-a% se8a*a%+o$ as a *es!,% of e:8+*a%+o$ of a f+:e"4%e*# a88o+$%#e$% %aDes 8,a(e a!%o#a%+(a,,;6 9+%-o!% 8*+o* $o%+(e6 o$ %-e e:8+*a%+o$ "a%e s8e(+f+e" +$ %-e ,e%%e* of a88o+$%#e$%.

19. I% *e(a,,e"6 -o9e/e*6 %-a% a "e(+s+o$ $o% %o *e$e9 a f+:e"4%e*# a88o+$%#e$% (a$)e (-a,,e$ge" o$ %-e g*o!$"s %-a% %-e A"#+$+s%*a%+o$ -as $o% a(%e" fa+*,;6<!s%,;6 o* %*a$s8a*e$%,; 9+%- %-e s%aff #e#)e* o* 9as #o%+/a%e");)+as6 8*e<!"+(e o* +#8*o8e* #o%+/e. T-e A88ea,s T*+)!$a, f+$a,,; *e(a,,e" %-a% +% +s a$ a88,+(a$%Fs

Merits of the case

20. T-e A88,+(a$% (-a,,e$ges %-e (o$%es%e" "e(+s+o$ a*g!+$g %-a% +% +s $o% s!88o*%e"); %-e fa(%s6 +s #o%+/a%e");)+as aga+$s% -+# a$" +#8*o8e* #o%+/es6 a$" +s /+%+a%e" "!e %o #+sa88*o8*+a%+o$ of f!$"s6 (+*(!#/e$%+o$ of %-e *!,es o$ %e*#+$a%+o$6 ITCFs fa+,!*e %o a(% fa+*,;6 <!s%,; a$" %*a$s8a*e$%,; a$" a)!se of a!%-o*+%;. T-e T*+)!$a, 9+,, e:a#+$e)e,o9 %-ese a*g!#e$%s +$ %!*$.

C-e%-e* %-e o4*e$e9a, "e(+s+o$ +s s!88o*%e"); %-e fa(%s

21. T-e A88,+(a$% a,,eges %-a% %-e)!"ge%a*; (o$s+"e*a%+o$6 $a#e,; ,a(D of f!$"s fo* %-e Pa(+f+(P*o<e(%6 +s $o% s!88o*%e"); %-e fa(%s as %-e e/+"e$(e "oes $o% es%a),+s- %-e a)se$(e of f!$"s fo* %-+s 8*o<e(%)e;o$" !$e 201&.

22. T-e T*+)!$a,Fs <!"+(+a, *e/+e9 fo(!ses o$ -o9 %-e "e(+s+o$4#aDe* *ea(-e" %-e +#8!g$e" "e(+s+o$ a$"6 %o %-+s e$"6 +% e:a#+$es 9-e%-e* a *a%+o$a, (o$$e(%+o$ +s s!ff+(+e$%,; "e#o$s%*a%e")e%9ee$ %-e +$fo*#a%+o$ a/a+,a),e %o %-e "e(+s+o$4#aDe* a$" %-e *easo$=s@ g+/e$ fo* %-e (o$%es%e" "e(+s+o$.

23. A,%-o!g-6 as %-e A88,+(a$%Fs a"/a$(es6 %-e*e +s $o "o(!#e$%a*; e/+"e$(e e:8,+(+%,; s-o9+$g %-a% f!$"+$g fo* %-e Pa(+f+(P*o<e(% 9as %o e$" +$!$e 201&6 o%-e* %-a$ %-e Res8o$"e$%Fs asse*%+o$ %-a% %-e Pa(+f+(P*o<e(% *e(e+/e" $o f!$"+$g)e;o$" 30 !$e 201&6 %-e T*+)!$a, f+$"s %-a% %-e*e a*e e$o!g- e,e#e$%s %-a% %aDe$ %oge%-e* s!88o*% %-e)!"ge%a*; *easo$)e-+$" %-e o4*e$e9a, of %-e A88,+(a$%Fs a88o+$%#e$%.

2A. Se(o$"6 %-e A88,+(a$% a$" o%-e* ITC Off+(+a,s 9e*e f!,,; a9a*e +$ .e)*!a*; 201& %-a% %-e Do$o* Co!$%*; 9as (o$s+"e*+$g $o% (o$%+$!+$g %o f!$" %-e 8*o<e(%)e;o$" !$e 201&. A,so6 %-e*e +s "o(!#e$%a*; e/+"e$(e s-o9+$g a)a,a$(e of USD2H6000 fo* %-e 8*o<e(% o$ 22 !$e 201&6 9-+(- 9as +$s!ff+(+e$% %o 8a; sa,a*+es fo* A8*+,6 1a; a$" !$e 201&.

2E. T-e A88,+(a$% -as $o% 8*o/+"e" e/+"e$(e %o %-e (o$%*a*; a$"6 (o$seG!e$%,;6 -+s (-a,,e$ge %o %-e (,a+# of ,a(D of f!$"s fo* %-e 8*o<e(% (a$$o%)!% fa+,.

C-e%-e* %-e o4*e$e9a, +s #o%+/a%e");)+as a$"/o* +#8*o8e* #o%+/e

2&. As s%a%e" a)o/e6 %-e A88,+(a$%)ea*s %-e)!*"e$ of 8*o/+$g %-e e:+s%e$(e of)+as a$"/o* +#8*o8e* #o%+/e. T-e A88,+(a$% a,,eges %-a% a(%+o$s6 "e(+s+o$s a$" %-e ge$e*a,)e-a/+o!* of %-e "e(+s+o$4#aDe* e:-+)+% (,ea* s+g$s of)+as %o9a*"s -+#. I$ %-+s (o$$e(%+o$6 %-e A88,+(a$% *efe*s %o)e+$g fo*#a,,; *e#o/e" f*o# "+ffe*e$% 8*o<e(%s.

2H. T-e T*+)!$a, *e(a,,s %-a% +% 9+,, $o% ,+g-%,; +$%e*fe*e 9+%- #a$age*+a, "+s(*e%+o$. I% 9+,, o$,; "o so +f #a$age*sF a(%+o$s a*e !$*easo$a),e6 !$,a9f!, o* %a+$%e"); !,%e*+o* #o%+/es. I$ %-e (ase a% -a$"6 %-e T*+)!$a, f+$"s %-a% %-e*e +s $o e/+"e$(e s-o9+$g %-a% (-a$ges +$ %-e A88,+(a$%Fs fP28 . D 0U2 2 62 (e)0 . 87(4)3-45(3 7C5f4-R(2 83T 6U9 2"2 1((3 5

1+sa88*o8*+a%+o$ of f!$"s

30. T-e A88,+(a$% a*g!es %-a% %-e 8os% -e e$(!#)e*e" 9as f!,,; f!$"e"); %-e Do$o* Co!$%*; %-*o!g- f!$"s ea*#a*De" fo* %-e Pa(+f+(P*o<e(%. Po+$%+$g o!% %o %-e fa(% %-a% -e 9as (a,,e" %o ass+s% +$ o%-e* 8*o<e(%s6 *e8*ese$%+$g a88*o:+#a%e,; '0 J of -+s f!$(%+o$s6 -e %-e$ asse*%s %-a% ITC !se" 8a*% of %-e Pa(+f+(P*o<e(% f!$"s fo* o%-e* 8*o<e(%s 9+%-o!% %-e "o$o*Fs a88*o/a,. 2e %-e$ (o$(,!"es %-a% g+/e$ %-+s s+%!a%+o$6 ITC 9as !$"e* a$ o),+ga%+o$ %o (o$%+$!e %-e f!$"+$g of -+s 8os% *ega*",ess of f!*%-e* f!$"+$g f*o# %-e Do$o* Co!$%*;.

31. T-e A88,+(a$%Fs (o$%e$%+o$ +s $o% o$,; !$(o$/+$(+$g)!% a,so6 +f +% 9e*e %o)e e$%e*%a+$e" 9o!," a#o!$% %o a se*+o!s a((!sa%+o$ +$ 9-+(- -e 9as (o#8,+(+%. I$"ee"6 as -e 9as *es8o$s+),e fo* #a$ag+$g %-e Pa(+f+(P*o<e(% +% fe,, !8o$ -+#

+$%e$"e" %o f!$" %-e 8os% -e e$(!#)e*e" %o -o$o!* +%s (o$%*a(%!a, o),+ga%+o$s %o9a*"s -+#.

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