Tax INFORM

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DIRECT TAX

A. Recent Case Laws

I. Domestic Tax Rulings

Wipro Finance Ltd. [TS-283-SC-2022]

Exchange fluctuation loss on repayment of loan taken in foreign currency for business expansion allowable as revenue expenditure.

Facts: The appellant had borrowed money in foreign currency from Commonwealth Development Corporation, England for expanding its primary business of leasing and hire purchase of capital equipment to existing Indian enterprises. However, while repayment of loan, the appellant had to pay higher amount due to the difference in foreign exchange, resulting in loss to the appellant.

The appellant company filed return of income, mentioning loss of income, majorly owing to exchange fluctuation. The assessment was concluded by positive taxable income (treating loss on exchange fluctuation as capital as against revenue), against which appellant filed an appeal before the CIT(A). Aggrieved by the CIT (A) order, the appellant filed an appeal before the Tribunal.

The Tribunal ruled in favour of the appellant and held that "the exchange fluctuation loss is an expenditure incidental to carrying on of business and comes within the purview of section 37 of the Act, as the same is incurred wholly and exclusively for the purposes of business. It is nobody's case that the funds borrowed in foreign exchange have been diverted for non-business purposes. In such a case the decision of the Supreme Court in India Cement Case (124 ITR 1) fully covers the issue in favour of the assessee. We also find that in this case, assessee's claim satisfies all the tests laid down by Supreme Court in extracted supra. In this case entire borrowing of the loan and the utilization of the same, is in trading operations of the company more profitably and the fixed capital in this case is untouched. Hence the expenditure is on revenue account and allowable."

Aggrieved by the Tribunal's order, the Revenue filed an appeal before the High Court. The High Court reversed the Tribunal's order and ruled in favour of the Revenue. Consequently, the appellant filed an appeal before the Supreme Court.

Issue before the Supreme Court: Whether the loss suffered by the appellant owing to exchange fluctuation would be regarded as revenue expenditure or capital expenditure.

Supreme Court's Ruling: The Honourable Supreme Court observed that the transaction of loan between the appellant and Commonwealth Development Corporation was in the nature of

borrowing money by the appellant, which was necessary for carrying on its business of financing. It was certainly not for creation of asset of the appellant as such or acquisition of asset from a country outside India for the purpose of its business.

Based on the above facts of the case, the SC remarked that "the appellant would be justified in availing deduction of entire expenditure or loss suffered by it in connection with such a transaction in terms of Section 37 of the Act. For, the loan is wholly and exclusively used for the purpose of business of financing the existing Indian enterprises, who in turn, had to acquire plant, machinery and equipment to be used by them. It is a different matter that they may do so because of the leasing and hire purchase agreement with the appellant. That would be, nevertheless, an activity concerning the business of the appellant."

The SC further affirmed the judgement of the Tribunal, who relied on the SC decision in the case of **India Cements Ltd. vs. Commissioner of Income Tax, Madras**. The SC further elaborated the SC decision in the case of **Empire Jute Co. Ltd. vs. Commissioner of Income Tax (4 SCC 25)**, which reads as follows: "it is not a universally true proposition that what may be capital receipt in the hands of the payee must necessarily be capital expenditure in relation to the payer. The fact that a certain payment constitutes income or capital receipt in the hands of the recipient is not material in determining whether the payment is revenue or capital disbursement qua the payer."

The SC held that "what is material to consider is the nature of the advantage in a commercial sense and it is only where the advantage is in the capital field that the expenditure would be disallowable on an application of this test. If the advantage consists merely in facilitating the assessee's trading operations or enabling the management and conduct of the assessee's business to be carried on more efficiently or more profitably while leaving the fixed capital untouched, the expenditure would be on revenue account, even though the advantage may endure for an indefinite future. The test of enduring benefit is therefore not a certain or conclusive test and it cannot be applied blindly and mechanically without regard to the particular facts and circumstances of a given case."

Based on the above, the High Court's order was set aside, and the case was decided in favour of the Appellant.

Biocon Ltd (ITA No.1248/Bang/2014)/ [TS-216-ITAT-2022(Bang)]

TDS applicable on year-end provisions; default can lead to proceedings u/s 201.

Facts: The assessee is engaged in the business of manufacture and sale/licensing of active pharmaceutical ingredients and trading in certain pharma formulations. For the AY 2012-13, the assessee-company, in its return of income, had disallowed certain expenditure u/s 40(a)(i) and 40(a)(ia) of the Act for not deducting tax at source.

Since there was failure on the part of the assessee to deduct tax at source from certain expenses, the AO initiated proceedings u/s 201(1) & 201(1A) of the Act.

Aggrieved, the assessee preferred an appeal before the CIT(A), wherein it was submitted that assessee had voluntarily disallowed expenses u/s 40(a)(i) and 40(a)(ia) of the Act and these provisions mandate disallowance if tax was not deducted at source from expenses. Further, accounting standards are used to make year-end adjustments, which mandate accounting of expenses incurred during the FY, but for which the invoices were not received by the end of the year.

Further, it is difficult to ascertain exact liability due to uncertainty in the identity of payees in some cases. In other cases, the payees would have been unable to claim the TDS amount, since they were not aware of the provision for expenses at the assessee's part and thus, opted to not declare the amount in their respective income. The assessee relied on **ACIT vs. Motor Industries Co. (249 ITR 141)**, wherein it was held that TDS provision will apply only when payees have enforceable right to receive payments from payers. However, the CIT(A) confirmed the order of the AO. Subsequently, the assessee preferred an appeal before the Tribunal.

Issues before the Bangalore Tribunal:

1. Whether the assessee is liable to deduct TDS from the year-end provisions.

2. Whether the assessee is liable u/s 201 of the Act when he voluntarily disallowed year end provisions u/s 40(a)(i)/40(a)(ia) of the Act.

Tribunal's Ruling: The Tribunal noted that the accounting principle of "Prudence" requires accounting for all known expenses and losses at the time of finalising accounts at the year end. Accordingly, the assessees, who are following mercantile system of accounting, are required to account for all known expenses and losses, even if the bills/invoices have not been received. This is done by making provision for various expenses at the year end.

The Tribunal further discussed accounting practice related to year-end provisions as per AS-29, wherein the assessee is required to account for all identified expenses and losses even for the payments where invoices were not received. The Tribunal acknowledged that modern day's accounting practice is to reverse the provision for expenses so created as at the year-end, immediately on the first day of succeeding year. So, year-end provisions created on 31.03.2012 are reversed on 01.04.2012, whereby the expenses are recorded when the payment is made. However, the Tribunal was not convinced with the modern practice as the net result of making provision for expenses is that the expenses pertaining to a particular year shall be claimed in that year only even in the absence of bills/invoices received from the vendors/service providers. Further, the Tribunal noted that the burden to deduct tax lies with the assessee under the TDS provisions of the Act. It states that even if the sums referred to under the TDS provisions are credited to any account, whether known as "suspense account" or any other name, in the books of account of the person who is liable to pay the amount, such crediting will be deemed as credit of such amount to the payee and TDS provisions will apply accordingly.

Further, the Tribunal referred to **IBM India Private Ltd (ITA Nos. 749 to 752/Bang/2012)**, wherein it was held that "It is thus clear from the statutory provisions that the liability to tax at source exists when the amount in question is credited to a 'suspense Account' or any other

account by whatever name called, which will also include "Provision" created in the books of accounts. Therefore, it is not possible for the Assessee to argue that there was no accrual of expenditure in accordance with the mercantile system of account and therefore the TDS obligations do not get triggered."

The Tribunal also placed reliance on the decision in **Interglobe Aviation Ltd (ITA No.5347/Del/2012**), wherein the Tribunal has held that "There may be reasons for receiving the bills by the service providers after certain time lag but that does not absolve the assessee from the liability of deduction of tax at source. In the present case the provision is made under the specified head, provision is also made to on certain basis thereby ascertaining the amount. It is not the case of the assessee that it has made an ad hoc provision. Thus, it cannot be said that the payee is not identified. Therefore, according to us, the tax is required to be deducted on the year-end provisions made by the assessee which are ascertained liabilities." Based on the above referred decisions of the co-ordinate benches and in view of specific provisions available in all TDS sections, the Tribunal held that the TDS provisions are triggered for the amount credited to "Provision for expenses account". Accordingly, the assessee is liable to deduct tax at source from the year-end provision for expenses.

With respect to liability u/s 201 of the Act, the Tribunal placed reliance on the decision of **Agreenco Fibre Foam (P) Ltd (TDS)(ITA No.165/Coch/2012)**, wherein it was held that that "the provisions of sec 40(a)(ia) does not override the provisions of sec. 201 of the Act. We notice that provisions of sec. 40(a)(ia) do not provide for absolute disallowance as in the case of say, sec. 40A(3) of the Act. The amount disallowed u/s 40(a)(ia) in one year can be claimed as deduction in the year in which the TDS provisions are complied with. Thus, in our view, the provisions of sec. 40(a)(ia) provide only for deferment of the allowance and it does not provide for absolute disallowance. The objective of sec. 40(a)(ia) appears to be to compel the assessee to deduct tax at source in order to claim the relevant expenditure as deduction." A similar view was also expressed by co-ordinate bench in IBM India.

Thus, the Tribunal observed that the disallowance u/s 40(a)(i) and 40(a)(ia) and the demand raised u/s 201 are two different consequences; liability u/s 201 is independent of disallowance made u/s 40(a)(i)/40(a)(ai) of the Act. Accordingly, the Tribunal accepted the order of AO with regards to applicability of TDS obligations and restored the issue of computing the liability u/s 201 to the AO.

II. International Tax Rulings

Ovid Technologies [TS-186-ITAT-2022(DEL)]

Payment for accessing online database would not constitute Royalty under India-US DTAA.

Facts: Assessee is a US-based entity that allows access to data/information, which is otherwise available in public domain, after making some value additions like analysis, indexing

description and appending notes for easy access and charges fee for the same from the customers. The AO concluded that the assessee has granted license to access online data base, which falls within the definition of 'Royalty', relying on the decision of Karnataka High Court in **Synopsis International Ltd. (2112 Taxmann.com 454).**

Aggrieved, the assessee preferred an appeal before CIT(A), who also confirmed the order of the AO. Subsequently, the assessee preferred an appeal before the Tribunal.

Issue before the Delhi Tribunal: Whether grant of license by assessee to access its database, falls within the ambit of "Royalty" under India-US Double Tax Avoidance Agreement ('DTAA').

Tribunal's ruling: At the outset, the Tribunal referred to Article 12 of the India-US DTAA, which provides the definition of "Royalty" and noted that the business of assessee does not entail a transfer of legal title in the copyrighted data of the assessee. The consumer can only access the data and cannot reproduce/translate/make adaptations of the same. The Tribunal was of the view that in order to determine whether a payment is for using copyright, a distinction must be made between "payment for the right to use copyright in a program" versus "right to use the program itself".



The Tribunal observed that the revenue derived by the assessee from granting limited access to its database is akin to sale of a book, wherein the purchaser does not acquire any right to exploit the underlying copyright. When the purchaser reads the book, he only enjoys the content. Similarly, the user of the data base does not receive the right to exploit the copyright in the database; he only enjoys the product in the normal course of his business.

Further, the Tribunal relied on the Supreme Court decision in the case of **Engineering Analysis Center of Excellence Pvt Ltd. ([2021] 432 ITR 471),** which rejected the ruling in Synopsis

International and held that payment made by end-users to non-resident computer software manufacturers as consideration for use of software, would not constitute payment of royalty for use of copyright in the software. Considering that the transaction under consideration is for provision of accessing database of the assessee, the Tribunal concluded that the same cannot be considered as royalty under Article 12 of the India USA – DTAA.

Accordingly, the Tribunal rejected the order of AO and upheld the issue in favour of the assessee.

Lahmeyer Holding GmbH [TS-208-ITAT-2022(DEL)]

Tax rate computed on a presumptive basis u/s 44BBB with a bonafide belief of non-existence of PE would not attract penalty.

Facts: The assessee, a German company, in its return of income, computed tax on a presumptive basis u/s 44BBB, for AY 2004-05 and 2005-06. The assessee believed that the nature of services rendered by it would not constitute a PE in India and hence the income received would be taxable as Fee for technical services @ 10%. However, the AO determined that the same amount should be taxed at 20% on receipts from all contracts and imposed a penalty u/s 271(1)(c) of the Act for evasion of tax. Aggrieved, the assessee preferred an appeal before the CIT(A), where the order of the AO was upheld.

Issue before the Delhi Tribunal: Whether penalty can be imposed where income has been declared on a presumptive basis u/s 44BBB of the Act, with a bonafide belief that the assessee does not have a PE in India.

Tribunal's Ruling: The Tribunal observed that the assessee, based on a bonafide belief that it does not have a PE in India qua its projects, offered its income for tax on a presumptive basis u/s 44BBB of the Act, which prescribes tax rate of 10%.

The Tribunal noted that the assessee obtained a certificate from Revenue stating that the net profits should be determined as per section 44BBB of the Act and net profits should be taxed at 10%. The assessee had offered its income for tax on a presumptive basis u/s 44BBB of the Act at 10%, whereas the AO taxed the same at 20%. Thus, a penalty cannot be imposed since the issue is regarding tax rates and not income amount. The Tribunal relied on the case of **Reliance Petro Products Pvt. Ltd (322 ITR 158),** wherein it was held that genuine claims which are not unsustainable in law, would not amount to furnishing inaccurate particulars of income and thus, would not result in penalty against the assessee. The Tribunal also relied on **Nortel Network Ltd in ITA No. 5631/Del/2011**, wherein it was held that where income is not enhanced during re-assessment and only tax rate is increased, it cannot be said that the assessee had concealed its income.

Considering the above, the Tribunal noted that since the returned income and assessed income of the assessee is same, it rejected the order of AO and upheld the issue in favour of the assessee.

Asian Hotels North Ltd (ITA No. 210/Del/2016)/ [TS-229-ITAT-2022(DEL)]

Payment made to non-resident for rendering centralised marketing services not liable for withholding tax.

Facts: The assessee was running a hotel under the name "Hyatt Regency", as a franchise of Hyatt International Asia Pacific Limited, known as Hyatt. The company, named Hyatt International South-West Asia Limited ("HISWAL"), which is in the field of providing marketing, management and operation of hotels work under the brand of Hyatt. The assessee entered into a Strategic Oversight Agreement ("SOA") with HISWAL dated 4.9.2008 in respect of carrying out hotel and management services with the assessee. For such services, various employees of HISWAL visit India from time to time.

As per SOA there are various other services which are to be provided by other affiliates of Hyatt. One such affiliate of Hyatt is Hyatt Chain Services Ltd., Hongkong ("HCSL"). HCSL provides centralised services outside India to worldwide Hyatt Group of Hotels, who work under the supervision and control of Hyatt. HSCL conducts sales and marketing on behalf of all hotels affiliated to the Hyatt chain.

The chain marketing includes business and sales promotion, advertising, publicity and public relations, reservation system across the globe, conducting marketing surveys and studies to standardize and improve the facilities in the hotels of the affiliates across the world, all other activities aimed at protecting and promoting the mutual interest of the affiliates as well as to benefit the guests with better services and facilities.

The cost of such expenses incurred by HCSL is allocated amongst the participating Hyatt Hotels worldwide on cost basis, without having any element of profit. Hyatt franchisees across the globe contribute to HCSL on an agreed basis and HCSL defrays the advertising as well as its administrative expenses. Short fall in a year, if any, is made up by the franchisees on a prorated basis and the surplus are not distributed as dividend or profit to any person but adjusted as a discount in subsequent year.

The assessee had filed an application u/s 195(2) of the Act before the AO with regards to future payments proposed to be made to HSCL. In its application u/s 195 of the Act, the assessee contended that no tax is required to be withheld under the terms of SOA, on remittance made to HCSL, as it is for the prorated share of sales and marketing services that were performed by Hyatt, Hong Kong outside India and thus, no income is accrued or arisen or received in India. Also, the payments to be made are only in the nature of reimbursement of expenses incurred by HCSL outside India.

The AO rejected assessee's contention and held that the payment made to HCSL is in the nature of Royalty/FTS, which is taxable u/s 9(1)(vi)/(vii) of the Act, since the services provided by HCSL and its other affiliates constitutes a bouquet of services and HCSL is not a separate

legal entity from HISWAL; thus, all the payments constitute royalty. The AO relied on the decision of DRP in the case of HISWAL for AY 2009-10 for the same.

Aggrieved, the assessee preferred an appeal before CIT(A), where the decision of AO was reversed. It was concluded that HISWAL and HCSL are two distinct entities and facts of HISWAL case indicated that it had a service PE in India. The same was not the case with HCSL. Aggrieved by the CIT (A) order, the Revenue filed an appeal before the Tribunal.



Issue before the Delhi Tribunal: Whether the payments made to HSCL are in the nature of Royalty as per Explanation 2 of section 9(1)(vi) and thus, the assessee is required to withhold tax on such remittance for the services provided?

Tribunal's Ruling: At the outset, the Tribunal noted that HCSL is a separate independent no profit entity and provides services outside India to various hotels operated by Hyatt across the globe. Costs of such chain marketing services are being reimbursed on a proportionate basis by the participant hotels, one of which is the assessee. Further, there is nothing on record to suggest that HCSL had a PE/ business connection in India. The main thrust of the AO is on the findings in the assessment of HISWAL for assessment year 2009-10 wherein HISWAL was held to be having a PE in India. However, the case of HISWAL has no application in the case of the assessee, as HCSL does not have a PE/ business connection in India.

The Tribunal observed that there are numerous decisions wherein the issue relating to provision of centralised marketing services by way of advertising and computer reservation etc. rendered by one of the group companies, particularly in the field of hospitality industry outside India, has been considered. In the case of **Director of Income Tax vs. Sheraton International Inc. (2009) 313 ITR 267** wherein such type of service was under consideration,

the Hon'ble Delhi High Court held that such services are neither royalty nor FTS as per the provisions of section 9 of the Act and accordingly not liable to tax in India.
The Hon'ble Karnataka High Court reiterated the above view in **CIT/ITO (TDS) vs. ITC Hotels Ltd., ITA Nos. 477 and 478 of 2009 dated 15.06.2015**, wherein the Hon'ble High Court, following the judgement of the Delhi High Court in Sheraton International Inc. (supra), held as under-

> "...In the present case, the question that would arise is whether payment made by the respondent assessee to Sheraton would amount to 'business income' or 'royalty' or 'fee for technical services' and said issue has been settled by the Delhi High Court in the case of Director of Income Tax vs. Sheraton International Inc – (2009) 313 ITR 267 and it has been held that such income would be 'business income' not liable for payment of tax under the Double Taxation Avoidance Agreement (DTAA)..."

Following the above decisions, the Tribunal held that the payments made to HSCL by the assessee are not in the nature of royalty under the provisions of section 9(1)(vi) of the Act and thus not chargeable to tax. Further, it is a settled position of law that under section 195 of the Act, tax is not required to be withheld on remittance made by the assessee in respect of the income of the payee, which is not chargeable to tax under the provisions of the Act.

Further, the assessee raised an alternate argument that the payment for chain marketing services has been made to HSCL as reimbursement of the proportionate expenses incurred by HSCL on cost-to-cost basis and there was no element of income at all.

Hence, the payments made to HSCL cannot be said to be in the nature of income deemed to accrue or arise to India in the form of royalty or FTS. The Tribunal agreed with the aforesaid argument, relying on the decision of the Hon'ble Delhi High Court in CIT vs. Expeditors International (India) (P.) Ltd. [2012] 209 Taxman 18 (Delhi), wherein it was held that the assessee was not liable to withhold tax in respect of the reimbursement of global management expenses, communication uplink charges and other expenses made to its parent company located outside India. Considering the above, the Tribunal rejected the order of the AO and upheld the issue in favour of the assessee.



III. Individual Tax Rulings

Sandeep Dhirajlal Dhakan (ITA No.: 6755/Mum/2019)/[TS-181-ITAT-2022 (Mum)]

Funds which are originated outside India and invested by non-resident in India are not taxable as unexplained investment of non-resident.

Facts: The case of the assessee, a UAE-resident operating jewellery business, was reopened for AY 2008-09 based on the information that the assessee invested INR 25.37 crores in M/s Rajesh Export through M/S Ventura Securities and failed to prove the source of investments. Subsequently, AO made addition of the entire amount to the income of assessee, as "Unexplained Investments", under the head 'Income from Other Sources' and initiated penalty proceedings for concealing the true income.

Aggrieved by the addition, the assessee preferred an appeal before the CIT(A). The assessee submitted additional evidence based on which the CIT(A) sought a remand report, which disclosed that the investment was made by the assessee from his repatriated funds, originated in the UAE. Further, the CIT(A) referred to Article 22 of India-UAE DTAA and concluded that the income of the assessee would be taxed in UAE and not in India since the assessee is a resident of UAE.

Aggrieved, the Revenue preferred an appeal before the Tribunal.

Issue before the Mumbai Tribunal: Whether the investment made by a non-resident from foreign sources can be taxed in India as unexplained income.

Tribunal's Ruling: At the outset, the Tribunal noted that the assessee is a non-resident and the funds were transferred from his Dubai account to his account in India. The AO could not examine the source of those funds as they originated outside India, thus being an 'out of country' transaction. However, the assessee had discharged his onus under section 68 of the Act in as much identity; creditworthiness and genuineness of the transaction were duly explained.

Further, the Tribunal relied on the decision of **Rajeev Suresh Ghai (ITA No. 6290/Mum/2019)** wherein it was observed that taxability of the sum in Dubai Bank Account was beyond Indian jurisdiction and once AO accepts that the amount was sent from assessee's foreign bank account, the provisions of DTAA would be attracted.

Considering the above, the Tribunal rejected the order of AO and upheld the issue in favour of assessee.

Sandeep Modi (I.T.A. No. 425/Kol/2021)/ [TS-184-ITAT-2022 (Kol.)]

TDS on life insurance maturity benefit to be deducted only on the non-exempt portion of net proceeds and not on the entire amount.

Facts: Assessee availed a loan for his company and as a condition, it availed a life insurance policy from SBI that entailed a single premium policy of Rs. 10,00,000, for which he did not claim any benefit u/s 80C of the Act. Accordingly, he only disclosed appreciation in its maturity benefit over the premium paid, under the head "Income from Other Sources" i.e. the income element to the tune of Rs 3.09 lacs. The AO added the entire maturity receipt as the assessee's income.

Aggrieved, the assessee preferred an appeal before CIT(A), however, the CIT(A) upheld the order of AO.

Issue before the Kolkata Tribunal: Whether the TDS should be deducted on non-exempt portion of life insurance maturity benefit on net basis or on the entire amount?

Tribunal's Ruling: At the outset, the Tribunal noted the submission of assessee that it was erroneous on the part of payer (SBI) to deduct 1% from the entire amount of insurance, whereas the correct amount for TDS should have been the net proceeds (total receipt-premium paid). The Tribunal referred to the amendment made to Section 194DA vide Finance Bill 2019 and took note of the objective for amending Section 194DA in the Memorandum explaining Finance Bill 2019 "Under section 194DA of the Act, a person is obliged to deduct tax at source, if it pays any sum to a resident under a life insurance policy, which is not exempt under sub-section (10D) of section 10. The present requirement is to deduct at the rate of one per cent of such sum at the time of payment. Several concerns have been expressed that deducting tax on gross amount creates difficulties to an assessee who otherwise has to pay tax on net income (i.e after deducting the amount of insurance premium paid by him from the total sum received). From the point of view of tax administration as well, it is preferable to deduct tax on net income so that the income as per TDS return of the deductor can be matched automatically with the return of income filed by the assessee. The person who is paying a sum to a resident under a life insurance policy is aware of the amount of insurance premium paid by the assessee."

The Tribunal further observed that the assessee has neither availed deduction u/s 80C for the premium paid nor claimed deduction u/s 10(10D) of the Act and offered the net amount to be taxed. The Tribunal agreed with the assessee that adding the entire amount would result in double taxation.

Considering the above, the Tribunal rejected the order of AO and upheld the issue in favour of the assessee.

B. Notifications/Circulars

Notification No. 18 dated 29th March 2022

The Central Board of Direct taxes has notified e-Assessment of Income Escaping Assessment Scheme, 2022 which covers, assessment, reassessment or re-computation under Section 147 and issuance of notice under Section 148.

Notification No. 19 dated 30th March 2022

The Central Board of Direct taxes has notified Faceless Inquiry or Valuation Scheme, 2022 which covers the following:

- Issuance of notice under Section 142(1).
- Making inquiry before assessment under Section 142(2).
- Directing the assessee to get his accounts audited under Section 142(2A).
- Valuation under Section 142A for estimating the value of any asset, property or investment by a Valuation Officer.

The Scheme provides that the aforesaid actions shall be in a faceless manner, through automated allocation, in accordance with and to the extent provided in Section 144B.

Notification No. 20 dated 30th March 2022

The Central Board of Direct taxes has notified that non-resident individuals visiting India would be exempted from TCS under section 206C(1G).

Notification No. 22 dated 30th March 2022

The Central Board of Direct taxes has notified updated Income-tax Return Forms - SAHAJ ITR-1, ITR-2, ITR-3, SUGAM ITR4, ITR-5, ITR-6, ITR-V and ITR- Acknowledgement for Assessment Year 2022-23.

Notification No. 24 dated 4th April 2022

The Central Board of Direct taxes has amended Income Tax Rules, 1962 to insert Rule 21AAA regarding taxation of income from retirement benefit account maintained in notified countries.

The rule provides that if a specified person has accrued any income in the retirement benefits account, then the same shall be included in his total income of the previous year, in which such income is taxed, in the country wherein such account is maintained.

To exercise this option, the specified person is required to e-file Form No 10-EE on or before furnishing his return of income. Further, once this option is exercised, it will apply to all subsequent previous years and cannot be withdrawn.

However, if the specified person has become non-resident after exercising the option, then it shall be deemed that he has never exercised the option and the income accrued in the specified account from the previous year in which such option was exercised, shall be taxable in his hand.

Notification No. 26 dated 5th April 2022

The Central Board of Direct taxes has introduced new IT Rules relating to 'Dispute Resolution Committee' as follows:

- Rule 44DAA regarding constitution of Dispute Resolution Committee.
- Rule 44DAB regarding application for resolution of dispute before the Dispute Resolution Committee in Form 34BC.
- Rule 44DAC regarding power to reduce or waive penalty imposable or grant immunity from prosecution or both under the Act.
- Rule 44DAD regarding scope and conditions for Dispute Resolution.

Notification No. 37 dated 21st April 2022

The Central Board of Direct taxes has introduced Rule 12AB, in the Income Tax Rules, 1962 regarding some new conditions for furnishing the Income Tax Return (ITR) in respect of persons other than a company or a firm. The conditions are:

- If total sales, turnover or gross receipts, as the case may be, in the business exceeds sixty lakh rupees during the previous year; or

- If total gross receipts in profession exceeds ten lakh rupees during the previous year; or
- If the aggregate of tax deducted at source (TDS) and tax collected at source (TCS) during the previous year, is twenty-five thousand rupees or more for person of the age of less than sixty years; or
- If the aggregate of tax deducted at source (TDS) and tax collected at source (TCS) during the previous year, is fifty thousand rupees or more for person of the age of sixty years or more; or,
- If deposit in one or more savings bank account, in aggregate, is rupees fifty lakh or more during the previous year.

If any person falls in any of the above following conditions, then he is mandatorily required to file his ITR.

EPFO circular dated 6th April 2022

Employee Provident Fund Organization (EPFO) has issued circular clarifying calculation and deduction of tax on taxable interest relating to contribution in provident fund pursuant to CBDT Notification No. 95 of 2021.

The Circular is applicable to all EPF subscribers with effect from 1st April 2022 for FY 2021-22. It clarifies that the effective date for deduction of tax shall be 1st April 2022 or final settlement/ transfer, whichever is later in case of final claim settlement and in all other case, TDS shall be on the date of credit of interest.

According to the Circular, TDS on interest earned on excess contribution above Rs 2.5 lakh will be applicable in case of final settlement, transfer claims, or transfers from exempted organizations to EPFO and vice versa. They will also be applicable on transfer from one trust to another, past accumulation transfer, and at the time of annual account processing, i.e., credit of interest in EPF accounts.

The Circular instructs that interest and claim for refund shall be divided into two components – Taxable and Non-taxable for the purposes of TDS. It further specifies that TDS rate shall be 10% if PF account is linked with valid PAN, failing which the TDS rate would be double i.e 20%, further states that in case of non-resident, TDS rate would be 30% under Section 195 subject to provisions of DTAA.

INDIRECT TAX

Goods & Services Tax

A. Recent Case Laws:

Amogh R. Bhatwadekar [TS-103-AAAR(MAH)-2022-GST]

AAAR held that IGST is applicable on a reverse charge basis for the supply of e-goods from foreign suppliers.

In this case, the Appellant was engaged in the business of supplying digital goods for online gaming. The "e-goods" were shipped electronically to the consumer through email or downloaded directly from the internet. The Appellant had filed an application before the Maharashtra Authority for Advance Ruling (hereinafter referred to as "AAR"), on whether "e-goods" were goods as per the Goods and Services Tax Act or were services, the tax rate applicable, or if the supply was liable for tax under reverse charge basis. The AAR held that the supply of e-goods would be treated as a supply of service, it would not be exempted and would attract GST at the rate of 18%. Further, the procurement of goods from foreign vendors would attract tax on a reverse charge basis. The Appellant aggrieved with the ruling, had preferred an appeal before the Maharashtra Appellate Authority for Advance Ruling (hereinafter referred to as "AAAR") on the grounds that the supply of digital goods was to be treated as an "export of service" and was not liable to any duty. The AAAR agreed with the ruling passed by the AAR stating that the supply of e-goods was a supply of service which was not contended by the Appellant. The goods procured from foreign vendors amounted to import of service as the conditions specified under Sub-Section (12) of Section 13 of the Integrated Goods and Services Tax Act, 2017(hereinafter referred to as "IGST Act, 2017") were satisfied and hence, the said services were liable for tax on a reverse charge basis as per sub-section (3) of Section 5 of the IGST Act, 2017.

Chhattisgarh State Renewable Energy Development Agency [TS-1264-AAAR(CHAT)-2020-GST]

Ancillary activities to Environmental projects performed for consideration are not considered as "charitable".

In this case, the Appellant was a nodal agency of the State Government and was also possessing Section 12AA registration under the Income Tax Act, 1961 (hereinafter referred to as "IT Act"). The Appellant had filed an application before the Chhattisgarh Authority for Advance Ruling (hereinafter referred to as "AAR") regarding the applicability of Notification No.12/2017 – Central Tax dated 28/06/2017 regarding GST exemption to an entity

registered under Section 12AA of the IT Act. The AAR denied the exemption to the Appellant and ruled that the Appellant was liable to pay tax on the ancillary activities of the Appellant's project conducted for consideration. Aggrieved with the ruling, the Appellant preferred an appeal before the Chhattisgarh Appellate Authority for Advance Ruling (hereinafter referred to as "AAAR"). The Appellant contended that it provides ancillary services as part of implementing its major projects to perform its work more efficiently and receives consideration for the same. The Appellant received consideration for the allied services rendered by them from their clients/channel partners. The primary purpose of the transaction was for a consideration and not the protection of the environment. Thus, the said activities did not qualify for exemption under Notification No.12/2017. The AAAR ruled that the said supplies were not for charitable purposes, the impugned services were taxable, and the ruling of the AAR was upheld.

GRB Dairy Foods Pvt Ltd. [TS-128-AAAR(TN)-2022-GST]

Retailers receiving rewards under sales promotion scheme are not eligible for ITC.

In this case, the Appellant was engaged in the business of ghee and other related products. The Appellant filed an application before the Tamil Nadu Authority for Advance Ruling (hereinafter referred to as "AAR") to obtain a ruling on whether the gifts/rewards procured for the implementation of its sales promotion scheme were eligible for the input tax credit. The AAR denied input tax credit to the Appellant, due to which the Appellant preferred an appeal before the Tamil Nadu Appellate Authority for Advance Ruling (hereinafter referred to as "AAAR"). The AAAR observed that the MRP of the products remained the same pre and post the sales campaign, which indicated that goods and services (rewards) distributed under the scheme were without consideration. The AAAR held that gifts or rewards given without consideration for sales promotion do not qualify as inputs for the purpose of availing input tax credit since no GST was paid on its disposal. Accordingly, the ruling given by the AAR was upheld and the appeal filed by the Appellant was dismissed.

DLF Ltd [TS-1266-AAAR(HAR)-2020-GST]

AAAR held that Preferential Location Service charges are taxable at the rate of 18%.

In this case, the Appellant was engaged in the construction of residential and commercial properties. Along with other charges, the Appellant also collects PLS charges or Preferential Location Service Charges from the buyers. PLS is an additional charge for booking a unit which has an advantage over other units in terms of location. The Appellant had requested the Haryana Authority for Advance Ruling (hereinafter referred to as "AAR") on the tax rate applicable for collection of PLS before issuance of completion/occupancy certificate and if PLS is outside the scope of GST after issuance of completion/occupancy certificate. The AAR rejected the application of the Appellant as the Applicant had not appeared before the AAR. The Appellant had preferred an appeal before the Haryana Appellate Authority for Advance Ruling (hereinafter referred to as "AAAR") on the grounds that the AAR ruling was time-barred

and there was a lack of opportunity for being heard. The AAAR admitted the appeal and further, observed that the PLS does not transfer any material to the service recipient, it was not classified/classifiable under any construction service codes and PLS service could be offered even after the issuance of CC/OC. The AAAR held that it was a real estate service for a fee/commission and was taxable at the rate of 18%.

Muasashi Auto Parts India Pvt. Ltd. [TS-1269-AAAR(HAR)-2020-GST]

AAAR held that GST is not applicable on coupons distributed to employees.

In this case, the Appellant was engaged in manufacturing and supplying auto parts in Faridabad. The Appellant was charging a nominal amount of Rs.250/- for the provision of canteen service to avoid wastage of food and to maintain discipline. The Appellant had filed an application before the Haryana Authority for Advance Ruling (hereinafter referred to as "AAR") questioning whether the Appellant was eligible to claim the input tax credit on canteen services availed by it for its employees and whether the distribution of coupons to employees attracted tax. The AAR held that the company was not eligible for claiming credit on canteen services and the distribution of coupons would attract tax liability. Aggrieved with the ruling, the Appellant had preferred an appeal before the Haryana Appellate Authority for Advance Ruling (hereinafter referred to as "AAAR"). The AAAR upon observation of the facts and case in hand pointed out that the amended provisions of Sub-section (5) of Section 17 of the Central Goods and Services Tax Act, 2017 state that input tax credit was available only when the registered person was making an outward taxable supply of the same category of goods or services. Hence, the AAAR ruled that the input tax credit was not admissible on the canteen services as the outward taxable supply of the company was not to supply canteen services. Accordingly, the coupons distributed among employees also did not attract GST liability.



Rahul Goyal [TS-778-AAR(RAJ)-2021-GST]

Provisions of Schedule III of the CGST Act, 2017 are not applicable to Educational & Training Services.

In this case, the Applicant prior to cancellation of Goods and Service Tax registration was providing Educational & Training Services and was paying taxes at the rate of 18%. The Applicant was advised by the Income Tax Authority to treat such supply of service as supply between employer and employee. The Applicant had filed an application before the Rajasthan Authority for Advance Ruling to ascertain whether the services provided are covered under Schedule III of the Central Goods and Services Tax Act, 2017 (hereinafter referred to as "CGST Act, 2017") which provided for activities/transactions which shall not be treated as supply of goods nor supply of services. Upon analysis of the relevant provisions and the agreement entered into by the Applicant, the AAR stated that the agreement entered into was on a principal-to-principal basis and specifically stated that the parties are independent of each other. Therefore, the AAR ruled that provisions of Schedule III of the CGST Act, 2017 will not apply.



Agro Tech Foods Limited [TS-122-AAR(TEL)-2022-GST]

Retail packages of “ready to eat popcorn” are taxable at 18%.

In this case, the Applicant was in the business of selling readymade popcorn. The popcorn was prepared by heating the maize corn until it pops and subsequently adding flavours and spices. The Applicant had filed an application before the Telangana State Authority for Advance Ruling (hereinafter referred to as “AAR”) to ascertain the correct Harmonized System of Nomenclature code (hereinafter referred to as “HSN”) and the rate of tax applicable for the readymade popcorn. The AAR observed that there are broadly three codes available for the classification of the product. Heading 1904 includes “Prepared foods obtained by swelling or roasting of cereals or cereal products”, Heading 2008 includes “Fruit, Nuts and Other edible parts of plants, otherwise prepared or preserved, whether or not containing added sugar or other sweetening matter or spirit, not elsewhere specified or included” and Heading 2106 is a residuary entry which covers food preparations not elsewhere classified. The Applicant had admitted that the popcorn was prepared by the swelling of maize corn. Upon observation of the various heads of classification and facts on hand, the AAR held that Heading 1904 was applicable as a specific head was available that met the criteria for classification and there was no necessity for classification under a general head. The AAR further held that the rate of tax applicable was 18%.

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