Tax INFORM

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Circulars and Notifications

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DIRECT TAX

A. Recent Case Laws

I. Domestic Tax Rulings

Jubilant Foodworks Ltd [TS-626-HC-2022(ALL)]

Expenditure incurred for beautification of outlets on lease are revenue in nature as no new asset is created.

Facts: Assessee is engaged in business of manufacturing and sale of pizza and other related fast-food items under the brand name "Dominos" and non-alcoholic beverages from its retail outlets across the country. The assessee had claimed expenditure on account of leasehold improvement of its outlets of INR 47,37,14,260/- and INR 23,12,19,190/- for AY 2013-14 and AY 2012-13 respectively, as revenue expenditure. Revenue opined that such expenditure of beautification of outlets had enduring benefit and held it to be capital in nature not allowable, under Section 37 of the Act.

Issue before the Hon'ble Allahabad High Court: Whether expenditure incurred for beautification of outlets on lease by the assessee is revenue or capital in nature?

Hon'ble Allahabad High Court's ruling:

- The Hon'ble High Court observed that the CIT(A) has given a finding that considering the nature of business of the assessee, the modifications done in the various lease premises taken by the assessee for the purpose of business, did not create any new asset.

- The expenditure of renovation and repairs of stores assumed a character of revenue in nature and the expenditure incurred by the assessee was necessary for the purpose of business and squarely fall under section 37(1) of the Act. The Tribunal concurred with findings of the CIT(A).

- The Hon'ble High Court affirmed the finding of the Tribunal that by incurring the aforesaid expenditure no new asset has come into existence.

- Remarked that no substantial question of law was involved in the impugned order of the Tribunal.

Ujjwal Singh Vs. DCIT, CPC [ITA No. 4597/Del/2018]

The TDS credit is allowable in the year in which the income is accrued and offered for taxation even if TDS is deducted in an earlier year and denial of TDS credit in such cases would fall within the league of "mistake apparent from record" liable for rectification under section 154.

Facts: The assessee had filed its return of income for Assessment Year (AY) 2016-17 and inter alia claimed credit of TDS deducted by the deductor entity in the preceding AY i.e., AY 2015-16. The assessee claimed the TDS credit in the AY 2016-17 on the grounds that the invoice was raised by him, and the corresponding income accrued to him during AY 2016-17. The assessee had not claimed the said TDS credit in AY 2015-16, where the deduction was made by the deductor entity. The AO denied the claim of TDS while processing the return u/s 143(1) on the grounds that the same did not reflect in the Form 26AS for AY 2016-17. The assessee filed rectification application before the AO. However, the AO denied the credit of TDS. The Ld. CIT(A) dismissed the appeal of assessee on the grounds that it is a debatable issue and outside the scope of rectification u/s 154.

Issue before the Hon'ble Delhi Tribunal:

- Whether credit of TDS deducted allowed in the year of accrual of income or the year in which the deductor has deducted and paid the same?

- Whether denial of TDS credit in contradiction to section 199 r.w. Rule 37BA is a mistake apparent from record liable for rectification under section 154?

Hon'ble Delhi Tribunal's ruling:

- As per Section 199 r.w. Rule 37BA(3), the credit for TDS shall be allowed by the AO in the year in which the income has been offered to tax by the assessee.

- In the instant case, the income had been offered in the year of accrual i.e. AY 2016-17 and hence, the credit for TDS deducted thereon deserves to be allowed in AY 2016-17.

- The Hon'ble Tribunal referred to the decision of its co-ordinate bench in the case of M/s. Interglobe Enterprises Pvt. Ltd. Vs. ACIT, New Delhi [dated 7th June 2022], wherein an identical issue was dealt with and an order in favour of the assessee was passed allowing credit in the year in which the income is accrued.

- The Hon'ble Tribunal ruled that denial of TDS credit in contradiction to the plain provisions of Section 199 r.w. Section Rule 37BA is clearly in the league of apparent error and thus liable to be rectified under Section 154 of the Act.

- The Hon'ble Tribunal held that the assessee shall be entitled to the TDS credit in the AY 2016-17 provided the same has not been already claimed in by him in AY 2015-16.

- The order of the Ld. CIT(A) was therefore set aside and restored back to the file of the AO to grant credit accordingly.

Abbott Healthcare Private Limited [TS-645-ITAT-2022(Mum)]

Assessee is eligible for depreciation on non-compete fees paid in case while acquiring business via slump sale.

Facts: The During AY 2011-12, the assessee had entered into a Business Transfer Agreement with Piramal Healthcare Limited ("Piramal") to acquire Piramal's Base Domestic Formulations business on a slump sale basis. The assessee claimed depreciation @ 25% on the non-compete fee paid as a part of slump sale agreement. During the assessment proceedings, the AO disallowed the claim of depreciation on non-compete fees. In appeal before the CIT(A), although the assessee's alternate ground for allowance of non-compete fee, as deferred revenue expenditure, was accepted, the CIT(A) did not record any specific finding regarding the claim of depreciation on non-compete fees.

Issue before the Hon'ble Mumbai Tribunal: Whether the claim of the assessee with regards to the depreciation on non-compete fee was tenable?

Hon'ble Mumbai Tribunal's ruling:

- The Hon'ble Tribunal observed that the CIT(A) had passed the order on 08 November 2017. It did not have the benefit of decision rendered by Hon'ble Jurisdictional High Court, vide its order dated 11 June 2019, in the case of Piramal Glass Ltd vs. DCIT [80 taxmann.com 68] as the said decision was subsequent in time.

- The Hon'ble Bombay High Court in the case of Piramal Glass Ltd (supra), had allowed claim of depreciation on non-compete fees paid, by referring to the decision of Hon'ble Gujarat High Court in case of PCIT vs. Ferromatic Milacron India (P) Ltd. [Tax Appeal No. 1233 of 2018].

    a) The Hon'ble High Court in case of Ferromatic Milacron (supra) had noted that by making expenditure on non-compete agreement, the assessee had acquired certain enduring benefits.

    b) The view of the AO that non-compete fee would never qualify for depreciation under section 32 was plainly opposed to the well settled principles.

    c) In case of Areva T & D India Limited, the Hon'ble Delhi High Court had observed that on perusal of the meaning of the categories of specific intangible assets referred to in section 32(1)(ii) of the Act preceding the term "business or commercial rights of similar nature", it is seen that intangible assets are not of the same kind and are clearly distinct from one another. The legislature thus did not intend to provide for depreciation only in respect of the specified

intangible assets, but also to other categories of intangible assets, which may not be possible to exhaustively enumerate. It was concluded that the assessee who had acquired commercial rights to sell products under the trade name and through the network created by the seller for sale in India, were entitled to depreciation.

- The Hon'ble Tribunal also observed that in the present case, payment of non-compete fee in accordance with terms of agreement between the assessee and Piramal was not disputed by the Revenue.

- Thus, the Hon'ble Tribunal held that the assessee was eligible for depreciation under section 32 of the Act on non-compete fees paid, being an intangible asset.

Ozone Urbana Infra Developers Pvt. Ltd [TS-615-ITAT-2022(Bang)]

Developer is not liable to deduct TDS under section 194A on pre-EMI interest borne on behalf of buyers under interest subvention scheme.

Facts: The assessee is a developer of residential apartments, hotels, educational institutions etc. In the course of its business, assessee would enter into tripartite agreements with buyers and housing finance companies under which assessee would pay pre-EMI interest on behalf of the buyers as per the interest subvention scheme. The assessee did not deduct tax at source on such pre-EMI interest paid to housing finance companies. The AO passed an order under section 201 and 201(1A) of the Act, treating the assessee as assessee in default. Upon appeal, the CIT(A) confirmed the order of the AO.

Issue before the Hon'ble Bangalore Tribunal: Whether property developer is liable for deducting tax at source under section 194A on subvention charges or pre-EMI interest charges paid to housing finance companies on behalf of buyer/borrower?

Hon'ble Bangalore Tribunal's ruling:

- It was contended by the assessee that it was the responsibility of the buyer to pay the interest and that the assessee has paid the interest only for and on behalf of the buyer.

- The Revenue contended that the wordings used in section 194A is "person responsible for paying" and therefore the assessee being the person responsible for paying the interest is liable to deduct tax at source.

- The Hon'ble Tribunal while deciding on liability to deduct TDS analysed provisions of section 194A as well as definition of "interest" under Section 2(28A). It noted that it is required to be seen whether the payments are in the nature of interest and whether the assessee is the 'person responsible' for paying interest.



- The Hon’ble Tribunal held that the payment is certainly in the nature of interest since it is due on account of money borrowed from housing finance companies by the buyers.

- It further held the buyer of the flat to be the person primarily responsible for paying interest as the assessee had undertaken the liability of paying pre-EMI interest on buyer’s behalf until the possession of the flat is given to the buyer as a part of its business strategy to attract customers.

- The Hon’ble tribunal held that as per section 194A of the Act, the buyers being individuals or HUFs not liable for TDS. Therefore, the assessee making payment on behalf of them would also not be liable for TDS.

II. International Tax Rulings

Air India Ltd [TS-619-HC-2022(DEL)]

TDS at beneficial treaty rate shall prevail over Section 206AA provisions.

Facts: The assessee company had paid lease rent for an engine to ELFC, a Netherlands based company not holding PAN, by depositing TDS at the rate of 10% as per the India-Netherlands DTAA. The case of the Revenue was that the rent paid for engines should be treated as Royalty / FTS under Article 12 of the DTAA, and as the assessee had reported the transaction without PAN of deductee in the quarterly TDS statements, the rate of TDS applicable on such payments, is 20.12% as per Section 206AA.

Issue before the Hon'ble Delhi High Court (HC): Does the non-obstante provisions of section 206AA override provisions of the Double Tax Avoidance Agreements?

Hon'ble Delhi High Court's ruling:

- The HC observed that engine is a part of the aircraft, and it cannot be said to be an aircraft and the payment made for rent of engine is covered under equipment as per Article 12(4) of the India Netherlands DTAA. Also, ELFC, the lessor, is a tax resident of Netherlands having no permanent establishment in India.

- The HC relied on the co-ordinate bench ruling in Danisco India [W.P. (C) 5908/2015], wherein it was held that, "Double Taxation Avoidance Agreement acquires primacy, where reciprocating states mutually agree upon acceptable principles for tax treatment, the provision in Section 206AA (as it existed) has to be read down to mean that where the deductee i.e. the overseas resident business concern, conducts its operation from a territory, whose Government has entered into a DTAA with India, the rate of taxation would be as dictated by the provisions of the treaty."

- The HC also took note of decision of Hon'ble Supreme Court (SC) in case of GE India Technology Centre Pvt. Ltd. [327 ITR 456], wherein SC had held that the while applying the provisions of tax deduction at source, provisions of DTAAs along with sections 4, 5, 9, 90 and 91 of the Act are relevant. Thus, where section 90(2) of the Act provides that DTAAs override domestic laws in cases where provisions of DTAAs are more beneficial, this in turn, overrides section 206AA of the Act.

- The HC concurred with the ITAT's observation that the provisions of Section 206AA of the Act do not override the provisions of the DTAA even though the provisions of Section 206AA are non obstante provisions.

- Remarked that no substantial question of law arises for consideration in the present appeal.

Michael Page International Recruitment Pvt Ltd [TS-624-ITAT-2022(Mum)]

Assessee's business support services not taxable as FTS since incidentally benefitting Indian AE without transfer of technology.

Facts: The assessee company is incorporated and fiscally domiciled in Singapore and is engaged in the business of, inter alia, providing executive search and recruitment services. For the year under consideration, the assessee received certain sums from its Indian Associated Enterprise ("Indian AE"). These services were in the nature of:

(i) fees for providing business support services, mainly consisting of management support, administrative support, finance, learning and development services, marketing and internet support, routine and ad hoc level operational support services; and

(ii) referral fees, when a group entity offers a job opening and where such opening is filled up by another group entity, the entity that offers the opening is paid a referral fee.

The assessee did not offer the fees so received from the Indian AE to tax, on the ground that the services rendered by the assessee did not "make available" the services so rendered to the Indian AE, in terms of Article 12 of the India Singapore tax treaty. In the earlier years, however, the assessee had offered this income to tax. The Assessing Officer (AO) did not accept the contention of the assessee and held the same to be Fees for Technical Services. The assessee raised grievances before the Dispute Resolution Panel ("DRP") against the draft assessment order, however the DRP declined to interfere with the said draft order and upheld the action of the AO.



Issue before the Hon'ble Mumbai Tribunal: Whether the business support services provided by the assessee to its Indian AE is taxable as FTS in India?

Hon'ble Mumbai Tribunal's ruling:

- The Hon'ble Tribunal made reference to the case of Shell Global International Solutions BV Vs ITO [(2015) 64 taxmann.com 3 (Ahd)], wherein a reference was made to the judgement of the Hon'ble Delhi High Court in the case of DIT v. Guy Carpenter & Co Ltd. [(2012) 346 ITR 504] and Hon'ble Karnataka High Court in the case of CIT v. De Beers India (P.) Ltd. [(2012) 346 ITR 467], both in favour of the assessee. It was held in case of De Beers (supra) that:

    a) For any technical or consultancy service to be considered as making available technical knowledge, know-how, skills etc. to the recipient, the service should be aimed at and result in transmitting technical knowledge etc., so that the recipient could derive an enduring benefit and utilize the knowledge or know-how on his own in future without the aid of the service provider.

    b) In other words, to fit into the terminology "making available", the technical knowledge, skill etc., must remain with the person receiving the services even after the particular contract comes to an end.

    c) It is not enough that a lot of technical knowledge and experience of the service provider have gone into providing the service. What is important is that the technical knowledge of the provider should be imparted to and absorbed by the receiver so that the receiver can deploy similar technology or techniques in the future without depending upon the provider.

    d) Technology will be considered made available when the person acquiring the service is enabled to apply the technology. The fact that the provision of the service that may require technical knowledge, skills, etc., does not mean that technology is made available to the person purchasing the service.

- The Hon'ble Tribunal held that unless the recipient of the services is enabled to apply the same services without recourse to the service provider, the services cannot be said to have been made available to the recipient of services.

- On Revenue's argument regarding incidental benefit to assessee, the Hon'ble Tribunal held that a mere incidental advantage to the recipient of services is not enough. There should be transfer of skill or technology.

- On Revenue's argument regarding change in the stand of the assessee and the fact that assessee had offered the same income to tax in earlier years, the Hon'ble Tribunal held that there is no res judicata in income tax proceedings. When a claim of assessee is

accepted on merits, the taxability in earlier years cannot come in the way of assessee's lawful claim.

- The Hon'ble ITAT, therefore, directed the AO to exclude the said amount from assessee's taxable income as fees for technical services.

B. Notifications/Circulars

Notification No. 5/2022, dated 29-07-2022

The CBDT, vide this notification, has reduced the time limit for e-verification or submission of ITR-V of Return of Income (ROI) from 120 days to 30 days, from the date of uploading the ROI. The reduced verification time limit would be applicable for ROI filed on or after 01.08.2022. Further, for the ROI furnished and e-verified or ITR-V submitted within 30 days of uploading the ROI, the date of e-uploading would be considered as date of filing the ROI. In all other cases, the date of e-verification / ITR-V submission would be considered as date of filing the ROI and all the consequences of late filing of ROI under the Act would apply. The verified ITR-V is required to be sent to CPC Bengaluru by Speed Post only. Further, in case of verification of ROI through ITR-V submission, the date of dispatch of Speed Post of duly verified ITR-V, would be considered for determination of 30 days' time limit.

Notification No. 86/2022 [F. No. 500/PF1/S10(23FE)/FT&TR-II]/S.O. 3324(E), dated 21-07-2022

The Central Government, vide this notification has notified CPPIB Credit Investments VI Inc., bearing PAN: AAGCC5549K, 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 conditions mentioned therein.

Notification No. 87/2022 [F. No. 370142/36/2022-TPL]/GSR 610(E), dated 01-08-2022

The CBDT has, vide this notification exempted income accrued / received by non-resident on transfer of offshore derivative instruments or over-the-counter derivatives, entered with an offshore banking unit of an International Financial Services Centre (IFSC), registered under International Financial Services Centres Authority (Banking) Regulations, 2020. Further, the Non-resident should have not entered such contract of instrument or derivative through or on behalf of its Permanent Establishment in India. The Notification further explains the terms “derivative”, “a non-deliverable forward contract”, “offshore Banking Unit”, offshore derivative Instrument”, “Over-the-counter derivatives” and “Permanent Establishment”.



Notification No. 89/2022 [F. No. 370142/26/2019-TPL-Part (1)]/SO 3652(E), dated 03-08-2022

The CBDT has, vide this notification, excluded the transfer by non-resident of Bullion Depository Receipt with underlying bullion (referred as "Bullion") from the definition of transfer for applicability of provisions of Capital Gains, provided that the bullion is listed on a recognised stock exchange located in any IFSC and transfer is made as per the regulations of Securities and Exchange Board of India Act, 1992 or the IFSC Authority Act, 2019 and the consideration on such transfer is in foreign currency.

Notification No. 90/2022 [F. No. 370142/31/2022-TPL (Part-2)]/SO 3703(E), dated 05-08-2022

The CBDT has, vide this notification, specified the following documents to be submitted by employee to employer for claiming exemption of perquisite in terms of any payment made by employer on medical treatment of any COVID-19 illness relating to employee or any of his family members:

- COVID-19 positive report or medical report, if clinically determined to be COVID-19 positive through investigations, in hospital or in-patient facility, by a treating physician of person so admitted.
- All medical diagnosis or treatment documents relating to treatment of COVID-19 or COVID-19 related illness, suffered within 6 months from date of being determined as COVID-19 positive; and

- A certificate in respect of all expenditure incurred on the treatment of COVID-19 or COVID-19 related illness.

The notification is retrospectively applicable from 01.04.2020 and applies to AY 2020-21 and thereafter.

Notification No. 91/2022 [F. No. 370142/31/2022-TPL (Part-2)/SO 3704(E), dated 05-08-2022

The CBDT has, vide this notification, specified the following documents that an individual should keep for claiming exemption of any money or property received from any person, for expenditure actually incurred by him on medical treatment of self or any family member for any illness related to COVID-19:

- COVID-19 positive report or medical report if clinically determined to COVID-19 positive through investigations, in hospital or in-patient facility by a treating physician of person so admitted.

- All medical diagnosis or treatment documents relating to treatment of COVID-19 or COVID-19 related illness suffered within 6 months from date of being determined as COVID-19 positive.

A Statement in Form No. 1 is required to be furnished to the Income Tax Department giving details of amount received in a financial year (FY) for expenditure actually incurred for medical treatment of any illness relating to COVID-19.

The Form No. 1 is to be furnished within 9 months from the end of financial year in which such amount is received or December 31, 2022, whichever later.

Notification No. 92/2022 [F. No. 370142/31/2022-TPL (Part-2)]/SO 3705(E), dated 05-08-2022

The CBDT has, vide this notification, specified certain conditions and documents to be maintained by a family member of a deceased person (where the cause of death is COVID-19 related illness) claiming exemption for any money or property received from employer of such deceased or any other person/s, not exceeding Rs. 10 Lacs in aggregate on account such death. The conditions to claim exemption are as follows:

- The death of the individual should be within 6 months from the date of testing COVID-19 positive or from the date of being clinically determined as a COVID-19 case.

- The family member of deceased individual should keep:
    a) the COVID-19 positive report of individual or medical report if clinically determined to COVID-19 positive through investigations, in hospital or in-patient facility by a treating physician of person so admitted;
    b) a medical report or death certificate stating cause of death to be COVID-19 issued by a medical practitioner or a government civil registration office.

- The family member of deceased individual is required furnish statement in Form A giving details of any money received during the financial year from the employer of the deceased or from any other person/s.

- The Form A is to be furnished to the Assessing Officer, within 9 months of end of the financial year in which such amount is received or December 31, 2022, whichever later.

Notification No. 93/2022 [F. No. 500/SWF3/S10(23FE)/FT&TR-II(Pt.3)]/S.O. 3707(E), dated 05-08-2022

The Central Government, vide this notification, has notified Qatar Holding LLC, bearing PAN: AAACQ3167H, 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 conditions mentioned therein.

Notification No. 94/2022 [F. No. 370142/34/2022-TPL]/GSR 610, dated 10-08-2022

The CBDT has, vide this notification, notified the list of books of account and documents required to be maintained by every fund or institution or trust or any university or other educational institution or any hospital or other medical institution, registered u/s 10(23C) and 12AB of the Act. Further, these books of account and documents are to be maintained for 10 years from end of the relevant Assessment Year, or till the conclusion of any assessment proceeding, initiated u/s 147 (if any), whichever is later.

These books of account and documents are to be kept at the registered office or any other place decided by the management and the address should be intimated to the assessing officer.

Notification No. 95/2022 [F. No. 500/SWF4/S10(23FE)/FT&TR-II(Pt.4)]/S.O. 3828(E), dated 16-08-2022

The Central Government, vide this notification, has notified INQ Holding LLC, bearing PAN: AADCI5071P, 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 conditions mentioned therein.

Notification No. 96/2022 [F. No.370142/34/2022-TPL]/GSR 632(E), dated 17-08-2022

The CBDT has, vide this notification:

- Notified Form No. 9A, which is to be furnished on or before the due date of filing return by a trust for charitable or religious purpose, which has opted for option of deemed application of income for such purpose in India in the previous year either due to non-receipt of accrued income or any other reason.
- Notified Statement in Form No. 10 to be furnished to Assessing officer on or before the due date of filing return by:

    a) a trust for religious or charitable purposes which has accumulated or set-aside whole or any part of its 85% of Income for application in India in a previous year and deposited/invested the same in the manner specified

under section 11(5) of the Act, to claim exemption for such income subject to certain other conditions;

b) the fund or institution or trust or any university or other educational institution or any hospital or other medical institution referred under section 10(23C) (iv), (v), (vi) or (via), which has accumulated or set-aside whole or any part of its 85% of income for application in India in a previous year, for a period not exceeding 5 years and invested in the manner specified under Section 11(5) of the Act, to claim exemption for such income;

- Form 9A or Form 10 as applicable, would be required to be e-filed either under digital signature or electronic verification code.

Notification No. 97/2022 [F. No. 500/PF2/S10(23FE)/FT&TR-II-Part (3)]/S.O. 3867(E), dated 17-08-2022

The Central Government, vide this notification, has notified CPPIB India Private Holdings Inc., bearing PAN: AAICC2378J, 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 conditions mentioned therein.

Notification No. 98/2022 [F. No. 370142/33/2022-TPL] GSR 634(E), dated 17-08-2022

The CBDT has, vide this notification, notified Form no. 29D for claim of refund of any tax borne and paid under section 195 on any income, except interest, by the person making payment of such Income and who further claims that no tax was deductible on such income.

Refund application in Form no. 29D shall have to be accompanied with copy of written agreement or other arrangement under which such tax was required to be borne by the person making payment of above specified income.

The application in Form no. 29D may be presented by an agent duly authorized by the claimant.

Notification No. 99/2022 [F. No. 370142/9/2022-TPL Part (2)]/SO 3878(E), dated 17-08-2022

The CBDT has, vide this notification, provided that the requirement of tax collection at source (TCS) by authorised dealer remitting money outside India, received from a person remitting such amount, under the Liberalised Remittance Scheme [LRS] of Reserve Bank of India or by a seller of an overseas tour package, shall not apply, if the buyer is a non-resident and does not have Permanent Establishment in India.

Notification No. 100/2022 [F. No. 370142/35/2022-TPL]/GSR 636(E), dated 18-08-2022

The CBDT has, vide this notification, substituted Rule 128(9) of the Income Tax Rules, 1962. It now provides that Form No. 67, that is required to be furnished by an assessee claiming credit of any foreign tax, can be furnished before the end of the relevant assessment year, provided that the return of income of such assessment year is filed either by the due date of filing the original return or the belated return. In case the return filed is an Updated Return u/s 139(8A), From No. 67 shall be filed on or before the date of filing of such updated return, provided the corresponding income is included in such updated return.

INDIRECT TAX

Goods & Services Tax

A. Recent Case Laws:

Louis Dreyfus Company India Pvt Ltd. vs. Union of India [TS-385-HC(GUJ)-2022-GST]

Gujarat High Court directs refund of tax collected on Ocean freight with interest.

In this case, the Appellant was engaged in the business of processing of edible oils and coffee. The Appellant filed a Special Civil Application before the Honorable Gujarat High Court (hereinafter referred to as "HC") praying for a refund of the Integrated Goods and Service tax collected on Ocean freight charges with interest. The Appellant contended that the facts of the case were similar to the decision passed in the case of Mohit Minerals Pvt Ltd in which the Court directed the Revenue to refund the tax collected on Ocean Freight charges. The HC following the judgement of Mohit Minerals, directed the GST authorities to refund the tax collected along with statutory interest.



Trident Pneumatics (P) Ltd [TS-383-AAR(TN)-2022-GST]

AAR denied advance ruling application as the matter was pending before the DGGI.

In this case, the Applicant was an approved vendor of the Indian railways for the supply of machinery parts. The Applicant filed an application before the Tamil Nadu Authority for Advance Ruling (hereinafter referred to as "AAR") to obtain a ruling on the head of classification of the parts supplied by them to the Indian railways. The Jurisdictional Officer submitted that the ruling sought by the Applicant was already decided by the Directorate General of GST Intelligence. The AAR called for the requisite documents and noted that the ruling sought was already part of the proceedings before the DGGI and hence, as per the provisions of Sub-section (2) of Section 98 of the Central Goods and Services Tax Act, 2017 (hereinafter referred to as "CGST Act"), a ruling based on merits could not be provided and the application could not be admitted.

NSK ship management [TS-389-AAR(TN)-2022-GST]

AAR held that services which require physical presence of Foreign ships in India cannot be termed as 'export of services'

In this case, the Applicant was a company engaged in providing vessel support services to its group company located outside India. The group company in Japan had agreed to pay fixed management for vessel support services to its ships at the Indian ports. In this regard, the Applicant approached the Tamil Nadu Authority for Advance Ruling to obtain a ruling on whether the services provided by them to the Japanese entity could be termed as "export of services". The AAR obtained all the required agreements and analyzed the facts of the case. The AAR noted that the supplier of service was located in India, the recipient of service was located outside India, and the payment for the said service was made in convertible foreign exchange but however, but the place of supply of service was in India. The AAR opined that as the place of supply of service was in India, such services cannot be termed as "export of service" and hence, denied the benefit to the Applicant.

Bhopal Smart City Development Corporation [TS-380-AAAR(MP)-2022-GST]

AAAR held that purchase/allotment of land was taxable at 18% after undertaking development activities

In this case, the Applicant filed an application before the Madhya Pradesh Authority for Advance Ruling (hereinafter referred to as "AAR") to obtain a ruling on whether Goods and

Services Tax (hereinafter referred to as “GST”) was applicable on the sale of developed land. The developed land consisted of amenities such as drainage lines, water lines, electricity lines etc., and any further improvements to be made were a cost to the buyer. The AAR upon observation of the facts ruled that the said sale of land did not constitute a ‘supply’ as per the provisions of Section 7 of the Central Goods and Services Tax Act, 2017 (hereinafter referred to as “CGST Act”). Aggrieved with the ruling, the jurisdictional officer preferred an appeal before the Madhya Pradesh Appellate Authority for Advance Ruling (hereinafter referred to as “AAAR”). The AAAR on analysis of the facts of the case and rulings passed by other Honorable Courts held that the activity of development of amenities such as drainage lines, water lines, electricity lines etc., was to be construed as ‘supply’ as per the provisions of Section 7 of the CGST Act as there was an element of service involved in the development of sites and provision of infrastructure. In this regard, the AAAR held that such a supply was taxable at the rate of 18% as per Notification No.12/2017-Central Tax (Rate) dated 28/06/2017.



B. Notifications/Circulars

Notification No.17/2022 – Central Tax dated 1st August 2022

The said notification amends the threshold limit of mandatory e-invoicing for taxpayers from having an aggregate turnover of “twenty crore rupees” to “ten crore rupees”.

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