Tax INFORM

A Fox Mandal publication for private circulation only.

Issue XXI | September 2022



FoxMandal Solicitors & Advocates

www.foxmandal.in | info@foxmandal.in

Contents

4 DIRECT TAX

Recent Case Laws

Notifications/Circulars

22 INDIRECT TAX

23 Goods & Services Tax

Recent Case Laws

Notifications/Circulars

Highlights of the Issue

DIRECT TAX

Domestic Tax Rulings:

- Situs of officer who assesses is relevant for deciding HC's appellate jurisdiction, despite transfer of 'case' under Sec.127.
- Apex Court disallows bad debts deduction on advance given by real estate developer and financier for purchase of commercial property.
- Disallowance for TDS default is not sustainable for sum neither claimed as deduction in computing Business Income, nor debited to P&L Account.
- The Hon'ble High Court upholds reassessment proceedings for AY 2013-14 conducted through two Show Cause Notices over accommodation entry.
- High Court affirms discount on issue of ESOPs as a tax-deductible business expenditure.
- The Mumbai ITAT allows Sec.54F exemption wrongly claimed under Sec.54 by rejecting AO's approach as hyper-pedantic.
- ITAT allows depreciation u/s 32 on cars purchased in the name of the company's director.
- TDS credit sought through rectification application cannot be rejected on the ground of non-filing of revised return.

International Tax Rulings:

- ITAT holds that Web hosting charges paid to Amazon is not taxable as royalty and accordingly not liable for TDS.
- Dutch entity not liable to TDS on interest on tax-refund; Invokes MFN Clause to extend benefit under India-Italy DTAA.

Circulars and Notifications

- Circular No 18 of 2022, F.No. 370142/27/2022-TPL.
- Notification No. 101/2022/F.No. 370142/37/2022-TPL.
- Notification No. 105/2022/F. No. 370142/38/2022-TPL-Part-I
- Notification No. 109/2022/F. No. 370142/ 44/2022-TPL.

INDIRECT TAX

Goods and Services Tax
Case Laws:

- AAR denies exemption to "online coaching" stating that it is not "education".
- AAR held that printing of answer booklets and envelopes constitutes a supply of goods.
- AAR held that a tax rate of 12% is applicable for printing on boards supplied by customers.
- AAR denies ITC on goods procured for business promotion.
- AAR taxed 'Go Karts' used for 'amusement' at the rate of 18%.

Circulars and Notifications

- Circular No.180/12/2022-GST.

DIRECT TAX

A. Recent Case Laws

I. Domestic Tax Rulings

ABC Papers Limited [TS-656-SC-2022]

Situs of officer who assesses is relevant for deciding HC's appellate jurisdiction, despite transfer of 'case' under Sec.127.

Facts: Assessee-company, engaged in manufacture of writing and printing paper, was assessed by the DCIT – 1(1), New Delhi, for AY 2008-09. Against the assessment order, the assessee filed an appeal before the CIT(A), which was allowed. The Revenue appealed before the ITAT, New Delhi, who dismissed Revenue's appeal. The Revenue further appealed before the High Court of Punjab & Haryana (ITA No. 517 of 2017).

While the matter was pending before the CIT(A), a search operation u/s 132(1) was carried out against the assessee, post which, the CIT(Central)-Ludhiana transferred the cases of the assessee for AY 2006-07 to AY 2013-14 to Central Circle-Ghaziabad, by an order u/s 127. After the transfer, the DCIT Central Circle-Ghaziabad passed an assessment order, against which the assessee preferred an appeal before CIT(A)-Kanpur, which was allowed. The Revenue appealed before ITAT-New Delhi, which followed its earlier judgement, passed in favour of assessee (supra), dismissing the Revenue's appeal. The Revenue again filed an appeal before the High Court of Punjab & Haryana (ITA No. 130 of 2018).

However, before the Revenue could file this appeal, (both, ITA No. 517 of 2017 as well as ITA No. 130 of 2018, as mentioned above), the cases of the assessee were re-transferred u/s 127 to DCIT-Chandigarh.

The Hon'ble High Court disposed of both the appeals before it, as not maintainable, holding that it would not have jurisdiction over the appeals, as the AO who passed the initial assessment order (i.e. New Delhi), was situated outside the jurisdiction of the High Court.
The Revenue had also filed an appeal, against the aforesaid order of ITAT New Delhi, before the Hon'ble Delhi High Court, which dismissed the appeal on the ground of lack of territorial jurisdiction and took a view that when an order u/s 127 is passed, the jurisdiction gets transferred to the High Court within whose jurisdiction the situs of the transferee officer is located.

Since both, the High Court of Punjab and Haryana as well as High Court of Delhi had refused to entertain the appeals on the ground of lack of territorial jurisdiction, the Revenue filed this appeal before the Hon'ble Supreme Court.

Issue before the Hon'ble Supreme Court: Which High Court would have jurisdiction to entertain appeal against decision of a Bench of ITAT exercising jurisdiction over more than one State, particularly when case(s) of same assessment year are transferred u/s 127? Should it be the High Court of the State in which the ITAT is physically located, the High Court of the State in which the Assessee is residing and/or doing its business, or the High Court where the AO who assessed the assessee, is located?

Hon'ble Supreme Court's ruling:

- The Court noted that it is well-settled that appellate jurisdiction of a High Court is exercisable by the High Court within whose territorial jurisdiction the AO is situated. This was also decided by the Delhi High Court in the case of **Seth Banarasi Das Gupta (1978) 113 ITR 817 (Del)** and several other judgements.

- In the instant case, the Supreme Court was confronted of the peculiar situation in a case where the jurisdiction is transferred u/s 127 from one AO to another AO in a different State under jurisdiction of a different High Court.

- The Court after noting several judicial decisions in this regard, concluded that appeals against every decision of the ITAT shall lie only before the High Court within whose jurisdiction the AO who passed the assessment order, is situated.

- Even if the case(s) of assessee are transferred in exercise of power u/s 127, the High Court within whose jurisdiction the AO has passed the order, shall continue to exercise the jurisdiction of appeal. This principle is applicable even if the transfer is under Section 127 for the same assessment year.

Fox Mandal Comment: It would be interesting to see the impact of this judgement in the current scenario, where all assessment orders are being issued by the National Faceless Assessment Centre (NFAC), Delhi, which falls under the territorial jurisdiction of the Hon'ble Delhi High Court.

Khyati Realtors Pvt. Ltd. - [TS-671-SC-2022]

Apex Court disallows bad debts deduction on advance given by real estate developer and financier for purchase of commercial property.

Facts: The assessee, engaged in real estate development business, trading in transferable development rights (TDR) and finance, had made an advance of INR 10 Cr. to Bhansali Developers Pvt Ltd in the year 2007 for acquiring a commercial property. However, the project was stagnant, and consequently, the assessee sought return of the amounts paid, to which the

assessee did not receive any response. Therefore, the assessee had written-off the said amount and claimed it as bad debt for AY 2009-10. The same was disallowed by the AO as well as by CIT(A), on appeal. However, the Hon'ble ITAT ruled in favour of the assessee against which the Revenue filed an appeal before Hon'ble Bombay High Court, which in turn, dismissed the appeal on the ground that there was no question of law arising in the appeal.

Issue before the Hon'ble Supreme Court: Whether the claim for advance written-off as business loss under Section 37(1) allowable, which was held disallowable as bad debt under Section 36(1)(vii)?

Hon'ble Supreme Court's Ruling:

- The Supreme Court clarified the proposition of law that merely stating a bad and doubtful debt as an irrecoverable write off without the appropriate treatment in the accounts, as well as non-compliance with the conditions in section 36(1)(vii), 36(2), and Explanation to Section 36(1)(vii) of the Act would not entitle the assessee to claim a deduction.

- After examining the provisions of section 36(2) and section 36(1)(vii) of the Act and relying on its earlier decisions in case of **Southern Technologies Ltd vs JCIT (2010) 2 SCR 380, Catholic Syrian Bank Ltd vs. CIT (2012) 3 SCC 784 and TRF Ltd vs. CIT (2010) 13 SCC)**, the Apex Court made the following observations:

    a. The amount of any bad debt or part thereof has to be written-off as irrecoverable in the accounts of the assessee for the previous year;

    b. Such bad debt or part of it written-off as irrecoverable in the accounts of the assessee cannot include any provision for bad and doubtful debts made in the accounts of the assessee;

    c. No deduction is allowable unless the debt or part of it "has been taken into account in computing the income of the assessee of the previous year in which the amount of such debt or part thereof is written off or of an earlier previous year", or represents money lent in the ordinary course of the business of banking or money-lending which is carried on by the assessee;

    d. The assessee is obliged to prove to the AO that the case satisfies the ingredients of Section 36(1)(vii) as well as Section 36(2) of the Act.

- In light of the above observations, the Supreme Court, in the instant case, concluded that:

    a. the record of the assessee nowhere showed that the assessee advanced the sum in the ordinary course of business nor could it establish that the amount was given as loan in the ordinary course of money-lending business.

b. the assessee could not establish from its record that the bad debt was written off as irrecoverable in the books of account.
c. since the advance was given to acquire immovable property, it was in the nature of capital expenditure and hence, not allowable as revenue business expenditure.

- The Apex Court followed the decision of Division Bench in case of Southern Technologies Ltd in the peculiar facts of the case wherein it was held, "If an item falls under Sections 30 to 36, but is excluded by an Explanation to Section 36 (1) (vii) then Section 37 cannot come in. Section 37 applies only to items which do not fall in Section 30 to 36. If a provision for doubtful debt is expressly excluded from Section 36 (1) (vii) then such a provision cannot claim deduction under Section 37 of the IT Act even on the basis of "real income theory".

- Hence, the Court upheld the disallowance made by the AO and reversed the decision of High Court and Tribunal.

Linde India Ltd [TS-701-HC-2022(CAL)]

Disallowance for TDS default is not sustainable for sum neither claimed as deduction in computing Business Income, nor debited to P&L Account.

Facts: The assessee company is engaged in the business of manufacture and sale of various industrial and mechanical gases, cryogenic and non-cryogenic plants and vessels. The AO disallowed INR 128.48 Cr. u/s 40(a)(i) for non-deduction of tax u/s 195, in respect of advances paid for import of capital goods.The Kolkata ITAT held that no disallowance could be made u/s. 40(a)(i)/ 40(a)(ia) of the Act. Being aggrieved, the Revenue preferred an appeal before the Calcutta High Court.

Issue before the Hon'ble Calcutta High Court: Whether disallowance u/s 40(a)(i) can be made where amount is paid for advance for import of capital goods?

Hon'ble Calcutta High Court's ruling:

- While preparing the profit and loss account of a business or profession, an amount can be deducted from the professional and/or business income by debiting the profit and loss account prepared in connection with such profession or business with such amount.

- Such amount may also be deducted while computing the profits and gains of business or profession for the purpose of arriving at the business or professional income chargeable to tax. Therefore, if the disputed amount is neither debited from the profit and loss account of the business or profession nor has been deducted while computing the profits and gains of business or profession, Section 40 of the Income Tax Act do not come into operation as such amount cannot be said to have been deducted in computing the income chargeable under such head.

- Where the assessee has paid an amount on account of fees for technical services outside India or in India, to a non-resident, but has not debited such amount to the profit and loss account and the same has also not been claimed as deduction in computing the income chargeable under the head profits and gains of business or profession, no disallowance u/s 40 can be made.

- The Hon'ble Calcutta High Court in this case followed the decision of Hon'ble Karnataka High Court in the case of Tally Solutions (2021) 430 ITR 527 (Karn), wherein it was held that when no amount was claimed as revenue expenditure, no disallowance under Section 40(a)(i) and (ia) of the Act would be warranted.

Saroj Chandna [TS-697-HC-2022(DEL)]

The Hon'ble High Court upholds reassessment proceedings for AY 2013-14 conducted through two Show Cause Notices over accommodation entry.

Facts: The assessee was issued a show cause notice (SCN) dated 17-05-2022 alleging that she had entered into a financial transaction i.e. deposited cash amounting to INR 50 Lakhs in current account and immediately withdrew it in cash from ATM. The assessee responded to the said SCN stating that she had not deposited cash in her current account and that she did not even possess a debit card to be able to withdraw the cash as alleged by the AO. The AO further issued a second SCN on 23-06-2022 explaining the chain of transaction that led to an allegation of accommodation entry in assessee's name. The assessee furnished another reply dated 28-06-2022 stating that the SCN lacked sufficient information as to the date of receipt of the alleged sum and/or the material relied upon to substantiate the said allegation of accommodation entry.

The AO passed the order under Section 148A(d) on 22-07-2022. The assessee challenged the said order contending it to be time barred and further stating that the last date for passing the order was 30-06-2022; since the reply to SCN was furnished on 24/05/2022 and that the procedure adopted is in violation of SC ruling in Ashish Agarwal (TS-339-SC-2022). The assessee further submitted that allegation in the SCN date 23-06-2022 were materially different from the allegation in the SCN dated 17-05-2022 and the allegation pertaining to credit of INR 50 Lakhs is not an 'asset' within the meaning of Section 149(1)(b).

Issue before the Hon'ble Delhi High Court: Whether the action of the AO in issuing notice dated 23-06-2022 was correct in law?

Hon'ble Delhi High Court's ruling:

The Hon'ble High Court observed/noted the following:

- To give effect to the objective of the scheme of Section 148A of the Act, the AO must provide specific material and information to the assessee at the stage of Section 148A(b) of the Act, so that the assessee can provide a meaningful response at the stage of inquiry under Section 148A proceedings.



- The petitioner in her reply had specifically sought better material and information from AO to enable a rebuttal. In these circumstances, the issuance of notice dated, 23-06-2022, furnishing specific details of the transaction, which as per AO, is subject matter of the notice dated 17-05-2022, cannot be faulted.

- In the absence of any explanation offered by the assessee in her reply, the Hon'ble High Court did not find any error in the impugned order issued by the AO.

Thus, the Hon'ble High Court, without expressing any opinion on the merits of the controversy, found no infirmity in the impugned order passed by the AO.

PVR Ltd [TS-675-HC-2022(DEL)]

High Court affirms discount on issue of ESOPs as a tax-deductible business expenditure.

The Issue before the Hon'ble Delhi High Court: Whether the difference between the price at which stock options were offered to employees of the assessee under ESOP and ESPS and the prevailing market price of the stock on the date of grant of such options, is allowable as revenue expenditure under Section 37(1) of the Act?

Hon'ble Delhi High Court's ruling:

- The Hon'ble Delhi High Court follows the decision of Karnataka High Court in case of **Biocon Ltd ([2020] 121 taxmann.com 351** (Karnataka)) and also its Coordinate bench in case of **New Delhi Television Ltd [2018] 99 taxmann.com 401** (Delhi).

- The Karnataka High Court in case of Biocon Ltd (supra) had observed:

    a. The deduction under section 37(1) of the Act is permissible when the expenditure is incurred even if the pay-out or expenditure is not incurred in cash.

    b. The expression 'expenditure' under section 37(1) of the Act includes a loss and therefore, covers discount on issuance of shares (due to the difference between the issue price and the market price) within its ambit.

    c. It is a settled principle of law that if a business liability has arisen in an accounting year, the same is permissible as deduction in the same accounting year, irrespective of the fact that the liability is quantified and discharged in future.

    d. On the issue of discount on issue of ESOP being in the nature of contingent liability, reliance was placed on the decision of the Supreme Court in the case of **Bharat Earth Movers (2000) 245 ITR 428 (SC)** wherein it was held that discount on issue of ESOPs was not a contingent liability but an ascertained liability.

- Thus, the Delhi High Court ruled in favour of the assessee holding that the difference between the price at which stock options were offered to assessee's employees under ESOP scheme and the prevailing market price of the stock on the date of grant of such options, was allowable revenue expenditure under Section 37(1).

Armine Hamied Khan [2022] 142 taxmann.com 14 (Mumbai Trib.)

The Mumbai ITAT allows Sec.54F exemption wrongly claimed under Sec.54 by rejecting AO's approach as hyper-pedantic.

Facts: The assessee had earned long term capital gains on surrender of tenancy rights and had invested the sale proceeds in a residential property. Thus, she was entitled to exemption under section 54F. However, the assessee had claimed the exemption under section 54 in the tax return.

The AO rejected the exemption claimed by the assessee on the ground that it amounts to a fresh claim made during scrutiny assessment proceedings. The AO relied on the judgement of the Hon'ble Supreme Court in case of **Goetz India Limited Vs CIT [(2006) 204 CTR 182 (SC)]** since the said claim was not made by way of revising the income tax return.

Issue before the Hon'ble Mumbai ITAT: Can a claim for exemption which was rightly made, but under a wrong section in tax return, be rejected during assessment proceedings?

Hon'ble Mumbai ITAT's ruling:

- The Hon'ble ITAT observed that this was not a case where there is a mistake in the return of income which could be corrected only by filing a revising return. This was a case where there was a bonafide claim made by the appellant. However, the same was made under wrong section. Therefore, the mistake can be corrected while deciding the assessment itself.

- The Hon'ble ITAT, therefore, held the AO in error in adopting such a hyper-pedantic approach and in holding that there was a fresh claim for exemption under section 54F.

- It also remarked that the AO had proceeded on the fallacious assumption that a change of section on account of an inadvertent and bonafide error, under which the claim is made, by itself, amounts to a fresh claim.

Shivam Water Treaters Pvt. Ltd. [TS-676-ITAT-2022(Ahd)]

ITAT allows depreciation u/s 32 on cars purchased in the name of the company's director.

Facts: The assessee company had purchased cars in the name of the directors, but the payment was made through the assessee company. The assessee had claimed depreciation on such cars in the tax return. The tax authorities claimed that the cars were registered in the name of the company's directors and that the company did not maintain logbook. The AO was of the view that there was possibility of personal use and therefore proceeded to make an ad-hoc disallowance of 20% of the depreciation claimed.

Issue before the Hon'ble Ahmedabad Tribunal: Can depreciation claim be denied on the reasoning that cars were registered in the name of the directors of the company?

Hon'ble Ahmedabad Tribunal's ruling:

- The Tribunal noted that the legal ownership though vest with the individual directors but the dominion ownership rests with the assessee company as the payment for the purchase is made by the assessee from its books of accounts.

- Therefore, the company cannot be denied depreciation merely on the reasoning that the cars were registered in the name of directors.

- On the issue of possibility of personal use, the Tribunal highlights that depreciation is an allowance and not an expenditure and that it has to be allowed as per the provisions of section 32 of the Act irrespective of its use by the director or the company.

- The Tribunal further remarks that even in a situation where assessee is not maintaining the logbook and the directors use the car for personal purposes, at the most such facility extended to the directors can be treated as perquisites under section 17(2) which can be brought to tax in hands of directors as a part of salary.

Heidrick and Struggles Inc. [TS-679-ITAT-2022(DEL)]

TDS credit sought through rectification application cannot be rejected on the ground of non-filing of revised return.

Facts: The assessee is a US tax resident and has filed return of income declaring income of INR 23.60 Cr. for AY 2018-19 and claiming refund of INR 53.56 Lacs. The Centralized Processing Centre (CPC) processed the return of income u/s 143(1) and raised tax demand of INR 80.58 Lakhs holding the service income of INR 2.84 Cr received from Indian AE taxable at the rate 40%. Aggrieved, the assessee filed a rectification application u/s 154 before CPC which was rejected with an enhancement of tax demand to INR 4.08 Cr by denying TDS credit of INR 2.78 Cr which was hitherto allowed earlier. The assessee filed another rectification application pursuant to which CPC raised a demand of INR 1.06 Cr by taxing the receipt of INR 2.84 Cr at rate of 40% and denial of TDS credit of INR 22.54 Lakhs. On appeal by assessee, the CIT(A) upheld the order of CPC.

Issue before the Hon'ble Delhi Tribunal: Whether CIT(A) was justified in upholding the denial of the TDS credit sought by the assessee through rectification application on the ground that no revised return was filed by the assessee?

Hon'ble Tribunal ruling:

- The assessee contended that CIT(A) disregarded principle of natural justice in holding that relief can be claimed only by filing the revised return within the statutory time limit that had already expired. The assessee also contended that CIT(A) erroneously did not go into the merits of the case and ignored the beneficial provision of Article 12 of India-US DTAA.

- The Revenue contended that assessee is only entitled to seek a relief only by filing revised return under Section 139(5) with the statutory time limit and therefore, CIT(A) rightly denied the relief.

- The ITAT observes that assessee has filed a return claiming service income of INR 2.84 Cr received from AE as income from other sources and there is no dispute that as per Article 12 of India-US DTAA, the impugned service income is not chargeable to tax and the services rendered by the assessee do not satisfy the make available clause of India-US DTAA. It further observes that rectification application on similar adjustment with respect of taxing of service receipt at the rate of 40% for the previous AY was allowed by CPC.

- The ITAT refers to CBDT Circular dated April 11, 1955 which warrants that the Revenue must not take advantage of an assessee's ignorance. It further relies on decision in case of **Madhabi Nag (ITA No. 152/KOl/2015)** wherein the Kolkata bench had held that the Revenue cannot reject the application under Section 154 on the ground that the assessee did not file a revised return of income.

- The ITAT further points out that Delhi High Court in case of **Bharat General Reinsurance (81 ITR 303 (Del))** had held that merely because assessee wrongly included the income in its return for a particular year, it cannot confer jurisdiction on the Revenue to tax that income in that year even though legally such income did not pertain to that year.

- Finally, the ITAT holds that the addition made only due to wrong reporting of income by the assessee cannot be sustained and on the issue of denial of TDS credit, ITAT remits the matter back to CPC with a direction to grant eligible TDS credit in accordance with law.

II. International Tax Rulings

Reasoning Global E-Application Ltd [TS-670-ITAT-2022(HYD)]

ITAT holds that Web hosting charges paid to Amazon is not taxable as royalty and accordingly not liable for TDS.

Facts: The assessee company is engaged in the business of providing IT enabled electronic commerce services. It makes use of technology of Amazon Web Services for imparting of information concerning, for the working of, or use of, technology; or concerning technical industrial, commercial, or scientific knowledge. During assessment proceedings, the Assessing Officer noted that Web Hosting charges claimed as expenditure by the assessee included payment towards AWS Data Transfer, Amazon Simple Storage Services, AWS Premium Support, Amazon Elastic Compute Could, etc and proceeded to disallow the said charges u/s 40(a)(i) of the Act by holding that the TDS u/s 195 was not deducted by the assessee.

Issue before the Hon'ble Hyderabad ITAT: Whether the disallowance u/s 40(a)(i) on payment made towards services used in relation to data storage and transfer from Amazon Web Services is tenable in law?

Hon'ble Hyderabad ITAT's ruling:

- The Tribunal observed that the assessee received cloud-based services from Amazon and the said services do not involve any transfer of rights in any process. The grant of right to install and use the software included with the subscription does not include providing any copy of the said software to the assessee.

- The Tribunal also observed that the assessee did not receive any right of reproduction and that the services provised by Amazon merely facilitate the flow of user data from the front run user through internet to the provider system and back.

- Therefore, subscription fees paid by the assessee is merely a consideration for the online access of the cloud computing services for process and storage of data or run the applications and cannot be considered to be a royalty within the meaning of section 9(1)(vi) of the Act.

- The Hon'ble ITAT relied on coordinate bench ruling in EPRSS Prepaid Recharge Services India (P) Ltd vs. Income Tax Officer (2018) 100 Taxmann.com 52 wherein it was held that amount paid to Amazon for various service provided by it are not in nature of royalty and hence provisions of section 40(a)(i) are not applicable.

- The Hon'ble ITAT also relied on coordinate bench ruling in **Microsoft Regional Sales Pte Ltd (TS-317-ITAT2022(DEL))** wherein it was held that cloud base services do not involve any transfer of rights to the customers in the process and the subscription fees is not royalty but merely a consideration of online access of the cloud process and storage of data to run the applications.

Koninklijke Philips N.V [TS-699-ITAT-2022(Kol)]

Dutch entity not liable to TDS on interest on tax-refund; Invokes MFN Clause to extend benefit under India-Italy DTAA.

Facts: The assessee is a non-resident company incorporated under the laws of Netherlands and operates in the areas of consumer electronics domestic appliances, components and medical systems. The assessee does not have a permanent establishment (PE) in India. During the course of assessment, the Assessing Officer made additions with respect to Management Support Service Agreement (MSSA) and Research and Development Co-operation Agreement (RDCA). The Kolkata ITAT held that receipts in MSSA and RDCA are not taxable in India.
While giving effect to the order of the Hon'ble ITAT, the AO failed to grant appropriate interest u/s 244A of the Act and deducted TDS on interest paid.



Issue before the Hon'ble Kolkata ITAT: Is there a liability of deducting TDS on interest on tax refund in case of the assessee?

Hon'ble Kolkata ITAT's ruling:

- The ITAT observed that the assessee is covered by the India-Netherlands DTAA and by virtue of the Protocol which is a part of the India-Netherlands DTAA, the Most Favoured Nation clause is applicable to the assessee.

- The MFN clause provides that if the provisions of a tax treaty entered into by India after signing of India-Netherlands DTAA i.e. after 21.01.1989 with another OECD member country is more beneficial either in terms of its scope and coverage or tax rate vis-a-vis the India-Netherlands DTAA, then the said provisions shall also apply into the India-Netherlands DTAA.

- The ITAT remarked that the beneficial provisions available to the assessee under the India-Italy DTAA on the aspect of taxability of interest as in the present case will get force of attraction and can be imported into the India Netherlands DTAA by virtue of MFN clause.

- The ITAT relies on the judgement of Hon'ble High Court of Madras in the case of **Ansaldo Energio SPA Vs. CIT (IT) (2016) 384 ITR 312 (Mad.)** wherein the High Court had held that the interest on income tax refund is a 'debt claim' payable by the Revenue in terms of Article 12(3)(a) of the India-Italy DTAA and thus such interest is not taxable in India and as such no TDS ought to be done by the AO.

- Thus, the ITAT rules that no tax is required to be deducted on interest on income tax refund by the AO while remitting the said interest to the assessee and thus directed the AO to grant the refund of the TDS so done.

B. Notifications/Circulars

Circular No 18 of 2022, F.No. 370142/27/2022-TPL, Dated 13-09-202

The CBDT has, vide Circular No. 18 of 2022 dated 13 September 2022, aimed to remove difficulties on implementation of TDS on benefits or perquisites under Section 194R of the Act. This Circular is in continuation of Circular No. 12, issued by CDBT earlier, on 16/06/2022, providing guidelines on the scope and coverage of section 194R of the Act. The Revenue authorities have explicitly made it clear that this Circular is only for removal of difficulties in implementation of provisions of section 194R of the Act and does not impact the taxability of income in the hands of the recipient, which shall be governed by the relevant provisions of the Act.

Key Clarifications in the Circular are as under:

1. One-time loan settlement/ waiver of loan

The provision of Section 194R of the Act shall not be applicable on one-time loan settlement entered with / waiver of loan granted to borrowers by specified banks/financial institutions.

2. Reimbursement of expenses incurred by a 'Pure Agent'

Any expense incurred by a "pure agent", as defined under the GST Valuation Rules, 2017 and which is in turn, reimbursed by the service recipient, would not be treated as benefit/perquisite for the purposes of Section 194R and therefore the pure agent would not be liable to deduct TDS u/s 194R of the Act. It has been explained that in such cases, even the GST input credit ought to be availed of by the service provider and not the service recipient.

3. Interplay of 194R and other TDS provisions

The Circular clarifies that if reimbursement of out-of-pocket expenses (OPE) is already a part of the gross consideration and tax has been deducted on the gross consideration under sections 194J or 194C of the Act, then there would not be any further liability to deduct tax under section 194R of the Act.

4. Expenditure incurred on dealers' / business conference:

In case of dealers' conference to educate the dealers about the company's products, it has been clarified that:

- It is not necessary to invite all dealers in a conference for the expenses incurred for conducting conference to be not reckoned as benefit / perquisite for deduction of tax.

- Any overstay by a dealer beyond one day prior and one day after the date of conference, would be treated as benefit / perquisite liable for deduction of tax under section 194R.

- Where it is not possible, owing to practical difficulties, to ascertain actual number of dealers for whom certain expenses were incurred, which should be classified as benefit / perquisite, then to avoid any further challenges, the taxpayer who has provided the benefit / perquisite may suo-moto disallow the said expenditure and thereafter, there will not be any requirement to comply with provisions of section 194R.

5. Availability of depreciation on any capital asset(car) gifted as benefit / perquisite

Where any capital asset is received as gift and tax has been withheld under section 194R, the recipient shall be eligible to claim depreciation under section 32 of the Act on such asset. The Circular clarifies that value of such benefit / perquisite offered as 'income' in the income-tax return of the recipient shall be deemed to be 'actual cost' in the hands of recipient for the purpose of calculation of such depreciation.

6. Liability on Embassy or High Commissions

The Circular clarifies that certain embassies and high commissions are not required to deduct tax under section 194R of the Act for the benefit / perquisite provided by such organizations.

7. Liability on issuance of bonus/right shares.

Tax under Section 194R of the Act is not required to be deducted on issuance of bonus or right shares issued by a company in which the public is substantially interested (listed company) as the overall value and ownership of their holding remains the same.

Notification No. 101/2022/F.No. 370142/37/2022-TPL, Dated 22-08-2022

The CBDT has, vide this notification, amended Rule 17CB; As per the amendment, the words 'trust or institution' shall be read as 'specified person' across the Rule 17CB. The word 'specified person' shall have the same meaning as assigned to it in clause (iia) of the Explanation to Section 115TD.

Notification No. 105/2022/F. No. 370142/38/2022-TPL-Part-I, Dated 01-09-2022

The CBDT has, vide this notification, amended Rule 114BB of the Income Tax Rules, 1962. The amendment is by inserting a proviso to exclude Central Government, State Governments and Consular Offices from the requirement of quoting PAN or Aadhaar Number for cash deposit(s) in or withdrawal(s) from a bank or a post office aggregating to INR20 Lac or more in a financial year and the exclusion shall also apply to opening a current or cash credit account with a bank or a post office. The amendment is deemed to come into effect from Jul 9,2022.



Notification No. 109/2022/F. No. 370142/ 44/2022-TPL, Dated 14-09-2022

The CBDT has, vide this notification, amends Rule 121A prescribing the form to be furnished by producers of cinematograph films or persons engaged in specified activity.

It requires that the Form 52A shall be furnished by a person carrying on production of cinematograph film or engaged in specified activity, or both, electronically under digital signature and through electronic verification code, within 60 days from the end of the previous year.

For the purposes of Section 285B (Submission of statements by film producers), the CBDT notifies that the prescribed authority shall be Principal Director General of Income-tax (Systems) PDGIT(Systems) or the Director General of Income-tax (Systems) DGIT(Systems) or any person authorized by PDGIT/DGIT(Systems). The prescribed authority shall specify the procedures, formats and standards for the purposes of furnishing and verification of Form No. 52A and shall be responsible for the day-to-day administration in relation to furnishing and verification of Form No. 52A and formulating and implementing appropriate security, archival and retrieval policies in relation to Form No. 52A.

INDIRECT TAX

Goods & Services Tax

A. Recent Case Laws:

Tutor Comp Infotech India Pvt Ltd [TS-414-AAR(KER)-2022-GST]

AAR denies exemption to “online coaching” stating that it is not “education”.

In the Applicant was an entity providing online education services on its own platform to students, institutions, and the Government. The Applicant was exporting services by way of providing one-to-one services to overseas students. The Applicant filed an application before the Kerala Authority for Advance Ruling (hereinafter referred to as “AAR”) to ascertain whether the services provided by them are exempted from tax under the list provided under Notification No.12/2017 dated 28/06/2017. The AAR analysed the facts and referring to various judgements held that “*education is the process of training and developing knowledge, skill and character of students by normal schooling*.”



As the applicant is not a school but merely an institution providing education services and the training provided by the applicant does not lead to the grant of any qualification recognized by any law for the time being in force nor is part of an approved vocational education course, the AAR held that the services provided by the applicant were not exempted from tax and the benefit provided under Notification No.12/2017 could not be availed.

PKS Centre for Learning [TS-417-AAR(KAR)-2022-GST]

AAR held that printing of answer booklets and envelopes constitutes a supply of goods.

In this case, the Applicant was intending to print question papers and other examination materials for public examinations. In this regard, the Applicant had filed an application before the Karnataka Authority for Advance Ruling (hereinafter referred to as "AAR") inquiring whether printing question papers, admit cards, answer booklets, pass certificates, circulars, ID cards and other examination materials for public examinations would constitute a supply of service to an 'educational institution'. The Applicant further states in its application that material for printing of question papers, answer booklets/scripts etc., was supplied and owned by the Board and only the physical inputs used for printing are owned by the Applicant. Notification No.12/2017 states that the supply of services to an educational institution by way of conduct of examinations was exempted from tax. The AAR upon observation of the facts of the case and the various kind of services provided held that activities such as printing of stationery items such as question papers, admit cards, pass certificates, fail cards, circulars, and ID cards for the conduct of examinations constituted as a 'supply of service' to an educational institution and were exempt from tax. The activity of printing answer booklets and envelopes for packing answer booklets constituted a 'supply of goods' to an educational institution and was taxable at the rate of 18%.

Anamika Agrawal [TS-452-AAR(WB)-2022-GST]

AAR held that a tax rate of 12% is applicable for printing on boards supplied by customers.

In this case, the applicant was engaged in the manufacturing of printed boxes, mono cartons, labels, etc., and was undertaking a works contract of the same nature. The applicant had filed an application before the West Bengal Authority for Advance Ruling (hereinafter referred to as "AAR") to ascertain the tax rate applicable on such works contract services. The AAR noted that the applicant was engaged in the printing of duplex board which was supplied by its customer and was also cutting, punching and laminating the board, so printed if the same was required by the customer. The services provided by the applicant satisfied the definition of a job worker which stated that "any treatment or process on goods belonging to another person

shall be treated as job work if the goods are owned by a registered person". The AAR ruled that the tax rate on services of a job worker was specified under Notification No.11/2017 dated 28/06/2017 which specified that the tax rate of 12% is applicable irrespective of whether the recipient of services was registered under the Act or not.

RODEC Pharmaceuticals Pvt Ltd [TS-454-AAR(UP)-2022-GST]

AAR denies ITC on goods procured for business promotion.

In this case, the Applicant was engaged in the business of trading Animal Health Products. The Applicant had filed an application before the Uttar Pradesh Authority for Advance Ruling (hereinafter referred to as "AAR") to ascertain whether GST paid on inputs/input services procured for business promotion was eligible for input tax credit. The applicant contended that the promotional items were to be treated as input/input services used in the furtherance of business and were not to be treated as gifts and hence, the applicant was eligible to claim input tax credit. The AAR noted that Section 17(5)(g) of the Central Goods and Services Tax Act, 2017, restricts Input tax credit on promotional items procured for personal consumption even if they are used for the furtherance of business. In the given case, as the products were used for personal consumption of the retailers, the AAR held that the input tax credit was blocked and the applicant was not eligible to claim input tax credit on the same.



KNK KARTS (P) Ltd. [TS-418-AAR(KAR)-2022-GST]

AAR taxed 'Go Karts' used for 'amusement' at the rate of 18%.

In this case, the Applicant was engaged in the manufacture and supply of 'amusement park ride karts', commonly known as 'Go-Karts'. The Applicant had filed an application before the Karnataka Authority for Advance Ruling (hereinafter referred to as "AAR") to ascertain the tax rate on such 'Go-Karts' and whether the same can be classified as "motor vehicles used for carrying passengers/persons". The AAR observed the facts and noted that the products manufactured by the applicant were designed and shaped to run or drive only on extremely smooth, specially designed tracks or closed circuits and not on tracks or rails where normal automobiles operate. Further, the products manufactured by the applicant did not qualify as 'motor vehicles' as they were not roadworthy and were meant only for entertainment. The AAR held that the products manufactured by the applicant were taxable at the rate of 18% and were not eligible to be classified as "motor vehicles used for carrying passengers/persons".

B. Notifications/Circulars

Circular No.180/12/2022-GST

The Central Government vide Circular No.180/12/2022-GST dated 9th September 2022 has provided guidelines for filing/revising FORM TRAN-1/TRAN-2. The said circular has directed the Goods and Service Tax Network to reopen the portal for furnishing FORM TRAN-1/TRAN-2 for the period. The said portal will be made available from 01/10/2022 to 30/11/2022.

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



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

©2022 Fox Mandal & Associates LLP | The contents of this publication are for general information only and should not be relied upon as a substitute for professional legal advice, which should always be sought in relation to any specific matter prior to acting in reliance upon any such information. The opinions, estimates and information given herein are made in best judgment, utmost good faith and as far as possible based on data or sources, which are, believed to be reliable. Notwithstanding we disclaim any liability in respect of any claim which may arise from any errors or omissions or from providing such advice, opinion, judgement, or information.

Offices at:

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

www.foxmandal.in
info@foxmandal.in

Follow us: