Tax INFORM

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Contents

5 DIRECT TAX

Recent Case Laws

Notifications/Circulars

21 INDIRECT TAX

22 Goods & Services Tax

Recent Case Laws

Notifications/Circulars

Highlights of the Issue

DIRECT TAX

Domestic Tax Rulings:

- Income Tax Department can pass order on reassessment initiated during pendency of CIRP where company did not obtain any concession from ITD by giving due notice of CIRP.
- The exemption under Section 96 of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 shall apply to the land acquired by National Hi-Speed Rail Corporation Ltd. under an agreement.
- Madras High Court upholds prosecution since ITR furnished only after survey and reassessment notice.
- Deduction in respect of employee's contribution towards PF & ESI would be allowable even paid after due date specified under respective Acts but before due date of filing of return. Amendment to provisions of sections 36(1)(va) and 43B, vide Finance Act, 2021, were applicable prospectively.

International Tax Rulings:

- Karnataka HC Ruling on Flipkart-Walmart TDS controversy on secondment of employees.
- Overseas remittances for business promotion not FTS but business income, not liable for TDS, in the absence of PE.
- Deduction in respect of employee's contribution towards PF & ESI would be allowable even paid after due date specified under respective Acts but before due date of filing of return.

Circulars and Notifications

- Notification No. 1 of 2022.
- Notification No. 2 of 2022.
- Notification No. 54 OF 2022 [F. NO.370142/51/2020-TPL].
- Notification No. 55 OF 2022 [F. NO.370142/51/2020-TPL].
- Notification No. 57 OF 2022 [F. NO. 370142/31/2021-TPL (PART III).
- Notification S.O. 2501 (E) [No. 58/2022/F.No.300196/12/2021-ITA-I].
- Notification S.O. 2735(E) [No. 62/2022/F.No.370142/20/2022-TPL].
- Notification S.O. 2777(E) [No. 65/2022/F.No. 275/30/2019-IT(B)].
- Notification G.S.R. 463(E)) [NO. 67/2022/F. NO. 370142/23/2022-TPL],
- Circular No. 11/2022 [F. No. 370142/4/2021-TPL]
- Circular No. 12/2022 [F. No. 370142/27/2022-TPL]
- Circular No. 13 of 2022 Dated 22-06-2022
- Circular F.NO. 225/81/2022/ITA-II, Dated 3-6-2022.
- Circular F. NO. 500/09/2016-APA-I, Dated 10-6-2022.

INDIRECT TAX

Goods and Services Tax
Case Laws:

- High Court held that 'Adjusted Total Turnover' to exclude domestic supplies attracting NIL Cess rate.
- High Court ruled that refund on exports can't be denied due to procedural error.
- AAR held that the facilitation of funds for investors to investees by an intermediary located outside is not taxable under RCM.
- AAR ruled that books, stationary and other services provided in addition to education services were eligible for exemption and treated as 'composite supply'.
- AAR held that bearing in mind the 'purpose of use', lease income from residential dwellings is exempt.
- AAR held that grievance redressal service provided against Insurer is not exempt from GST.
- AAR held that a facilitator receiving a stipend to disburse it to trainees is not taxable.

Circulars and Notifications

- Notification No.05/2022 extended the due date for furnishing of FORM GSTR-3B and FORM GST PMT-06 for the month of April 2022.
- Notification No.07/2022 inserted a proviso to Notification No.73/2017-Central Tax dated 29/12/2017.

DIRECT TAX

A. Recent Case Laws

I. Domestic Tax Rulings

Dishnet Wireless Ltd. [2022] 139 taxmann.com 493 (Madras)

Income Tax Department can pass order on reassessment initiated during pendency of CIRP where company did not obtain any concession from ITD by giving due notice of CIRP.

Facts: The assessee had voluntarily filed Corporate Insolvency Resolution Process ("CIRP") under the provisions of the Insolvency and Bankruptcy Code, 2018 ("IBC"), before the National Company Law Tribunal ("NCLT"). The proceedings for reopening of assessment were initiated under Section 148 Act, after the assessee approached the NCLT for CIRP voluntarily, under Section 10 of the IBC. The assessee filed objections to the said reopening of assessment, which were disposed by the Assessing Officer("AO"). Being aggrieved, the assessee filed a Writ Petition to the High Court, raising the following contentions:

- The Revenue authority is not entitled to proceed further in the light of the definition of claim as in Section 3(6) of IBC.
- The Government is a "corporate debtor" and therefore cannot proceed further, as the CIRP has been approved by the NCLT and has extinguished all the claims pre-existing, prior to the approval of the aforesaid CRP.
- Since the Plan has been approved by NCLT, the Revenue authority is precluded for proceedings against the assessee in terms of Section 31 of the IBC.

Issue before the Madras High Court: Whether reassessment proceedings initiated against the assessee during pendency of the CIRP, where the assessee did not obtain any concession from the Revenue authoritiy by giving due notice of CIRP are valid proceedings?

High Court's ruling:

- The High Court observed that the Resolution Professional is required to issue a publication inviting claims from all the stakeholders. He is required to collate information and submit necessary details in the information memorandum. The resolution applicants are required to submit their plans on the basis of the details provided in the information memorandum.
- CIRP approved under Section 31 of the IBC did not contemplate tax dues under the Act. Further, at the stage, the proceedings under 148 of the Act had not crystallized.

- Since the proceedings under IBC were initiated by the assessee few days prior to the initiation of the proceedings under Section 148 of the Act, it was incumbent for the assessee to have ensured proper notice to the Revenue authority and obtained appropriate concession in CIRP.

- Claims of the Revenue authority were not considered by the NCLT, while approving the Resolution Plan and therefore the question of abetment of such rights of the Revenue authority cannot be countenanced.

- The provisions of IBC cannot be interpreted in a manner which is inconsistent with any other law for the time being in force.

- CIRP sanctioned and approved cannot impinge on the rights of the Revenue authority to pass any fresh Assessment Order under Section 148 read with Sections 143(3) and 147 of the Act.

- Therefore, the proceedings under IBC cannot be pressed into service to dilute the rights of the Revenue authority under the Act to re-open the assessment under Section 148.

As such, the High Court held that the Revenue authority was not precluded from reopening the assessment completed under Section 143(3).

Seema Jagdish Patil [2022] 139 taxmann.com 249 (Bombay)

The exemption under Section 96 of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 shall apply to the land acquired by National Hi-Speed Rail Corporation Ltd. under an agreement.

Facts: The assessee was the owner of certain plots of land. The National Hi-Speed Rail Corporation Ltd. ("NHRC") acquired the said land under an agreement and deducted TDS from the compensation paid to the assessee. The assessee requested NHRC to reverse the tax deducted on the ground that Section 96, read with Section 46 of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 ('the relevant Act') specifically exempts compensation paid under the award or an agreement. NHRC, however, submitted that exemption is not available, as the acquisition is by an agreement between the parties, and it cannot be said to be compulsory acquisition under the Act. It further submitted that the sale deed was entered between the assessee and NHRC by negotiation, through a direct purchase method.

Issue before the Hon'ble Bombay High Court: Whether Section 96 of the relevant Act shall apply to the land acquired by NHRC under an agreement?

Bombay High Court's ruling:

The High Court Held as under:

- The public notice was issued for the acquisition of land through direct purchase and private negotiations by the office of the Sub-Divisional Officer for implementing the Mumbai-Ahmedabad Hi-Speed Rail Project. As per the public notice, the policy decision has been taken by the State Government under its Government Resolution for acquiring the property by private negotiations and purchases for implementation of the said project.

- The methodology used for computation of the compensation was as per the provisions of the relevant Act. If the parties would not agree with the negotiations and direct purchase, then the compulsory acquisition under the provisions of the relevant Act had to be resorted.

- The High Court made a reference to the case of **Balkrishnan v. Union of India** [2017] 80 taxmann.com 84 (SC) where the Apex Court has held that merely because the compensation amount is agreed upon would not change the character of acquisition from that of compulsory acquisition to the voluntary sale.

- The CBDT vide Circular No. 36 of 2016 dated 25-10-2016 has also clarified that the compensation received in respect of award or agreement which has been exempted from levy of income tax vide Section 96 of the relevant Act, shall not be taxable under the provisions of the Act. It also recognizes acquisition by award or agreement.

- Section 96 of the relevant Act unequivocally provides that no income tax or duty shall be levied on any award or agreement made under the relevant Act, except under Section 46.

Based on the above, the High Court held that NHRC ought not have deducted TDS.

Dharampal R. Pandia [TS-494-HC-2022(MAD)]

Madras High Court upholds prosecution since ITR furnished only after survey and reassessment notice.

Facts: The assessee is engaged in the business as a dealer in antibiotics, chemicals, prawn feeds and derives income thereof, besides having income from other sources. There was survey action/operation under Section 133(A) of the Act in the business premises of the assessee. It was detected that the assessee had not been filing his return nor was he maintaining books of accounts or getting them audited, though he was liable to tax audit. The

assessee, over a span of 6 years had failed to disclose income of over Rs. 5Cr and only filed the same upon being asked to file the same, post the survey action. The Revenue authorities initiated prosecution proceedings against the assessee for wilful evasion of tax.

Issue before the Hon'ble Madras High Court: Is there a case for prosecution against the asseessee in the case of wilful evasion of tax given the facts of the present case?

High Court's ruling:

- It is the duty of the assessee to file return of income for every assessment year within the statutory due date.
- By concealing the income, the assessee has deprived the exchequer, payment of tax for several months. Thus, there are enough and specific allegations made with regard to concealment of income by the Revenue authorities.
- By not filing the return of income, the assessee concealed his true and correct income, denied the opportunity to the Revenue authority to determine his true and correct income.
- The High Court also distinguished the judgements relied upon by the assessee on facts and also noted that the amounts involved in the said judgements are insignificant amounts, whereas in case of the assessee the amount of income suppressed is substantial.
- The High Court also observed that if the survey was not conducted, the concealment of income would not have come to light at all.

Thus, Hon'ble High Court has held that the facts of the case and allegations made against the assessee clearly make out a case for prosecution of the assessee for wilful evasion of tax.

Sandeep Kumar Agarwal [2022] 139 taxmann.com 564 (Delhi - Trib.)

Deduction in respect of employee's contribution towards PF & ESI would be allowable even paid after due date specified under respective Acts but before due date of filing of return. Amendment to provisions of sections 36(1)(va) and 43B, vide Finance Act, 2021, were applicable prospectively.

Facts: The assessee deposited the employee's contribution to PF/ ESIC well before the prescribed date for filing the return of income u/s.139(1). The Revenue authorities disallowed the same, contending that such contribution shall be allowable only if they are paid within the due date of the respective Acts. Being aggrieved, the assessee filed an appeal to the ITAT.

Issue before the ITAT: Whether Employee's Contribution towards PF and ESI would be allowable if the same was paid after the date of the respective Act, but before the due date of filing the return of income u/s 139(1).

ITAT's ruling:

- The ITAT relied on the judgement of its jurisdictional High Court in the case **of Pr. CIT v. Pro Interactive Services (India) (P.) Ltd.** [IT Appeal No. 983 of 2018, dated 10-9-2018], wherein it was held that it was not the legislative intent and objective of the law makers to treat belated payment of Employee's Provident Fund (EPD) and Employee's State Insurance Scheme (ESI) as deemed income of the employer under section 2(23)(x) of the Act, but was to ensure that the amount paid is allowed as an expenditure only when payment is actually made.

- The Hon'ble ITAT also observed that Finance Bill, 2021 clearly stated that the amendment will take effect from 01st April 2021 and will prospectively apply in relation to the Assessment year 2021-22 and subsequent assessment years. Thus, the amendment brought out by Finance Act, 2021 does not apply to assessment years prior to Assessment year 2021-22.

It was held that the AO was not justified in denying the deduction claimed by the assessee on account of late deposit of PF/ESI/EPF, albeit before filing the return of income.



II. International Tax Rulings

Flipkart Internet Private Limited [TS-503-HC-2022(KAR)]

Karnataka HC Ruling on Flipkart-Walmart TDS controversy on secondment of employees.

Facts:
The assessee company is engaged in the business of providing IT Solutions and Support Services for the e-commerce industry and had made payments to a non-resident as reimbursement of salaries to deputed expatriate employees. The assessee company made an application for a 'Nil' TDS certificate under Sec. 195, which was rejected by the Income Tax authorities, based on the following:

- The services rendered by such employees are in the nature of ''technical services'', both under the Act and under the India-US DTAA.

- B. Absence of employer-employee relationship between the assessee and the said employees.

- C. Deduction under Section 192 does not result in double deduction nor does it obviate the need to deduct tax under Section 195.

- D. Since the payment is in the nature of fees for technical services/fees for included services, it is taxable on gross basis with no need to examine whether or not income is embedded in such payment.

Issue before the Hon'ble Karnataka High Court: The primary questions before the Hon'ble Court were:

- Whether the application filed by the assessee u/s 195(2) of the Act is maintainable?

- Whether the assessee is required to deduct TDS u/s 195(2), read with Article 12(4) of the India-USA DTAA?

High Court's ruling:

Whether the application filed by the assessee u/s 195(2) of the Act is maintainable?

- The Court observed that the contention of the Revenue that the 'application under sec. 195(2) is maintainable only in the event of composite payments and where a 'Nil' deduction certificate is sought for, recourse is to be made under section 197', should have formed part of the order passed by the Ld. Deputy Commissioner of Income Tax (DCIT) for rejection of the application u/s 195(2). No such finding was recorded by the Ld. DCIT while passing the order rejecting the application. It was not open to the

Revenue to canvas this particular issue for the first time in the proceedings instituted by the assessee before the High Court.

- The relevant rules and forms to be filed thereunder make it clear that the application u/s 195 is at the instance of the person making the payment, while the application u/s 197 is at the instance of the recipient.

- The High Court also relied on its own judgement in the case of **CIT (International Tax) v. Bovis Lend Lease (India) Pvt Ltd** [2012] 208 Taxmann 168 (Kar) and accordingly held that section 197 can be invoked by the recipient and thus the contention that the assessee's application u/s 195(2) is not maintainable, is liable to be rejected.

- As against the contention of the Revenue that if the assessee was of the view that the amount is not chargeable to tax under the provisions of the Act, the question of obtaining certification u/s 195(2) or 197 does not arise, the Hon'ble High court observed that the object of sections 195(2) and 197 are in the nature of safeguards for the assessee to avoid consequences of a finding eventually that the payer ought to have made deduction of tax. Further, the assessee cannot be debarred from invoking such a provision if he was of the view that the payment being made was not chargeable under the provisions of the Act. Thus, the recourse to sec. 195(2) is perfectly in consonance with the object of Sec. 195 and cannot be faulted.

Whether the assessee is required to deduct TDS u/s 195(2) read with Article 12(4) of the DTAA?

- As per Section 195(2) and Article 12(4) of the India-US DTAA, the more beneficial treaty provisions are required to be applied to determine the liability to deduct tax.

- Sec. 195(2) places an obligation on the assessee to make deduction of tax under sub-section (1) where payment of "any such sum chargeable under this Act" is being made to a non-resident.

- For Article 12(4) pertaining to Fees for Included Services to apply in the said case, merely the condition of rendering Technical or consultancy services is not sufficient, but the requirement of make available in terms of Article 12(4)(b) requires to be fulfilled.

- The Ld. DCIT failed to examine that the fact that employees seconded, have the requisite experience, skill or training, capable of completing the services contemplated in the secondment, by itself, is insufficient to treat it as Fees for Included Services, as has been concluded de hors the satisfaction of 'make available'.

- The proceeding under Section 195 results in tentative finding and if such determination exempts the payer from making a deduction, it is still subject to final determination of taxability qua the payee.

The High Court further held as under:

- Since the 'make available' requirement that is mandated under Article 12(4) grants benefit to the assessee, the question of falling back on section 9 of the Act does not arise. Thus, the contention of the Revenue that the payment shall be 'deemed income' under sec. 9 of the Act is rejected.

- The logic of deduction of tax on the 'gross amounts' as required in sec. 194C and 194J cannot be extended to Section 195, which uses the term 'any sum chargeable under the provisions of the Act'. Thus, the obligation to deduct tax at source arises only when there is a sum chargeable under the Act.

- Since the Assessee issued appointment letters and employees reported to the Assessee, for a limited finding under Section 195, it could be concluded that the Assessee was the employer. The requirement of determining who the employer was, by itself would have no conclusive bearing on whether the payment made is for 'fees for included services', in light of the further requirement of "make available. Accordingly, the High Court has set aside the order of the Ld. DCIT and has directed the Revenue to issue a Nil withholding certificate u/s195(2) to the Assessee for the payment made.

Apurva Goswami [TS-400-ITAT-2022(DEL)]

Overseas remittances for business promotion not FTS but business income, not liable for TDS, in the absence of PE.

Facts: The Assessee, a proprietor, made certain payments to his non-resident Global Business Affiliates ("GBAs")/ Business Development Associates ("BDAs"), in countries like USA, UK and Switzerland, for rendering agency services of procurement, confirmation and execution of export orders, along with providing customer information. As per the terms of agreement, the Assessee pays the GBAs/BDAs a monthly fixed retainership fees & commission on business solicitation basis. The assessee deducted no TDS on these payments made as they are 'Business Profit', as per Article 7 of the DTAA & no tax is deductible if the GBAs/BDAs have no PE in India.

The CIT(A) partially upholding the decision of AO, concluded that the payments made to GBAs are in nature of Consultancy fees. The same has been correctly inferred by AO from the Master Service Agreement (MSA) between the Assessee and GBAs/BDAS, wherein the term "consultant" is clearly used to refer to GBAs/BDAs. Hence, the payments made are FTS & tax deductible under Article 13 of the DTAA. However, the payments made to GBAs of UK & USA are not liable to tax deduction as they fail to meet the requirement of 'make available'. Nevertheless, the payments made to GBAs of Switzerland was held liable to be subject to tax deduction as there was no requirement to satisfy 'make available' condition to FTS in India-Switzerland DTAA, prior to amended protocol of 27.12.2011.

Issue before ITAT: Whether the Payments made by the Assessee are FTS or Business Profit?

Tribunal's Ruling: At the outset, the Tribunal observed that the Ld. CIT(A) choose to refer to only portion of the MSA & took a narrow interpretation of word 'consultant' used in the MSA. The MSA read as whole, reveals that the transaction undertaken by the GBAs/BDAs on behalf of assessee are in nature of business promotion & client solicitation. There is no specialised technical service being rendered to the assessee & hence is not FTS but Business profit under Article 7 of DTAA. Further, as the GBAs/BDAs have no PE in India, no Income is chargeable to tax in India under Section 195(1) of the Income Tax Act. Hence, the assessee is in no default for non-deduction of tax.



Bosch Ltd. [TS-451-ITAT-2022(Bang)]

Receipt from sub-licensing technology, taxable as royalty; Rejects capital receipt plea.

Facts: The Assessee is a company engaged in manufacturing & sale of fuel injection equipment and parts thereof, auto electricals etc. It had licensed some manufacturing technology (hereinafter referred as 'technology') from its Associate Enterprise (AE). And further, with permission of the AE, had sub-licensed the technology to a Malaysian Company, in consideration for receipt of a lumpsum amount. The assessee considered the licensed technology as an intangible asset, on the basis that there is no requirement in law that the asset needs to be exclusively owned by one person. Accordingly, it had treated the lumpsum receipt on sub-licensing as capital gains, on the basis that its sub-licensing of the right in

technology is actually an “extinguishment of any rights”, covered under the definition of transfer under the Act & that the Explanation to definition of Royalty under the Act excluded such lumpsum consideration treated as capital gains. In the appeal before CIT(A), it was held that such lumpsum receipts are business income in nature of royalty and are not capital receipts, as there is no ‘transfer’ of any capital asset.

Tribunal’s Ruling

- The claim for transfer of capital asset can be substantiated only if asset is wholly or partially owned, any expenditure on such asset is capitalised, the asset is recognised in books of accounts as capital asset and depreciation is claimed on such asset.

- Rendering of continuous support, imparting of training and making available of knowledge are only post license support services constituting transfer of right to use.

- Assessee has merely sub-licensed the right to use technical knowhow and not the right to manufacture.

- Royalty includes transfer of all or any rights of granting license either for multiple payments or lump sum payments.

- The lumpsum payment received against granting of right to use technical knowhow is Royalty.

B. Notifications/Circulars

Notification No. 1 of 2022 Dated 09-06-2022

The CBDT has, through this notification has laid down the detailed procedure for sharing of information with tax deductor/collector to identify a ''Specified person'' under section 206AB and 206CCA of the Act.

Notification No. 2 of 2022 Dated 24-06-2022

The CBDT has notified Form No. 1, Form No. 2 and Form No. 2A for filing of Securities Transaction Tax return (STTR) electronically by Recognized Stock Exchanges, Mutual Funds and Insurance Companies. Further, eligible reporting institutions having obligation to submit STTR are required to email a PDF signed copy of the registration information viz., "Request of creation of SFTP User For filing of Securities Transaction Tax (STT) Return" to the Revenue authorities on stt.reporting@insight.gov.in.

Notification No. 54 OF 2022 [F. NO.370142/51/2020-TPL], Dated 27-05-2022

The CBDT has, vide this notification, amended the Faceless Penalty Scheme, 2021 [Scheme], making the following key amendments:

- Allowing mandatory personal hearing through electronic mode to the assessee who have requested for the same.
- The Regional Faceless Penalty Centre [RFPC] has now been omitted from the Scheme.
- The authentication of electronic records and hearings through video conferencing shall now be done by the National Faceless Assessment Centre [NFAC] and not by the RFPC.
- Consideration of AO having power so assigned by the Board, as an authority under the Penalty Unit and Penalty Review Unit.
- Omission of rectification procedures.

Notification No. 55 OF 2022 [F. NO.370142/51/2020-TPL], Dated 27-05-2022

The CBDT has, vide this notification, amended its earlier notification No. S.O. 118(E), dated 12-01-2021 of GOI, to give effect to the above amendments made in Faceless Assessment Scheme, 2021.



Notification No. 57 OF 2022 [F. NO. 370142/31/2021-TPL (PART III)], Dated 31-5-2022

The CBDT has, vide this notification, inserted Rule 44FA in the Income Tax Rules, 1962, which states that the form and manner to file appeal to High Court, against any order of the Board for Advance Rulings, by the aggrieved assessee or AO, shall be as per the procedure laid down by the jurisdictional High court for filing appeal before it.

Notification S.O. 2501 (E) [No. 58/2022/F.No.300196/12/2021-ITA-I], Dated 31-5-2022

The Central Government has notified the 'National Biodiversity Authority' (NBA) (PAN: AAALN0331K) as an eligible authority to claim exemption under section 10(46) of the Act on the Income earned in the form of Grant-in-aid from the Government of India, benefit sharing fee and royalty received, amount received in the form of application fees and interest earned on above sources, during FY 2021-22 to FY2025-26. The exemption is subject to condition that NBA is not engaged in any commercial activities, the nature of activities and specified income remains unchanged during the financial year and return is filed u/s 139(4C) of the Act.

Notification S.O. 2735(E) [No. 62/2022/F.No.370142/20/2022-TPL], Dated 14-6-2022

The Central Government has notified the Cost Inflation Index for FY 2022-23 as 331. This will be effective from 01.04.2022 i.e. Assessment Year 2023-24.

Notification S.O. 2777(E) [No. 65/2022/F.No. 275/30/2019-IT(B)], Dated 16-6-2022

The Central Government has, vide this notification, exempted the lessee of an aircraft from deduction of tax under section 194I of the Act, on payment of lease rent/supplemental lease rent to a unit located in International Financial Services Centre (IFSC) (“lessor”). This is provided the lessor submits statement-cum-declaration in Form-1 to the lessee for the previous years relevant to the ten consecutive assessment years for which the lessor opts to claim deduction under section 80LA(2)(1A) of the Act.

Notification G.S.R. 458(E) [NO. 66/2022/F. NO. 370142/26/2022-TPL], Dated 17-6-2022

The CBDT has, vide this notification, extended the applicability of Safe Harbour Rules under Rule 10TD to Assessment Year 2022-23, w.e.f from 01-04-2022.

Notification G.S.R. 463(E)) [NO. 67/2022/F. NO. 370142/23/2022-TPL], Dated 21-6-2022

The CBDT has notified that the tax deducted by specified person under section 194S shall be paid to the credit of the Central Government through electronic challan-cum-statement in Form No. 26QE, within 30 days from the end of the month in which the deduction is made. The specified person deducting tax would be required to furnish the certificate of tax deduction in notified Form No. 16E to the deductee within 15 days from the due date of furnishing the Form 26QE.

Circular No. 11/2022 [F. No. 370142/4/2021-TPL], Dated 3-6-2022

The CBDT has issued the following clarifications on Form 10AC:

- In view of section 12AB(4) of the Act, the Principal Commissioner or Commissioner of Income-tax shall, upon examination of any "specified violation" by the Trust, Institution, Fund, Institution fund, University or Educational university, Hospital or other Medical institution, registered/provisionally registered under sections 12AB, 12AA and 10(23C) of the Act, pass an order of cancellation or refusal for cancellation of registration.

- The definition of "specified violation" includes instances of any activity of Fund, Trust or Institution being carried out in violation of all or any of the conditions, subject to which registration was granted.

- Application for re-registration or provisional registration by charitable entities shall be in Form 10A and order granting such registrations shall be in Form 10AC.

- Order passed during FY 2021-22 as provisional registration/approval shall be considered as "Order for registration or approval".

Circular No. 12/2022 [F. No. 370142/27/2022-TPL], Dated 16-6-2022

The CBDT has vide this Circular clarified that under newly introduced section 194R [effective from 1 July 2022], there would be no requirement on the deductor to check the taxability of perquisite/ benefit ("perquisites") in the hands of the recipient. Further, tax would be deductible on Capital Assets being perquisites, no tax would be deductible on sales discounts, cash discounts, rebates allowed or on free samples distributed; tax would be deductible on the

recipient entity, even if perquisites are being used by the owner/director/employee of the recipient entity or their relatives; value of perquisites shall generally be the fair market value, but for items purchased or manufactured, the value shall be the purchase price or sale price to the customer; GST would be excluded from the value of perquisites; tax on perquisite/benefits in kind or partly in kind, may be deposited by deductee as advance tax. Further, the Circular, inter alia, has clarified on the issues relating to provision of benefits during dealer/business conferences and computation of threshold limit of Rs. 20,000, to be calculated from 01-04.2022.

Circular No. 13 of 2022 Dated 22-06-2022

The CBDT has, vide this Circular, issued guidelines/clarification for section 194S, inter alia, on matters such as person liable to deduct tax in exchange traded transaction, of Virtual Digital asset (VDA); requirement of furnishing quarterly statement in Form 26QF and return of Income by the Exchange; option of paying tax by seller in case consideration for VDA is in cash or partly in cash; procedure relating to conversion of tax deducted in kind by exchange; exclusion of GST from value of consideration; no liability on payment gateway to deduct tax; and determination of threshold from 01-04-2022.

Circular F.NO. 225/81/2022/ITA-II, Dated 3-6-2022

The CBDT has, vide this Circular made following key substitutions to its earlier guidelines, dated 11-05-22, on compulsory selection of returns for complete scrutiny:

- Differentiated the procedure for assessment of cases of search and seizure/requisition conducted prior to 01-04-2021 and for cases pertaining to period on or after 01.04.2021.

- Procedure for cases pertaining to the period prior to 01-04-2021 remains the same, as issued in the earlier guideline.

- Assessment in cases of search and seizure actions/requisitions u/s 132/132A conducted on or after 01-04-2021 and for return pertaining to A.Y.2021-22 to be made with prior approval of Pr. CIT/Pr. DIT/CIT/DIT and to be transferred to central charge within 15 days of service of notice u/s 143(2)/143(1).

Circular F. NO. 500/09/2016-APA-I, Dated 10-6-2022

The CBDT has, vide this Circular issued following guidance on Mutual Agreement Procedure (MAP) w.r.t cases under Direct tax Vivad Se Vishwas (VsV) Scheme, 2020:

- If a resident taxpayer's application under VsV Scheme for settlement of cases relating to transfer pricing adjustments on international transactions with its Associate Enterprises (AE), is accepted by the Indian tax Authorities, the Competent Authorities (CA) or Specified Authorities (SA) of such AE's shall accept MAP application of such AE's, provided the result of such acceptance does not deviate from the result arrived under the VsV.

- Non-resident taxpayer who has voluntarily opted for VsV on the same issue shall not have access to MAP in India.

- For cases decided by the ITAT, the Indian CA shall not deviate from such orders and the cases shall stand resolved and closed under domestic remedy.

INDIRECT TAX

Goods & Services Tax

A. Recent Case Laws:

The Principal Commissioner, CGST & Ors. vs. Electrosteel Castings Ltd. [TS-298-HC(CAL)-2022-GST]

High Court held that 'Adjusted Total Turnover' to exclude domestic supplies attracting NIL Cess rate.

In this case, the Appellant filed a writ petition before the Honorable Calcutta High Court (hereinafter referred to as "HC") as the Revenue had failed to disburse the refund amount due to them. The issue presented before the HC was whether, for the purpose of computing a refund, the domestic turnover of final products, not liable for Cess, could be excluded to arrive at the calculation of eligible refund. The refund calculation prescribed under the Central Goods and Service Tax Rules, 2017 (hereinafter referred to as "Rules") excludes exempt supply from the calculation of refund turnover, however, the Revenue had overlooked the definition for 'exempt supply' since it had not been prescribed under the Cess Act. The definition had to be applied as provided under the Central Goods and Services Tax Act, 2017 (hereinafter referred to as "CGST Act"). CGST Act excludes exempt supply from the provisions of calculation of refund and hence, the supply not liable for Cess was not liable for tax. Further, the Revenue had also not provided a reason for denial of the refund. The HC upon observation of the case on hand noted that the Central Board had issued a Circular No.45/19/2018-GST dated 30th May 2018 clarifying that a registered person making a zero-rated supply of final products (not subject to Cess) is exempt supply and may claim a refund. The High Court held that withholding of refund company/petitioner, is arbitrary and unjustified and the authorities were directed to refund the amount to the Appellant.

Abi Technologies vs. The Assistant Commissioner of Customs [TS-252-HC(MAD)-2022-GST]

High Court ruled that refund on exports can't be denied due to procedural error.

In this case, the Appellant was an exporter of goods and was promptly filing the returns prescribed under the law. The Appellant was eligible for a full refund of the taxes paid on the export of goods. The Appellant for the period October, November and December 2017 had declared the details of exports made correctly in the monthly GSTR-1 return but had

erred in providing accurate details in GSTR 3B return. The Appellant had paid taxes on the export of goods by utilizing the input tax credit. The Appellant instead of disclosing the exports under "Outward taxable supplies (zero-rated)", had disclosed it under "outward taxable supply (other than zero-rated, nil rated and exempted)" and this error subsisted for the 3 months stated above. The refund on the said exported goods was denied due to the wrong disclosure in the returns filed consequent to which a writ petition was filed before the Honorable Madras High Court (hereinafter referred to as "HC") by the aggrieved Appellant. The Appellant reiterated the facts before the HC to which the Respondent contended that a refund would be granted by the Revenue only upon the furnishing of valid returns. As valid returns were not furnished, the Appellant was not eligible for a refund. The HC stated that export incentives had been given to encourage exports so that there would be an inward remittance of foreign currency. The procedure prescribed was not intended to defeat such legitimate export incentives, if indeed on facts there was export on payment of tax. The HC disposed of the writ petition by directing the Revenue to get the data from the Appellant and from the customs department. Further, if there was a genuine export and taxes were paid by the Appellant, then a refund of the same should be granted.

Adani Green Energy Ltd. [TS-242-AAR(GUJ)-2022-GST]

AAR held that the facilitation of funds for investors to investees by an intermediary located outside is not taxable under RCM.

In this case, the Applicant was a listed company that required substantial working capital to conduct its business due to which it was raising funds by issuing securities. The Applicant had identified Managers, located and incorporated outside India whose role was to solicit and secure the requisite number of investors to subscribe to the issue. In case the Managers were unable to arrange for the requisite number of subscribers, the issuer had an option not to launch the issue for a subscription and the Managers would not be entitled to any fee. The Applicant had sought an advance ruling before the Gujarat Authority for Advance Ruling (hereinafter referred to as "AAR") on whether tax under reverse charge was applicable to the service provided by the manager for the arrangement of funds. The AAR observed the facts on hand and noted that the services provided by the Manager to the Applicant satisfied the definition of 'intermediary' as defined under clause (13) of Section 2 of the Integrated Goods and Services Tax Act, 2017 (hereinafter referred to as "IGST Act"). Section 2(11) of the IGST Act, 'import of services', required the supplier to be located outside India, the recipient to be located in India and the place of supply to be in India. As per Section 13(8)(b) of the IGST Act, the 'place of supply' of the intermediary services provided by the Manager was the location of the Manager i.e outside India. As the place of supply of the said services does not meet the conditions prescribed to qualify as 'import of services', the AAR held that there was no liability of tax on the Applicant.

Rahul Ramachandran (Inspire Academy) [TS-259-AAR(MAH)-2022-GST]

AAR ruled that books, stationary and other services provided in addition to education services were eligible for exemption and treated as 'composite supply'.

In this case, the Applicant was commencing new business under the trade name, "Nashik Cambridge Pre-School". The intention was to provide pre-school education against a fee, necessary equipment such as books, stationery, sports equipment etc., without any consideration, transportation services to students & faculty, and canteen services to its students & faculty. The query before the Maharashtra Authority for Advance Ruling (hereinafter referred to as "AAR") was whether the services provided along with pre-school education were eligible for exemption under Notification No.12/2017 – Central Tax dated 28/06/2017. The said Notification granted an exemption for services provided by an educational institution to its students, faculty, and staff. The AAR held that since the applicant's business satisfied the definition of 'educational institution' as given under the said notification, pre-school education service to its students against a fee, transportation service & canteen service to its students & faculty was eligible for an exemption. The AAR further held that the supply of books, stationery, sports equipment etc., without any consideration would constitute a composite supply and would not be required to pay any taxes. If the said goods were supplied for some consideration, then it would imply that such sale of goods was not part of the composite supply and accordingly, would not be eligible for exemption under the notification.



Kasturi & Sons Ltd. [TS-292-AAR(MAH)-2022-GST]

AAR held that bearing in mind the 'purpose of use', lease income from residential dwellings is exempt.

In this case, the Applicant was the owner of residential apartments and intended to let out the premises partially to M/s Life Insurance Corporation of India (hereinafter referred to as "LIC"). LIC proposed to let out the premises for the residential use of its staff. In this regard, the Applicant had filed an application before the Maharashtra Authority for Advance Ruling (hereinafter referred to as "AAR") to clarify if such letting out was eligible for exemption from tax under Notification No.12/2017 – Central Tax. The Jurisdictional Officer contended that the property was let out to a commercial organization and a profit-oriented company, therefore the said exemption was not to be granted. The AAR held that the notification requires the premises to be used for residence and does not mention to whom the services should be supplied. The ultimate use was to be considered and not the user of the premises. Hence, the exemption under the said notification was granted to the Applicant.

Executive Council of Insurers [TS-293-AAR(MAH)-2022-GST]

AAR held that grievance redressal service provided against Insurer is not exempt from GST.

In this case, the applicant was a Quasi-judicial body set up to facilitate the functioning of Insurance Ombudsman officers. The Applicant had filed an application before the Maharashtra Authority for Advance Ruling (hereinafter referred to as "AAR") questioning whether grievance redressal services provided by the applicant were exempt from tax. The AAR observed that entertaining complaints against the insurer and providing relief constituted a service and could be construed as a supply under the GST provisions. The AAR further observed that even though the Applicant was not charging fees from the aggrieved but was receiving funds from Life Insurance & General Insurance Councils for its routine activities, hence, the consideration for the grievance redressal services was provided for by the Councils. Therefore, after observation of the relevant facts and case on hand, the AAR held that the services provided by the Applicant were exigible for tax.

Patle Eduskills Foundation [TS-306-AAR(MAH)-2022-GST]

AAR held that a facilitator receiving a stipend to disburse it to trainees is not taxable.

In this case, the Applicant was a facilitator registered under the National Employability Enhancement Mission (NEEM) of the Government of India and was responsible to provide practical job training to enhance the prospects of employability. The question placed before the Maharashtra Authority for Advance Ruling (hereinafter referred to as “AAR”) was whether the reimbursement of stipends received from various institutes and paid to the trainees would be taxable. The AAR upon observation of the facts noted that the applicant was acting as a conduit for the payment of stipend and was not withholding any sum paid by the trainer institutes for themselves. In lieu of the above, the AAR held that such sum was not liable for tax.



B. Notifications/Circulars

Notification No.05/2022

- Central Tax hereby extended the due date for furnishing of **FORM GSTR-3B** for the month of April 2022 till the 24th day of May 2022.

- Central Tax hereby extended the due date for the payment of tax in **FORM GST PMT-06** for the month of April 2022 till 27th May 2022.

Notification No.07/2022

Central Tax inserted a proviso to Notification No.73/2017-Central Tax dated 29/12/2017, that provided for waiver of late fee payable in case of delay in filing of FORM GSTR 4 within the due date. The amendment to the notification waived off late fee for the period 1st day of May 2022 to 30th June 2022.

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