Tax INFORM

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Circulars and Notifications

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DIRECT TAX

A. Recent Case Laws

I. Domestic Tax Rulings

WIPRO Ltd. [2022] 140 taxmann.com 223 (SC)

Revised return can neither substitute the original return nor convert the original return into a belated return.

Facts: The assessee, a public limited company, is a 100% export-oriented unit and engaged in the business of running a call centre and IT Enabled and Remote Processing Services. The assessee clamed exemption under Section 10B in its original return annexing a note to the computation stating that the company is a 100% export-oriented unit and entitled to claim exemption under Section 10B of the Act and therefore no loss is being carried forward. Thereafter the assessee filed a declaration with the AO stating that it does not want to avail the benefit under Section 10B of the Act and filed a revised return effecting the same claiming carry forward of loss. The AO made addition with respect to denial of claim of carry forward of loss on the grounds that no declaration was filed before the due date of filing return. The Ld. CIT(A) upheld the order passed by the Assessing Officer. However, the Hon'ble ITAT allowed the assessee's claim for carry forward of losses under Section 72 of the Act. The Hon'ble Karnataka High Court dismissed the appeal preferred by the Revenue and confirmed the order passed by the Hon'ble ITAT.

Issues before the Hon'ble Supreme Court (SC): Whether, for claiming exemption under Section 10B(8) of the IT Act, the assessee is required to fulfil the twin conditions, namely:

(i) furnishing a declaration to the assessing officer in writing that the provisions of Section 10B(8) may not be made applicable to him.

(ii) the said declaration to be furnished before the due date of filing the return of income under sub-section (1) of Section 139 of the IT Act.

Hon'ble SC's ruling:

- The assessee can file a revised return in a case where there is an omission or a wrong statement. But a revised return of income, under Section 139(5) cannot be filed, to withdraw the claim and subsequently claiming the carried forward or set-off of any loss.

- By filing the revised return of income, the assessee cannot be permitted to substitute the original return of income filed under section 139(1) of the IT Act. Thus, filing a revised return cannot mean that the assessee has complied with the condition of furnishing the declaration before the due date of filing the original return of income under section 139(1) of the Act.

- The Hon'ble SC observed that, claiming benefit under section 10B(8) and furnishing the declaration as required under section 10B(8) in the revised return of income, in effect, was much after the due date of filing the original return of income under section 139(1) of the Act.

- Further, since the assessee filed its return u/s 139(1) and not u/s 139(3), a revised return cannot transform a return filed u/s 139(1) into a return under Section 139(3), in order to avail the benefit of carrying forward or set-off of any loss under Section 80 of the Act.

- The significance of filing a declaration under section 10B(8) can be said to be co-terminus with filing of a return under section 139(1), as a check has been put in place by virtue of section 10B(5) to verify the correctness of claim of deduction at the time of filing the return.

- In case of withdrawal of the claim u/s 10B, the accountant's report under section 10B(5) would become falsified and would stand to be nullified.

- In light of the above, the Hon'ble Supreme Court set aside the order of the Hon'ble High Court and allowed the appeal in favour of the revenue.

ERA Infrastructure (India) Ltd [TS-577-HC-2022(DEL)]

The Finance Act, 2022 amendment to Sec.14A for disallowance of expenditure which is "for the removal of doubts" cannot be presumed to be retrospective.

Facts: The Revenue had filed this appeal against the Tribunal's order deleting the disallowance of Rs.3,61,53,268/- for AY 2013-14, that was made by the Assessing Officer under Rule 8D of Income Tax Rules, 1962 read with Section 14A of the Act. This was done by the Tribunal, relying on the jurisdictional HC ruling in PCIT vs. IL & FS Energy Development, wherein it was held that no disallowance under Section 14A of the Act can be made if the assessee had not earned any exempt income. Revenue contented that the decision has not been accepted and has preferred an SLP against the said decision and therefore was not applicable. Also, the Revenue contended that an amendment has been made by the Finance Act, 2022 to Section 14A of the Act by inserting a non obstante clause and an explanation after the proviso, vide which a change has been brought about. As such, the decision in case of PCIT vs. IL & FS Energy Development Company Ltd is no longer a good law.

Issue before the Hon'ble Delhi High Court: Whether present appeal is being covered by the decision of jurisdictional HC in the case of PCIT vs. IL & FS Energy Development Company Ltd and applicability of amendment to Section 14A of the Act with effect from 1st April, 2022 in the present case.

Hon'ble Delhi High Court's ruling:

- The Hon'ble High Court referred to the Memorandum of the Finance Bill, 2022 and observed that it explicitly stipulates that the amendment made to Section 14A will take effect from 1st April 2022 and will apply in relation to the assessment year 2022-23.

- Relies on Sedco Forex International Drill. Inc. v. CIT, (2005) 12 SCC 717, which has held that a retrospective provision in a tax act which is "for the removal of doubts" cannot be presumed to be retrospective, even where such language is used, if it alters or changes the law as it earlier stood.

- Holds that "the amendment of Section 14A, which is "for removal of doubts" cannot be presumed to be retrospective, even where such language is used, if it alters or changes the law as it earlier stood".

- Remarks that though the judgment of this Court has been challenged and is pending adjudication before the Supreme Court, yet there is no stay of the said judgment till date and therefore present appeal is dismissed being covered by the judgment passed by the learned predecessor Division Bench in PCIT vs. IL & FS Energy Development Company Ltd.

- Clarifies that the order passed in the present appeal shall abide by the final decision of the Supreme Court in the SLP filed in the case of PCIT vs. IL & FS Energy Development Company Ltd.

Bank of India [TS-513-ITAT-2022(Mum)]

Faceless Appeal Scheme, 2021 - personal hearing to invariably be granted, on-demand, through video conferencing - applicable retrospectively.

Facts: The cross-appeals are filed against the order passed by the National Faceless Appeals Centre (NFAC) in the matter of order giving effect (OGE) to the order passed by a coordinate bench, under section 143(3), r.w.s. 254 of the Income Tax Act, 1961 ("the Act"), for assessment year 2010-11. The assessee contended before the Hon'ble Tribunal that despite the specific request, and without disposing of the same, the assessee was declined an opportunity for hearing through the video conferencing and NFAC simply proceeded to dispose of the appeal based on material on record.

Issue before the Hon'ble Mumbai Tribunal: Whether the NFAC has erred in not granting an opportunity to present the case through the video conferencing, as specified under the Faceless Appeals Scheme 2020, provided under section 250 (6B) of the Act?

Hon'ble Mumbai Tribunal's ruling:

- The Hon'ble Tribunal observed that in terms of Rule 12(2) of the National Faceless Appeals Scheme 2020, the assessee may request for personal hearing to make his oral submissions or present his case before the Appeal Unit, and it was incumbent upon the Chief Commissioner, or the Director-General concerned, to either grant the opportunity or decline the same for the reasons to be set out.

- Opines that the right course of action would be to send the matter back to the NFAC for taking a call on whether to permit the assessee to make submissions through the video conferencing - as was done by Hon'ble Madras High Court in the case of Ramco Cement ([2022] 442 ITR 279 (Madras)[03-02-2022).

- Notes that, in a subsequent development, by way of a notification of the Faceless Appeals Scheme 2021 ('the new rules'), in supersession of the Faceless Appeals Scheme 2020, the opportunity of a personal hearing, through video conferencing, is to be granted in all such cases in which the request for a personal hearing is made.

- The Hon'ble ITAT further observes that it is an amendment in the faceless appeal rules, which is meant to obviate the undue hardships of the assessee in presenting their cases to the first appellate authority, and when such an amendment is made to cure the shortcomings of the scheme, and thus obviate the unintended hardships to the taxpayers, the amendment is to be treated as retrospective in effect. It is for the reason of the well-settled legal position that a curative amendment in the law is to be treated as retrospective in nature, even though it may not state so specifically. Relies on SC's Constitution Bench ruling in Vatika Township (2009] 314 ITR 338 (SC)) on the principles of retrospectivity.

- Thus, holds that "we deem it fit and proper to remit the matter to the first appellate authority after giving an opportunity for a personal hearing, in terms of Rule 12 of the Faceless Appeals Rules 2021, for adjudication de novo in accordance with the law and by way of a speaking order".

Cummins Sales & Services (I) Ltd. (Formerly known as Cummins Diesels Sales & Services Ltd.) [TS-523-ITAT-2022(PUN)]

Disallows set-off of losses to Cummins despite HC's approval to demerger, since sole and underlying purpose was tax-benefit.

Facts: The assessee company had claimed set-off of brought forward business losses of Rs.16.54 Cr. and unabsorbed depreciation of Rs.3.47 Cr. pertaining to demerged undertaking that vested with the assessee for AY 2006-07. The AO disallowed the assessee's claim of brought forward loss and unabsorbed depreciation on the grounds that the scheme of

demerger was not carried out for genuine purposes. The CIT(A) held that once the demerger had been approved by the Hon'ble Bombay High Court, it is not within the jurisdiction of the Assessing Officer to question the motive behind the demerger and thus passed the order in assessee's favour.

Issue before the Hon'ble Pune Tribunal: Whether the set-off of losses should be allowed to the assessee merely because the Hon'ble High Court has approved the scheme of Demerger?



Hon'ble Pune Tribunal's ruling:

- The Hon'ble Tribunal observed that there was no doubt that the information contained in the Balance Sheet as on 31.03.2006, wherein it is mentioned that the assets of the demerged undertaking were held for sale, clearly revealed that there was no intention on part of the respondent-assesseee company to continue the business of demerged undertaking.

- The material on record also indicated that the respondent-assessee company had not carried on any business of demerged undertaking after date of approval of demerger by the Hon'ble High Court on 12.01.2007.

- Even though it is a settled position of law that the scheme of demerger once approved by the Hon'ble Jurisdictional High Court, it cannot be re-visited by any statutory authority, the provisions of income-tax act had prescribed the conditions under which the set-off of

brought forward business losses can be allowed in the case of amalgamation and demerger.

- Thus, mere fact that the scheme of demerger/amalgamation was accorded approval by the Hon'ble Jurisdictional High Court does not automatically entitle the assessee to claim the set-off of brought forward business losses.

- The Hon'ble Tribunal also referred to the case of IEL Ltd. vs. Union of India, 195 ITR 232 (Delhi), wherein it was held that the benefit of section 72A cannot be availed if the sole idea of the amalgamation was to avail the benefit of carried forward business losses and unabsorbed depreciation losses, as it is not for genuine purpose. The Hon'ble Tribunal also relied on the decision of Ballarpur Industries Ltd. vs. CIT, 398 ITR 145 (Bom.).

- The Hon'ble Tribunal was of the considered opinion that the objective behind enactment of entire provisions of section 72A is the same even after the insertion of sub-section (4) of section 72A dealing with cases of demerger. The said object is also made clear vide the memorandum explaining the provisions of Finance (No.2) Bill of 1997.

- The above object was also explained by the Hon'ble Supreme Court in the case of CIT vs. Mahindra & Mahindra Ltd., 144 ITR 225 (SC).

- In the present case, admittedly, after the scheme of demerger, the assessee had not carried on any business of demerged undertaking and the fact that the assets transferred to the demerged unit, were held for sale, goes to demonstrate the intention of the appellant that they had no intention of carrying on business of demerged undertaking.

- The Hon'ble Tribunal has reversed the order of the Ld. CIT(A) in this regard and decided against the assessee.

II. International Tax Rulings

EY Global Services Limited [TS-560-ITAT-2022(DEL)]

Providing access to technology, software licenses and other support services to its member firms, does not amount to 'royalty' and thus, is not liable to be taxed in India under the provisions of the Act or the India-UK DTAA.

Facts: The assessee is established as a non-profit central service provider of technology and other support services and software licenses to the member firms of the EY network. For this centralised shared service, the assessee's member firms share the costs. The assessee furnished its return of income, declaring NIL income and contended that the payments received from the Indian member firms are reimbursement of costs and hence, not taxable under the Income-tax Act, as well as under the India-UK DTAA. On application made to the Hon'ble AAR, it decided against the assessee, holding the payments to be taxable as "royalty" under the Act as well as under the DTAA. Based on this ruling, the AO framed the assessment and passed the final assessment order, holding the payments to be liable to tax @ 10% as "Royalty" under the Act as well as under the DTAA. Upon appeal, the CIT(A) held that the appeal is non-maintainable, as the assessment order was only to give effect to the AAR's decision, and the CIT(A) cannot decide the ground of appeal on the issues decided by the AAR. The assessee, in its own case for AYs 2010-11 & 2011-12, on the same issue, filed a writ petition before the Hon'ble jurisdictional High Court, against the Hon'ble AAR's ruling and the order was passed in the assessee's favour.

Issue before the Hon'ble Delhi Tribunal: Whether the CIT(A) erred in facts and in law in holding that no appeal is maintainable on the above ground, as the matter has already been decided by the AAR in appellant's own case, and while doing so, has ignored the rulings of Hon'ble High Courts on a similar issue, including that of the jurisdictional Hon'ble Delhi High Court?

Hon'ble Delhi Tribunal's ruling:

- The Hon'ble Tribunal noted that the ITAT, in assessee's own case for AYs 2010-11 & 2011-12, has adjudicated this issue, holding that where the Revenue authorities have only followed the ruling of the Hon'ble AAR in assessee's own case, no fault can be found in their orders in the appellate proceedings.

- The Hon'ble Tribunal further noted that the Hon'ble Delhi High Court, on appeal against the above referred case, has reversed the order of the Hon'ble AAR, holding that the assessee, in terms of the service agreement and the MOU, merely received the right to use the software procured by its another firm member from third-party vendors. The rights acquired by another firm from such third-party vendors are not relevant. Further, taking reference to the Judgment of Supreme court in the case of Engineering Analysis Centre of Excellence Pvt Ltd v CIT , the High Court held that the agreement between the

assessee and its member firms does not create any “right to transfer” the copyright in the software, to hold it as a “royalty”.

- Hence, the Tribunal in the current case, remitted the matter to the AO, directing the AO to pass an order, following the judgment of the Hon’ble Delhi High court in assessee's own case, as the Delhi High Court order was not in existence when the lower authorities had passed their initial order.

Hemera India Pvt. Ltd [TS-489-ITAT-2022(DEL)]

Service Fee paid to UK Company for client-introduction not FTS but regular business expenditure.

Facts: The assessee, a private limited company, had claimed an expenditure of Rs. 32,02,446/-, under the head "consultancy fees" paid to a UK company, on which no TDS was deducted. The AO disallowed the same u/s 40(a)(i) of the Act, treating the same to be in the nature of “Fees for technical services”. The CIT(A) confirmed the order of the AO, on the grounds that the assessee had paid the consultancy charges, to UK company, for rendering of market and sales promotion services and for arranging a client, engaged in business in India. Thus, the same was fees for technical services and the same being income of the assessee arising in India, was rightly brought to tax in India in assessee’s hands.

Issue before the Hon’ble Delhi Tribunal: Whether it was correct on the part of the AO to make an addition under section 40(a)(i) of the Act, treating the Service fee paid to the UK company as Fees for technical services and ignoring the fact that the same is in the nature of ‘commission on sale of goods’?

Hon’ble Delhi Tribunal's ruling:

- The Hon’ble Tribunal observed that the foreign entity did not provide any ‘managerial service’ to the assessee company and merely on conjecture, the concept of fees of technical services has been introduced. In fact, it was a normal business payment that was covered within the scope of Article 7, read with Article 5 of DTAA between India and United Kingdom.

- The Tribunal considered the assessee's reliance on the following judgements for concluding on the subject matter:
    a. In the case of CIT Vs. Grup Ism (P) Ltd. [2015] 57 taxmann.com 450(Delhi), it was held that where an agent acting as a liasioning agent of the assessee company in UAE, received remuneration from each client successfully solicited for the assessee, such remittances made by the assessee to the agent, would not come within the scope of phrase ‘fees for technical services’, as employed in section 9(1)(vii) of the Act.

b. In the case of DIT (Intl. Tax) Vs. Panalfa Autolectrick Ltd. [2014 49 taxmann.com 412 (Delhi), it was held that commission paid by assessee to its foreign agent for arranging of export sales and recovery payments could not be regarded as 'fee for technical services'.

c. Further, in the case of Welspring Universal Vs. JCIT, New Delhi [2015] 56 taxmann.com 174 (Delhi-Trib.), the Delhi Bench of Tribunal has held that commission in hands of non-resident can neither be considered as received or deemed to be received in India or accruing or arising or deemed to accrue or arise in India in terms of section 5(2) r.w.s. 195 and the assessee was not liable to deduct tax at source u/s 195.

- The Bench opined that once the Revenue admitted that the payments made were consultancy charges for introduction of client then, that would fall in the definition of payments made to intermediary or liaison agents for channelizing, arranging or soliciting work order.

- The Hon'ble ITAT has held that the nature of transaction between the assessee and the foreign entity was not of providing any technical services but was a normal business payment to an intermediary.



Hyderabad Educational Institutions Pvt. Ltd [TS-430-ITAT-2022(HYD)]

Remittances to Cambridge University & IB for imparting instructions on syllabus not taxable as FTS.

Facts: The Assessee Company, an educational institution, made payments to two foreign institutions, viz. University of Cambridge (UK) and International Baccalaureate (IB) (Switzerland) in connection with the schools run by it. These payments made by them were, firstly, towards payment of examination fees collected from the students and secondly, as fees for syllabus, setting up of question papers and training of teachers. The assessee did not deduct any TDS on the aforesaid payments u/s 195, as no income accrued or arose to the aforesaid foreign universities and educational institutions in India. The Ld. CIT(A) took the view that considering the provisions contained in DTAAs, the amount paid to the above two universities do not come under the clutches of either "technical services" or "royalty services". The Ld. CIT(A) made reference to the decisions reported in ACIT Vs. M/s. Mahindra Holidays & Resorts (I) Limited (131 TTJ (Chennai)(SB) 1) and the decision of the Hon'ble Karnataka High Court in the case of CIT Vs. DE Beers India Minerals P. Ltd., (2012) (346 ITR 467) (Kar) to reach the conclusion that the activities conducted by the foreign universities in this case are out of technical/royalty services.

Issue before the Hon'ble Hyderabad Tribunal: Whether amounts paid to foreign institutions, viz. University of Cambridge (UK) and International Baccalaureate (IB) (Switzerland) would be taxable as "Fees for Technical Services"?

Hon'ble Hyderabad Tribunal's ruling:

The Hon'ble Tribunal concurred with the decision of the Ld. CIT(A) that:

- It is not the case of Revenue that, the said remittance to the foreign universities is out of the funds of the assessee, but is from the fee collected and directly remitted to the foreign universities. No part of such receipt is retained by the assessee, nor is any additional expenditure in that respect incurred by the assessee.

- The case of assessee is that they are imparting instructions in India as per the syllabus set by the foreign universities, and subsequently, foreign universities are conducting the examinations before issuing the degrees. In these circumstances, the finding of the Ld. CIT(A) that the assessee is only a pass-through entity, in the sense that they are collecting the exam fee on behalf of the foreign universities, does not appear to be unreasonable or perverse.

- Article 13 (5)(c) of the DTAA between India and the UK, and Article 12 (5)(a) of the DTAA between India and Switzerland clearly reads that the definition of fee for technical services does not include any amount paid for teaching in or by educational institutions. The Ld. CIT(A) took the view that in view of this provision contained in DTAAs, the amount

paid to the above two universities do not come under the clutches of the technical services or the royalty services.

- The Ld. CIT(A) referred to the decisions reported in ACIT Vs. Mahindra Holidays and Resorts (I) Ltd. (supra) and the decision of the Hon'ble Karnataka High Court in the case of CIT Vs. DE Beers India Minerals P. Ltd., (supra) to reach the conclusion that the activities conducted by the foreign universities in this case are out of technical/royalty services.

- The expression 'teaching in or by educational institution' cannot be confined to the activity of imparting the instructions alone. In a broader sense, teaching includes not only imparting of the instructions but also the verification of the extent of perception of such instruction by the pupil and thereby includes the activity of examinations also.

- In this sense, this activity falls in the ambit of the exemption clause in the DTAAs, which exempts the amounts paid for teaching in or by the educational institutions.

Natasha Chopra [TS-535-ITAT-2022(DEL)]

Foreign rental income declared in returns filed in respective countries, not includible in Indian income.

Facts: The assessee, an individual tax resident in India, derived rentals from properties held in Australia and England which was declared by her in her tax returns in the respective countries. The AO, referring to the CBDT Notification No. 91/ 2008, dated Aug 28, 2008, made addition of the rental income, inferring that the words 'may be taxed' used in Article 6(1) of the DTAA would be construed as 'shall be taxed', as laid down by the aforesaid Circular. The CIT(A) concurred with the order of the AO.

Issue before the Hon'ble Delhi Tribunal: Whether the rentals earned in Australia and UK, which were declared in the tax returns of the respective countries, be brought to tax in India?

Hon'ble Delhi Tribunal's ruling:

- Article 6(1) of DTAA with UK which reads as *"Income from immovable property may be taxed in the Contracting State in which such property is situated".*

- Further, the Notification No. 91/2008 dated 28.08.2008 construed that the words "may be taxed" shall be read as "shall be taxed". Reading both the above article and notification together, the AO brought the rental income to tax in India.

- However, the provisions of section 90 have specifically laid down that there would be no double taxation of a particular income in two countries and that in relation to the assessee to whom the DTAA applies, the provisions of this Act shall apply to the extent they are more beneficial to that assessee.

- The Hon'ble Tribunal thus held that, in the absence of an express provision, the right of the resident country to tax its residents cannot be taken away under the DTAA. Therefore, the expression "may be taxed" cannot be construed to mean "shall be taxable only in the Resident State", unless it is expressly stated.

B. Notifications/Circulars

Notification S.O. 2910(E) [NO. 69/2022/F.NO. 500/SWF1/S10(23FE)/FT&TR-II-PT. 3], DATED 27-6-2022

The Central Government, vide this notification has notified Seventy Second Investment Company LLC, bearing PAN: ABICS2676N, an entity controlled by the Government of Abu Dhabi, as a specified person, for the purpose of claim vis-a-vis exemption of specified Income, under section 10(23FE) w.r.t. the Investments made on or before 31st March, 2024, subject to satisfaction of all the following conditions:

- It files return of Income (ROI) for all the previous years beginning from the date of investment and ending on date of liquidation of investments on or before the due date specified under section 139(1), along with conduct of audit of books of accounts and filing of audit report, in the format specified in the notification, at least a month prior to due date of filing of ROI under section 139(1).

- E-Filing of Quarterly statement in specified form within a month from the end of quarter during which the investments were made.

- Maintenance of segmented account of income and expenditure for investments qualifying for exemption under section 10(23FE);

- At any time, it is being controlled by Government of Abu Dhabi only;

- It continues to be regulated by the laws of Government of United Arab Emirates or the Government of Abu Dhabi or both;

- The earning shall be credited to the account of the Government of Abu Dhabi or to any other account designated by that Government;

- No loans or borrowings for the purpose of this investment in India should have been made;

- The assets upon dissolution shall vest in the Government of Abu Dhabi net off payment to creditors or depositors for loan or borrowings made for the purpose other than making investment in India; and

- No participation in day-to-day operations of investee shall be made, except such monitoring mechanism required to protect the investment.

Notification S.O. 2928(E)[NO. 70/2022/F. NO. 500/1/2014-APA-II], DATED 28-6-2022

The Central government has, vide this notification, provided that where the difference between the arm's length price and the price at which international or specified domestic transaction takes place, does not exceed 3% of the latter, in case of wholesale trading and 1% of the latter in all other cases then, the price at which the international or specified domestic transaction actually takes place, would be deemed to be the arm's length price. The notification explains "wholesale trading" as international or specified domestic transaction of trading of goods, wherein the purchase cost of finished goods is at least 80% of the total cost of such trading activities and the average monthly closing inventory of such goods, is not in excess of 10% of sales of such trading activities.

Notification G.S.R. 482(E) [NO. 73/2022/F. NO. 370142/29/2022-TPL (PART-I)], Dated 30-6-2022 as corrected by Notification G.S.R. 505(E) [NO. 77/2022/F.NO. 370142/29/2022-TPL (PART-I)], DATED 1-7-2022

The CBDT has, vide this notification, inserted in Rule 31A, the requirement for Exchange to furnish quarterly statement in Form 26QF for payment of tax in relation to transactions of transfer of virtual digital assets [VDA] owned by it. The details to be furnished in the statement would include details of amount paid or credited on which tax was not deducted as per section 194S(6). The notification further specifies the format of Form No. 26QF.



Notification S.O. 2958(E) [NO. 74/2022/F. NO. 370142/29/2022-TPL(PART-I)], DATED 30-6-2022

The Central Government has, vide this notification, excluded the following from the definition of VDA:

- Gift card or vouchers that may be used to obtain goods or services or discounted goods or services.
- Mileage points, reward points or loyalty card without monetary consideration and that which may be used only to obtain goods or services or discounted goods or services.
- Subscription to website or platforms or application.

Notification S.O. 2959(E) [NO. 75/2022/F. NO. 370142/29/2022-TPL (PART-I)], DATED 30-6-2022

The Central Government has, vide this notification, included non-fungible tokens as VDA in the definition of VDA. However, this shall exclude a non-fungible token whose transfer results in legally enforceable transfer of ownership of underlying tangible asset.

Notification S.O. 3105(E)[NO. 79/2022/F. NO. 300196/38/2021-ITA-I], DATED 6-7-2022

The Central Government has, vide this notification, notified Uttar Pradesh Electricity Regulatory Commission, bearing PAN: AAALU0227H, as eligible to claim exemption under section 10(46) w.r.t. the Income received by it in the form of Government Grants, License fees and fines and any interest received on such Income earned during Financial Year (FY) 2021-22 to 2025-26. The exemption is subject to conditions that it is not engaged in any commercial activity, the activities and the nature of specified income remains unchanged during the FYs and return of Income is filed under section 139(4C).

Notification G.S.R. 524(E)[NO. 80/2022/F. NO. 370142/11/2022-TPL], DATED 8-7-2022

The CBDT has, vide this notification, inserted Rule 21AL, notifying the 'other conditions for original fund of direct or indirect aggregate investment', by persons resident in India, not exceeding 5% of corpus in original fund being Category III Alternative Investment Fund, at the time of transfer of share or unit, or interest under section 47(viiad), held by Shareholder or unit holder or interest holder of such fund.

Notification S.O. 3142 (E) [NO. 81/2022/F.NO. 300196/14/2021-ITA-I], DATED 8-7-2022

The Central Government has, vide this notification, notified Bihar Electricity Regulatory Commission, bearing PAN: AAALB1099E, as an eligible state constituted commission to claim exemption under section 10(46), w.r.t the Income received in the form of licence fee from licensees in electricity and any interest received on such income and government grants earned during Financial Year (FY) 2021-22 to 2025-26. The exemption is subject to conditions that it is not engaged in any commercial activity, the activities and the nature of specified income remains unchanged during the FYs and return of Income is filed under section 139(4C).

Notification S.O. 3148(E) [NO. 82/2022/F. NO. 187/3/2020-ITA-I], DATED 8-7-2022

The CBDT has, vide this notification amended its earlier Notification no. 60/2014, substituting the word “Table” with “Schedule” and designating respective Commissioner of Transfer Pricing to be subordinate to specified Chief Commissioner of Income tax only.

Notification G.S.R. 537(E) [NO. 83/2022/ F. NO. 370142/30/2022-TPL], DATED 12-7- 2022

The CBDT has, vide this notification, prescribed Form 8A under Rule 16 r.w. Section 158AB(2) of the IT Act. This notified form shall be used by the AO (on direction of Principal

Commissioner/Commissioner) to make an application before the Appellate Tribunal (AT) or Jurisdictional High Court (HC), as the case may be, stating that an appeal on the question of law arising in the relevant case of assessee may be filed before them, when the identical matter in case of the assessee concerned or any other assessee for any other Assessment year pending before the Jurisdictional HC or Supreme Court, reaches finality.

Notification G.S.R. 537(E) [NO. 85/2022/ F. NO. 300196/17/2022--ITA-I], DATED 21-7- 2022

The Central Government, has, vide this notification, notified Odisha Electricity Regulatory Commission, bearing PAN: AAALO0073B, as eligible body constituted by the State of Odisha, to claim exemption under section 10(46) of Income received in the form of License fees, application processing fees and interest earned on such Income and on Government grants, during FY 2021-22 to 2025-26. The exemption is subject to conditions that it is not engaged in any commercial activity, the activities and the nature of specified income remains unchanged during the FYs and return of Income is filed under section 139(4C).

Notification No.3/2022 [F.NO. DGIT(S)-ADG(S)-3/ E-FILING NOTIFICATION/ FORMS/ 2022/ 3813], DATED 16-7-2022

The DGIT, with the approval of the CBDT, has notified the following forms, returns, statements, reports, etc.:

Sr. No.	Form	Description
1	3CEF	Annual Compliance Report on Advance Pricing Agreement
2	10F	Information to be provided under sub-section (5) of section 90 or sub-section (5) of Section 90A of the Act.
3	10IA	Certificate of the medical authority for certifying 'person with disability', 'severe disability', 'autism', 'cerebral palsy' and 'multiple disability' for the purposes of section 80DD and section 80U.
4	3BB	Monthly statement to be furnished by a Stock Exchange in respect of transactions in which client codes have been modified after registering in the system for the relevant month.
5	3BC	Monthly statement to be furnished by a Recognized Association in respect of transactions in which client codes have been modified after registering in the system for the relevant month.
6	10BC	Audit report under (sub-rule (1) of rule 17CA) of the Rules , in the case of an electoral trust.

7	10FC	Authorization for claiming deduction in respect of any payment made to any financial institution located in a notified jurisdictional area.
8	28A	Intimation to the Assessing Officer under section 210(5) regarding the Notice of demand under section 156 of the Act, for payment of advance tax under section 210(3)/210(4) of the Act.
9	27C	Declaration under sub-section (1A) of section 206C of the Act, to be made by a buyer for obtaining goods without collection of tax.
10	58D	Report to be submitted by a public sector company, local authority or an approved association or institution under clause (ii) of sub-section (5) of section 35AC of the Act, to the National Committee, on a notified eligible project or scheme.
11	58C	Report to be submitted under clause (ii) of sub-section (4) of section 35AC of the Act, to the National committee, by an approved association or institution.
12	68	Form of application under section 270AA(2) of the Act.

Circular No. 14/2022 [F. NO. 370142/29/2022-TPL (PART-I)], DATED 28-6-2022

The CBDT has, with approval of the Central Government, issued the following clarifications for deduction of tax under section 194S on transactions in VDA not made through an Exchange:

- In a direct Peer to Peer (buyer to seller) transaction, the person paying the consideration i.e. the buyer shall deduct the applicable tax, deposit the same with Government and furnish the statement in applicable Form No. 26Q/26QE.
- Tax shall be deducted on consideration of VDA, net of GST.
- For transactions involving consideration in kind, no such consideration shall be released by the buyer unless the seller pays the applicable tax and submits the proof of such payment to the buyer. Likewise, for transaction involving exchange of VDAs, the same shall be exchanged only after both the buyer and seller have paid the deductible tax and shown the evidence of the same to the other.
- The above transactions shall be reported in Form 26Q/26QE as applicable.
- No tax shall be deducted under section 194Q if the tax is deducted under section 194S.

Circular No. 15/2022 [F. No.197/89/2022-ITA-1], DATED 19-07-2022

The CBDT has, vide this Circular, issued following directions for admission of applications in respect of condonation of delay in filing of Audit Form 10BB required under section 10(23C):

Sr. No	Period of Delay	Authority to Admit condonation application	Application Admission Subject to
1	Years prior to A.Y.2018-19	Commissioner of Income tax (CIT)	Satisfaction of CIT that applicant was prevented by reasonable cause from filing.
2	Not more than 365 days for A.Y.2018-19 & subsequent A.Ys	Commissioner of Income tax (CIT)	Satisfaction of CIT that applicant was prevented by reasonable cause from filing and on merits.
3	More than 365 days and up to 3 years for A.Y.2018-19 and subsequent A.Ys.	Pr. Chief Commissioner of Income tax (PCCIT)/Chief Commissioner of Income tax (CCIT)	Satisfaction of PCCIT/CCIT that applicant was prevented by reasonable cause from filing and on merits.

The PCCIT/CCIT shall dispose of the application within 3 months of receipt of such application.

Circular No. 16/2022 [F.No.197/89/2022-ITA-1], DATED 19-07-2022

The CBDT has, vide this Circular, issued following directions for admission of applications in respect of condonation of delay in filing of Audit Form 10B required to be filed by a Charitable or religious trust or Institution registered u/s 12A or has submitted application for registration under Form 10A:

Sr. No.	Period of Delay	Authority to Admit condonation application	Application Admission Subject to
1	Not more than 365 days for A.Y.2018-19 & subsequent A.Ys	Commissioner of Income tax (CIT)	Satisfaction of CIT that applicant was prevented by reasonable cause from filing and on merits
2	More than 365 days and up to 3 years for A.Y.2018-19 and subsequent A.Ys.	Pr. Chief Commissioner of Income tax (PCCIT)/Chief	Satisfaction of PCCIT/CCIT that applicant was prevented by reasonable cause from filing and on merits

		Commissioner of Income tax (CCIT)	

The PCCIT/CCIT shall dispose of the application within 3 months of receipt of such application.

Circular No. 17/2022 [F.No.197/89/2022-ITA-1], DATED 19-07-2022

The CBDT has, vide this Circular, issued following directions for admission of applications in respect of condonation of delay in filing of Form 9A and Form 10 required to be filed under section 11:

Sr. No.	Period of Delay	Authority to Admit condonation application	Application Admission Subject to
1	Not more than 365 days for A.Y.2018-19 & subsequent A.Ys.	Commissioner of Income tax (CIT)	Satisfaction of CIT that applicant was prevented by reasonable cause from filing and on merits
2	More than 365 days and up to 3 years for A.Y.2018-19 and subsequent A.Ys.	Pr. Chief Commissioner of Income tax (PCCIT)/Chief Commissioner of Income tax (CCIT)	Satisfaction of PCCIT/CCIT that applicant was prevented by reasonable cause from filing and on merits. Further in respect of Form 10 the PCCIT/CCIT shall also be satisfied that the amount accumulated/Set apart is invested/deposited in one or more forms/modes specified u/s 11(5) of the Act

The PCCIT/CCIT shall dispose of the application within 3 months of receipt of such application.

INDIRECT TAX

Goods & Services Tax

A. Recent Case Laws:

Ramesh Kumar Patodia vs Citi Bank NA and ors. [TS-339-HC(CAL)-2022-GST]

Calcutta High Court held that the interest portion of EMI on a loan availed against a credit card is a taxable supply.

In this case, the Petitioner had availed a loan on his credit card and the same was repayable at regular intervals along with interest. The Applicant had noticed in his credit card statement that Integrated Goods and Services Tax (hereinafter referred to as "IGST") was levied on the interest portion. Aggrieved with the tax charged, the Petitioner filed a writ petition before the Calcutta High Court (hereinafter referred to as "High Court") for the quashing of the tax portion on the loan availed. The Petitioner contended that as per Exemption Notification No.9/2017 dated 28 June 2017, the services by way of interest on loans were not chargeable to tax and hence, the bank erred in levying tax on the loan availed by the Petitioner. The High Court held that the loan offered by the bank was exclusively for credit card holders and such services provided by the bank were to be treated as credit card services and not a loan service. Hence, the Court held that credit card services provided by the bank do not fall under the purview of the said exemption notification and therefore, the interest portion of the loan availed was chargeable to tax.

Dry Blend Foods Pvt. Ltd. [TS-311-AAR(UTT)-2022-GST]

AAR held that taxability under RCM does not arise when services for facilitating the sale of spice are received from Overseas Commission Agents

In this case, the Applicant was a company engaged in the manufacture and supply of seasonings, spices, premixes, and similar food products to its customers locally and globally. The Applicant had entered into an agreement with Overseas Commission Agents to assist in the export of goods to customers located outside India. The Applicant had approached the Uttarakhand Authority for Advance Ruling (hereinafter referred to as "AAR") to inquire whether the Overseas Commission Agent would be termed as an "intermediary" as per Section 2(13) of the Integrated Goods and Services Tax Act, 2017 (hereinafter referred to as "IGST Act") and whether the services received would tantamount to "import

of services" as per Section 2(11) of the IGST Act, 2017 for which duty was payable under reverse charge basis. The AAR upon observation of the agreement entered into between both the parties, noted that the Agent was facilitating the supply of goods for a commission and hence, was classifiable as an intermediary. Further, the AAR held that as the place of supply of service was outside India, the said service was not classifiable as "import of service" and hence, tax under reverse charge was also not applicable in this situation.

Garhwal Mandal Vikas Nigam Ltd. [TS-313-AAR(UTT)-2022-GST]

AAR held that consideration received in the form of a "grant" for services to the Government was exempt from GST.

In this case, a government entity, was intending to provide construction and repair activities to the Central and State Government, the consideration for which was paid in the form of grants. The Applicant filed an application before the Uttarakhand Authority for Advance Ruling (hereinafter referred to as "AAR") inquiring whether the said supply was a supply of goods or services and if the said supply was exempt. The AAR noted that the applicant had not disputed that the grant received by them was "consideration" and continued to assess whether the Applicant was eligible for an exemption. Further, the AAR noted that under Notification No.12/2017 dated 28/06/2017, services by a government entity to the government or any other government entity would be exempt and accordingly held that such supply of service by the Applicant to the Government was exempt from tax irrespective of the fact that consideration was received in the form of 'grants'.

Coronation Arts Crafts [TS-334-AAR(TN)-2022-GST]

AAR held that contents provided by recipient for the printing of leaflets is taxable at 18%.

In this case, , the Applicant was a supplier of printed leaflet products to a Government of India enterprise. The Applicant approached the Tamil Nadu Authority for Advance Ruling (hereinafter referred to as "AAR") to obtain a ruling on whether such supply of printed leaf where the content is provided by the recipient is classifiable as a supply of goods or services. The AAR observed Circular No.11/11/2017-GST dated 20-10-2017 which stated that in the matter of classification of printed articles, the predominance element plays an important role in the determination of classification of supply of goods or services. Hence, in the present scenario, the content on the printed leaflets plays an important and therefore, such supply was a supply of service taxable at the rate of 12%.



Toplink Motorcar Pvt. Ltd. [TS-343-AAR(WB)-2022-GST]

AAR held that demo vehicles capitalized in the books of account were eligible for an input tax credit.

In this case, the Applicant was an authorized dealer of Hyundai Motor India Limited. The Applicant stated that in addition to the supply of motor vehicles to customers, demo cars were also purchased for providing trial run/demonstration to the customers and such purchases were capitalized in the books of account. The Applicant wanted to claim the input tax credit on such demo cars purchased as the same was used for the furtherance of his business and hence, filed an application before the West Bengal Authority for Advance Ruling (hereinafter referred to as “AAR”) to confirm whether such credit can be availed. The AAR observed that the Applicant had to hold the car for a certain period and only after the expiry of such period was the Applicant eligible for further supply of the demo car. The AAR held that such a restriction on holding the car for a certain period does not change the purpose of further supply and hence, the Applicant was eligible for claiming the input tax credit on the said demo cars as it was used for the furtherance of his business.

Myntra Designs Pvt. Ltd. [TS-351-AAR(KAR)-2022-GST]

AAR held that a tax rate of 18% was applicable on the sale of advertisement space by Myntra.

In this case, the Applicant was an e-commerce portal supplying fashion and lifestyle products to customers. The customers purchase the product from the e-commerce portal and the Applicant collects the money from the customer which is in turn settled with the supplier on a periodical basis. The Applicant entered into an Advertisement agreement with a non-resident foreign entity for the sale of advertisement space on the e-commerce portal for consideration. The Applicant had filed an application before the Karnataka Authority for Advance Ruling (hereinafter referred to as “AAR”) inquiring whether the provision of advertisement space to a foreign entity could be classified as “export of services”. The AAR observed the definition of “export of services” under Sub-section (6) of Section 2 of the Integrated Goods and Services Tax Act, 2017 (hereinafter referred to as “IGST Act”) and held that if the place of supply was in India then Central Goods and Services Tax and State Goods and Services Tax or Integrated Goods and Services Tax, as the case may be was applicable at the rate of 18%. As the AAR was to decide on the place of supply of service, no ruling was provided as the determination of place of supply was outside the jurisdiction of the Authority. However, if the said supply was intra-state supply or inter-state supply within India then the said service was taxable at the rate of 18%.



B. Notifications/Circulars

Notification No.10/2022 – Central Tax dated 5th July 2022

The said notification states that a registered person having aggregate turnover in the Financial Year 2021-22 up to two crore rupees is exempt from filing the annual return for the said financial year.

Key Contacts



G.V. GOPALA RAO
DIRECTOR – TAX
BANGALORE
+91 94835 12333
GOPALA.RAO@FOXMANDAL.IN



SANDIP MUKHERJEE
DIRECTOR – INTERNATIONAL TAX
PUNE
+91 98900 36292
SANDIP.MUKHERJEE@FOXMANDAL.IN



PRAMOD BANTHIA
DIRECTOR – INDIRECT TAX
BANGALORE
+91 98450 88696
PRAMOD.BANTHIA@FOXMANDAL.IN



RANGANATH H.
DIRECTOR – TAX
BANGALORE
+91 98807 44482
RANGANATH@FOXMANDAL.IN

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Offices at:

Ahmedabad | Bengaluru | Chennai | Hyderabad | Kolkata | Mumbai | New Delhi | Pune

www.foxmandal.in
info@foxmandal.in

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