Tax INFORM

A Fox Mandal publication for private circulation only.

Issue XXIV | December 2022



FoxMandal Solicitors & Advocates

www.foxmandal.in | info@foxmandal.in

Contents

4 DIRECT TAX

Recent Case Laws

Notifications/Circulars

16 INDIRECT TAX

17 Goods & Services Tax

Recent Case Laws

Notifications/Circulars

Highlights of the Issue

DIRECT TAX

Domestic Tax Rulings:

- Special Court for Economic Offences acquits salaried person of ITR non-filing over belief that Form-16 & TDS provide adequate compliance.
- VsV Act being a beneficial law, the Court holds that an unintentional delay in payment was condonable and justifiable.
- Following amalgamation, the successor assumes the predecessor's role. Allows set-off of long-term capital loss and carrying forward of MAT credit in the scheme Of amalgamation.
- Delayed deposit of employees' PF 'indicated' in the audit report, sufficient for Sec.143(1) adjustment.
- TDS on FCCB premiums borne by Assessee and capitalised are eligible for depreciation.
- Centralised services to Indian hotels, including marketing & sales, not FTS; follows Sheraton International's ruling.

International Tax Rulings:

- Business profits embedded in reinsurance premiums are not taxable in the absence of Fixed Place PE.
- Benefit of Article 13(4) of the DTAA is available to the assessee before the setting-off of brought forward short/long term capital gains.
- Under the India-US DTAA, online auction income from Indian subsidiaries is not subject to royalty.

Circulars and Notifications

- Circular No. 24/2022 dated 07-12-2022
- F. No. DGIT(S)-ADG(S)-3/e-Filing Notification/Forms/2022/9227

INDIRECT TAX

Goods and Services Tax:

Case Laws:

- High Court allows a one-time revision of Form TRAN-1.
- HC condones the delay in an appeal for registration, considering financial hardship and COVID-19 as genuine reasons.
- AAR denies ITC on the canteen facility provided in the factory to employees.
- AAR held that GTA valuation includes the value of free fuel filled by the service recipient.
- AAR held that a tax rate of 18% was applicable to the cost of diesel incurred for running the Diesel Generator.

Circulars and Notifications:

- Notification No.23/22 dated 23rd November 2022
- Notification No.25/22 dated 13th November 2022

DIRECT TAX

A. Recent Case Laws

I. Domestic Tax Rulings

Partha Pratim Ghosh [TS-807-DC-2022(Bang)]

The Special Court for Economic Offenses clears salaried individuals of ITR non-filing on the grounds that Form 16, and TDS provided adequate compliance.

Facts: The Assessee is an individual and the GM of a company. The source of income earned by him was income from salary and interest on bank deposits. He had not filed his return of income since AY 2002-03 until AY 2011-12, under the bonafide belief that since tax on salary was deducted by the employer and Form 16 was received, no further return was to be furnished. The assessee subsequently filed the return of income and paid the due taxes with interest. Revenue determined that the assessee was a "habitual defaulter" and filed a prosecution.

Issue Before the Hon'ble Supreme Court: Whether the Assessee has wilfully attempted to evade payment of tax by not filing a return of income?

Hon'ble Bangalore Special Court's Decision:

1. The Court held that there is no material to show that the Assessee has wilfully and deliberately not filed the return of income to evade the tax.
2. Further there was no penalty initiated against the assessee which implies that there was a reasonable cause for the non-filing of returns.
3. Thus, it was held that there was a reasonable cause for the non-filing the returns and that the Revenue had failed to prove the guilt of the Assessee beyond all reasonable doubts.
4. Accordingly, the court acquitted the Assessee from prosecution.

IA Housing Solution Private Limited [TS-859-HC-2022(DEL)]

The Vivad se Vishwas Act, 2020 being a beneficial law, the Court holds that an unintentional delay in payment was condonable and justifiable.

Facts: The Assessee failed to adhere to the deadline for payment and requested the Revenue to condone the delay, with a submission that the said failure was caused by the death of a director of the Assessee-company, apparently undertaking/looking after the taxation matters thereof. The Revenue refused to condone the delay in payment and dismissed Assessee's

application under the Vivad se Vishwas Act, 2020 (VsV Act), with which the Assessee had preferred a writ petition before the Hon'ble Delhi High Court.

Issue Before the Hon'ble Supreme Court: Whether the delay in making payment under the VsV can be condoned?

Hon'ble Delhi High Court's decision:

1. The Court observed that the delay in payments of the amounts, in the present cases was attributable to unforeseen and extraneous circumstances that were beyond the control of the Assessee.
2. Though the power to condone the delay with regard to delay in payment under VSV is not vested with the Departmental Authorities, the power of the High Court under Article 226 of the Constitution of India to grant relief in extraordinary and exceptional circumstances, cannot be taken away or curtailed by any legislation.
3. The Court also observed that no prejudice will be caused to the Revenue by accepting the prayer of the assessee. Rather, the revenue would benefit and achieve the scheme's goal of reducing case pendency, generating timely revenue for the government, and providing certainty and savings of resources that would otherwise be spent on the lengthy litigation process.
4. The Court held that the delay in payment in the present cases were unintentional and supported by justifiable reasons, and thus the cause of substantial justice deserves to be preferred, and this unintentional delay deserves to be condoned.

Capgemini Technology Services India Limited [TS-918-ITAT-2022(PUN)]

Following amalgamation, the successor assumes the predecessor's role. Allows Set-Off of Long-Term Capital Loss and Carry Forward of MAT Credit in the Scheme of Amalgamation.

Facts: The Assessee (Amalgamating Company) is a company engaged in providing software development services and IT-enabled services. The Assessing Officer ("AO") observed that the Amalgamated Company had claimed to have brought forward long-term capital loss of Amalgamating Company in its income-tax return. The AO while noting provisions of section 72A of the Act denied the claim of such a long-term capital loss by the Amalgamated Company. The AO also held that MAT credit of the Amalgamating Company is not covered under Section 72A of the ITA. Therefore, in the absence of any specific provision entitling the Amalgamated Company to avail itself of MAT credit from the Amalgamating Company, no such credit could be allowed in the hands of the Amalgamated Company. The CIT (A) concurred with the view of the AO.

Issue Before the Hon'ble ITAT: Whether Long Term Capital Loss carried forward from the Amalgamating Company can be set off by the Amalgamated Company?

Hon'ble Pune ITAT's Decision:

1. The Hon'ble ITAT relied on the Supreme Court's decision in T. Veerabhadra Rao (1985) 155 ITR 152 (SC), which held that if the debt was considered in computing the income of the predecessor firm and was later written off as irrecoverable by the successor firm, the assessee-successor would be entitled to the deduction.
2. The ITAT further distinguished between amalgamation and winding up and observed that, per se, the existence of the business of the amalgamating entity does not cease in amalgamation as opposed to the business coming to an end in the winding up.
3. The ITAT further observed that although Section 72A applies exclusively in respect of accumulated losses and unabsorbed depreciation under the head PGBP of the Amalgamating Company, it is not a panacea for all the tax-related issues of the amalgamation and does not have application insofar as the other tax entitlements, privileges or benefits in the hands of the Amalgamating Company, are concerned.
4. The amount of long-term capital loss that is not set off in accordance with the relevant provisions is carried forward to subsequent assessment years, and so on, for set off subject to other conditions, including that of sub-section (2), and since the business of the amalgamating company continues uninterruptedly by the amalgamated company, the benefit of such carry forward and set off earned by the business of the amalgamating company must be allowed, as mandated by Section 74.

Cemetile Industries [TS-933-ITAT-2022(PUN)]

Delayed deposit of employees' PF 'indicated' in the Audit Report is sufficient for Sec.143(1) adjustment.

Facts: The assessee's return was processed under Section 143(1) of the Act, making disallowance under Section 36(1)(va) of the Act, on the ground that the amount received by the assessee from employees as contributions to the Employees Provident Fund (EPF)/Employees State Insurance Corporation (ESIC) etc. (hereinafter called `the relevant funds'), was not credited to the employees' accounts on or before the due date as prescribed under the respective Acts.

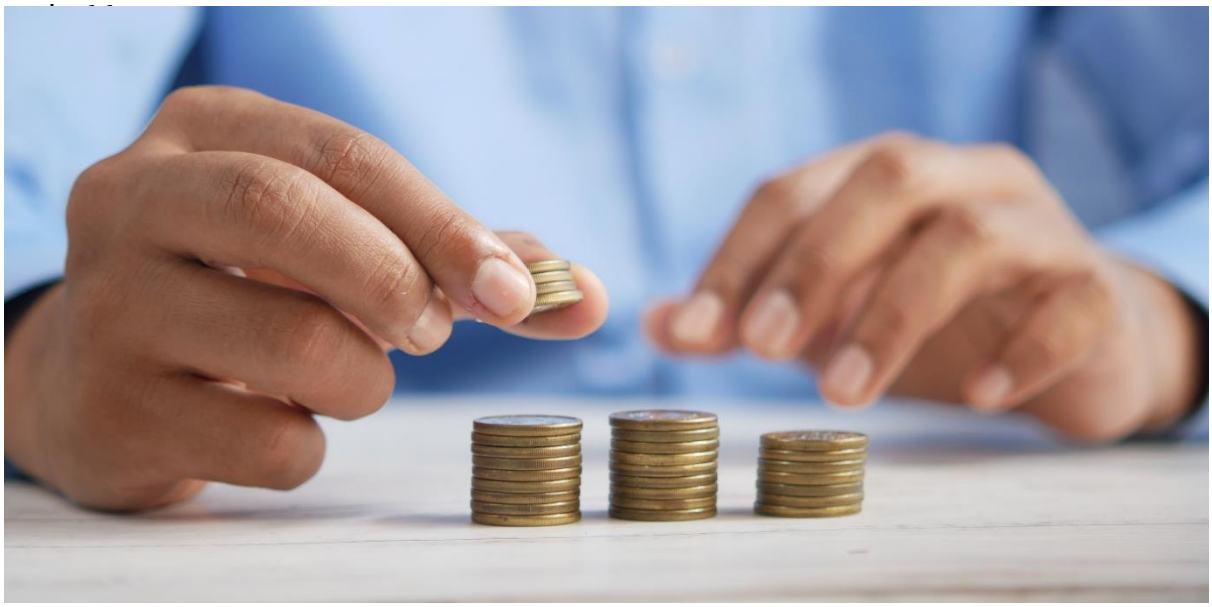
Issue Before the Hon'ble ITAT: Can disallowance be made for the PF contribution while processing the return u/s 143(1)(a)(iv), based on an audit report, stating that payment by the employer was made after the statutory due date?

Hon'ble Pune ITAT's ruling:

1. The Hon'ble Tribunal observed that the audit report filed by the assessee clearly indicated the due dates of payment to PF/ESIC and the fact that the assessee had deposited such amounts after the due dates prescribed in the respective acts, but before the due date of filing a return under Section 139(1).
2. The Hon'ble Tribunal remarks that "The case of the assessee before the authorities below has been that such payments before the due date as per section 139(1) of the

Act amounts to sufficient compliance with the provisions in terms of section 43B of the Act, not calling for any disallowance. Per contra, the Department has set up a case that the disallowance is called for because of the per se late deposit of the employee's share beyond the due date under the respective Act and Section 43B is of no assistance."

3. The Tribunal noted that recently, the Hon'ble Supreme Court in Checkmate Services P. Ltd. & Ors. Vs. CIT & Ors. (2022) 448 ITR 518 (SC) held that contributions by the employees to the relevant funds are the employer's income under Section 2(24)(x), but the deduction for the same can be allowed only if such amount is deposited in the employee's account in the relevant fund before the date stipulated under the respective law governing the fund and further that the due date u/s.139(1) of the Act is alien for this purpose.
4. The Tribunal accepted the Assessee's submission that no prima facie adjustment can be made in the intimation issued under Section 143(1) unless a case is covered within the specific four corners of the provisions.
5. The Hon'ble Tribunal observed that Section 143(1) of the Act opines that sub-section (1) of Section 143 states that a return shall be processed to compute total income by making six types of `adjustments' as set out in sub-clauses (i) to (vi) examines two sub-clauses, viz., (ii) and (iv). The sub-clause (ii) talks of 'an incorrect claim'. The Tribunal notices that defining an incorrect claim apparent from any information in the return attracts attention to the facts of the current case. On sub-clause (iv) being – disallowance of expenditure or increase in income indicated in the audit report but not considered in computation," the Tribunal observes that "if the indication in the audit report gives a clear picture of the violation of a provision, there can be no escape from disallowance."
6. The Tribunal refers to Clause 20(b) of the audit report providing details of contributions received from the employees for various funds as referred to in Section 36(1)(va); holds that even though the audit report clearly indicated that there was a delay in the deposit of the employees' share in the relevant funds, which was in contravention of the prescription of u/s.36(1)(va), the Assessee chose not to offer the disallowance in computing the total income in the return, which rightly called for the disallowance in terms of Section 143(1)(a) of the Act.



Man Industries (India) Limited [TS-839-ITAT-2022(Mum)]

TDS on FCCB premiums borne by the Assessee & capitalised are eligible for depreciation.

Facts: The Assessee is a resident company that manufactures and sells large diameter carbon steel line pipes. The Assessee had borrowed funds, for the purchase of certain capital assets, by issuing foreign currency convertible bonds (FCCBs), which were redeemed at a premium of Rs.112.05 Cr. and had borne the withholding tax of Rs.12.40 Cr, at 10% on the premium paid. The Assessee capitalised Rs.22.66 Cr of the said premium, including the TDS liability and claimed depreciation on it. The Assessing officer rejected the same and observed that, as per the agreement, the Assessee was required to bear only withholding tax in excess of 10% and since in the present case the rate of tax was 10%, no depreciation was allowable on the capitalised withholding tax. On appeal, CIT(A) confirmed the disallowance of depreciation.

Issue Before the Tribunal: Whether TDS on FCCB premium borne by Assessee & capitalised, was eligible for depreciation under the provisions of the Act?

Hon'ble Mumbai ITAT's ruling:

1. The Tribunal observed that in the normal course, the TDS amount would be reduced from the amount payable to the payee and the net amount alone would be paid to him. However, in the instant case, since the Assessee had borne the TDS deductible on the amount of premium payable on FCCB, the same would become an additional cost to the Assessee, resulting in an increase in the premium payable on FCCB.
2. The Tribunal noted that the assessee capitalised a portion of the FCCB premium paid and claimed depreciation for the first time in AY 2013-14, which was disallowed by the Revenue but allowed by both the CIT(A) and the Co-ordinate Bench.
3. The Tribunal agreed with the Assessee's contention that since the depreciation was allowed in the first year of claim, the same could not be disallowed by the Revenue in the subsequent years, relying on the Ahmedabad ITAT ruling in Bodal Chemicals Ltd (ITA No. 139/Ahd/2011), wherein it was held that if the Revenue once allowed the deduction for the depreciation, then it is debarred to reject the depreciation claim in the subsequent years on the WDV carried forward from the earlier AY's.
4. It rejected Revenue's argument that there was no contractual obligation for the Assessee to bear the TDS liability. It placed reliance on Hon'ble Madras High Court ruling in Standard Polygraph Machines (P) Ltd (2002) 124 taxman 669, wherein it was held that the TDS liability borne by the Assessee shall form part of the consideration.

Westin Hotel Management LP [TS-875-HC-2022(DEL)]

Centralised services to Indian hotels including marketing & sales, not FTS; Follows Sheraton International ruling.

Facts: Assessee, a non-resident US-based company engaged in the business of providing hotel related services in several countries, including India, entered into three agreements with Indian hotels, namely, (i) Agreement for grant of the right to use a trade name, (ii) Operating Services Agreement and (iii) Centralized Service Agreement. The Assessee claimed that the amount received under Centralized Service Agreement for providing hotel related services, was in the nature of business income. However, on the ground that the services provided by the Assessee, were of the nature of FTS, as defined in the Explanation of Section 9(1)(vii), the Revenue denied the claim of the Assessee. On appeal, the CIT(A) dismissed the Assessee's appeal. However, the ITAT relied on the jurisdictional HC ruling in the Assessee's group entity in Sheraton International Inc. (2009) 178 taxman 84 (Del) and observed that the amount received from customers on account of centralized services, viz. sales and marketing, loyalty programs, reservation service, technological service, operational services and training programs, does not constitute 'Fee for Technical Service' as defined under Section 9(1)(vii) or Article 12(4)(a) of India-US DTAA. The Revenue appealed before the High Court contending that the Sheraton International ruling has been assailed in the SC, which is pending adjudication.

Issue Before the Hon'ble High Court: Whether the Centralised services rendered by the Assessee to Indian hotels were in the nature of FTS or business income?

Hon'ble Delhi High Court's ruling:

1. The Hon'ble High Court noted that the Revenue had not brought anything on record to distinguish the facts of the present case from the facts of the quoted judgement, i.e. Sheraton International, which was decided in the favour of the Assessee.
2. Further It noted that though the said judgement was challenged by the Revenue before the Hon'ble Supreme Court, there was no stay on the said judgement till date.
3. Further, it relied on the SC ruling in Kunhayammed and Others VS. State of Kerala and Another, (2000) 6 SCC 359, wherein it was held that mere pendency of SLP does not put in jeopardy the finality of the order sought to be challenged. It was only if the application was allowed and leave to appeal was granted, that the finality of the order under challenge would be jeopardised, as the pendency of the appeal would reopen the issues decided and the correctness of the decision could be scrutinised in the exercise of appellate jurisdiction.
4. The Hon'ble High Court dismissed the Revenue's appeal and held that the said income did not constitute FTS and that the Sheraton International judgement would have a binding effect.

II. International Tax Rulings

RGA International Reinsurance Company Limited [TS-838-ITAT-2022(Mum)]

Business profits embedded in reinsurance premiums are not taxable in the absence of Fixed Place PE.

Facts: The Assessee is a company incorporated in and fiscally domiciled in Ireland and is admittedly entitled to the benefits of the India-Ireland Double Taxation Avoidance Agreement. The Assessee is engaged in the business of providing reinsurance services, among others, to its clients in India, and during the relevant previous year, the Assessee has earned reinsurance commission.

Issue Before the Hon'ble ITAT: Whether the business profits embedded in the reinsurance business are taxable in India?

Hon'ble Mumbai ITAT's ruling:

1. It is not even the case of the Assessing Officer, however, that any premises in India, whether of the RGA or otherwise, were at the disposal of the assessee. The ITAT noted the observations made by the Hon'ble Supreme Court in the case of E Funds IT Solutions Inc vs. ADIT [(2017) 86 Taxman 240 (SC)] that there must be a fixed place of business in India available to US companies through which they conduct their own business.
2. In the present case also, it has not even been the case for any of the authorities below that any particular premises were at the disposal of the assessee.
3. The DRP has referred to the existence of a business connection under Section 9(1) of the Indian Income Tax Act 1961, but then that aspect of the matter is wholly irrelevant because in a case in which a double taxation avoidance agreement comes into play, as admittedly, in this case, the provisions of the Income Tax Act 1961 cannot be pressed into service, unless these provisions are more beneficial to the assessee.
4. The core reinsurance activity is the assumption of risk, and that assumption of risk has been done outside India. There is thus no occasion to attribute reinsurance profit attribution to RGA India. Whatever activities are carried out by RGA India have been duly paid for by the Asseseee, and the transfer pricing assessment has accepted that position.
5. As regards the existence of the dependent agency permanent establishment, that aspect of the matter, in the light of the coordinated bench decision in the case of ADIT Vs Asia Today Ltd [(2021) 129 taxmann.com 35 (Mum)], regarding the existence of DAPE, is wholly tax-neutral and does not, therefore, need adjudication.
6. Thus, the ITAT held that the Assessee did not have a fixed permanent establishment in India, that the question of Assessee having a dependent agency PE is wholly academic in the sense that, as the law stands now, the existence of the DAPE is wholly tax neutral in India. Accordingly, the business profits earned by the Assessee on account of the reinsurance business have no tax implications in India.

Swiss Finance Corporation (Mauritius) Ltd [TS-832-ITAT-2022(Mum)]

Benefit of Article 13(4) of the DTAA is available to the Assessee before the setting-off of brought-forward short or long-term capital gains.

Facts: Assessee is a Mauritius-based Foreign Institutional Investor (FII) company. The Assessee has filed its return of income, declaring short term capital gain of Rs. 2358 Cr. and long-term capital gains of Rs. 790 Cr. However, the Assessee has claimed exemption under Article 13(4) of the India-Mauritius DTTA during the year under consideration and has also claimed brought forward capital losses of over Rs. 157 Cr. The Assessing Officer believed that before claiming the benefit of Article 13(4) of the DTAA, the Assessee should have first set off the brought forward short- and long-term capital losses with the current year short- and long-term capital gains, and thus completed the assessment u/s 143(3) at "nil" income after setting off the entire brought forward capital losses.

Issue Before the Tribunal: Whether the assessee was entitled to claim benefit of Article 13(4) of DTAA in respect of the entire current year short/long term capital gains without setting of the brought forward short/long term capital losses?

Hon'ble Mumbai Tribunal's Ruling:

1. Before the Hon'ble Tribunal, the Revenue contended that since the long/short term capital gains were exempt as per Article 13(4) of the DTAA, the same did not form part of assessable income of the year under consideration and accordingly, cannot be set off with the brought forward short/long term capital losses and the benefit of relevant article of DTAA must be given in respect of net taxable income computed as per provisions of Act. (Including Section 74 of the Act). Whereas the assessee relied on decision of the Tribunal in the case of Goldman Sachs Investments (Mauritius) Ltd. Vs. DCIT (International Taxation) – 2(3)(2) [2021] 187 ITD 184 (Mumbai - Trib.) [24-09-2020].
2. Hon'ble Tribunal observed that there is no dispute on Assessee's entitlement to the benefit of the exemption under Article 13(4) of the DTAA in respect of short/long term capital gains.
3. Relies on the Coordinate Bench ruling in the Goldman Sachs (supra) case, which held that the assessee was entitled to claim the benefit of Article 13(4) of the DTAA in respect of entire current year short/long term capital gains, without setting off brought forward short/long term capital losses. It also permitted the Assessee to carry forward the brought forward short/long term capital losses, allowed to be carried forward in a previous assessment, which could be reviewed in assessment proceedings of subsequent assessment years.



Ariba Inc [TS-819-ITAT-2022(DEL)]

Online auction income from Indian-subsidiary, not royalty under India US DTAA.

Facts: The Assessee company, a US tax resident, earned income from its Indian subsidiary in respect of online auction services and claimed that the same was in the nature of business profits, which in the absence of a PE, was not taxable in India. However, Revenue determined that the Indian subsidiary was the Assessee's dependent agent (PE), and thus the business profits were taxable in India. Alternatively, Revenue held that the payments received by the Assessee from the Indian subsidiary were royalty income under Article 12 of the bilateral tax treaty, which was upheld by the Commissioner of Indian Income Tax Appeals [CIT(A)].

Issue Before the Tribunal: Whether income received from a wholly owned subsidiary in India from its Global Market Operations Centres located outside India, should be taxed as royalty under Article 12 of the India-US bilateral tax treaty?

Hon'ble Delhi Tribunal's Ruling:

1. The ITAT held that no further profit attribution can be made to the alleged PE of the assessee when its AE i.e. Indian subsidiary was remunerated at arm's length price, by relying on the Indian Supreme Court ruling in Morgan Stanley.
2. The Assessee company earned income from its Indian subsidiary in respect of online auction services and claimed that the same was in the nature of business profits, which in the absence of a PE was not taxable in India. However, the Revenue determined that the Indian subsidiary was the Assessee's dependent agent PE [DAPE], and thus the business profits were taxable in India. Alternatively, the Revenue held that the payments received by the Assessee from the Indian subsidiary were ''royalty income'' under Article 12 of the bilateral tax treaty, which was upheld by the Commissioner of Indian Income Tax Appeals [CIT(A)].

3. With regard to the profit attribution to the alleged DAPE, the ITAT noted that while framing assessments for the assessee for all the subject assessment years (2004/05 to 2011/12), no TP adjustment was made or in cases where a TP adjustment was made, the same were deleted, pursuant to dispute resolution panel (DRP) directions. Thus, the ITAT opined that "it is undisputed that in the assessment of the AE, the transfer pricing adjustments do not survive. As a result, attributing income to the alleged PE is untenable."
4. As regards Revenue's alternate plea that the income is in the nature of royalty under article 12(3), the ITAT also noted that it is not Revenue's contention that the Indian subsidiary has control over the online platform used by it, opining that "once it is clear that at no point of time the control of equipment is exclusively granted to AE i.e. Ariba India or its clients, the treatment of the receipt as royalty is not tenable." Also, the ITAT concurred with the Assessee's submission that there is no base erosion in this case, since the Indian subsidiary has retained a majority of the revenues earned from the clients (around 88% to 97%) and offered the same to tax in India in its income tax returns and only a miniscule percentage of the revenues (around 3% to 12.50%) has been paid to the assessee. Thus, the ITAT held that there was no base erosion on account of the non-taxability of the assessee.
5. The ITAT relied on the jurisdictional HC ruling in Asia Satellite Telecommunications, wherein it was held that consideration paid to a satellite company for up-linking and down-linking of TV signals will not be deemed as royalty for use of transponders inside the satellite, rejecting the CIT(A)'s finding that granting access through user ID and passwords for availing the facility would grant control over the equipment involved in the process.
6. The ITAT thus noted that it is an erroneous proposition that is not sustainable and accepted the Assessee's submission that the assessee has merely conducted online auction on its platform and that at all times the control over process and information etc. remained with the Assessee, also relying on the Coordinate bench ruling in Salesforce.com Singapore.
7. ITAT holds that income from providing online auction services to its wholly owned subsidiary in India from its Global Market Operations Centres located outside India, cannot be taxed as royalty under Article 12 of the India-US bilateral tax treaty.

B. Notifications/Circulars

Circular No. 24/2022 dated 07-12-2022

The CBDT, vide this Circular has issued the provisions/rates applicable u/s 192 for TDS on Salary payments to employees during FY 2022-23 (AY 2023-24), for the guidance of concerned employers/employees.

Link: https://incometaxindia.gov.in/communications/circular/circular-24-2022.pdf

F. No. DGIT(S)-ADG(S)-3/e-Filing Notification/Forms/2022/9227

Directorate of Income-tax (Systems) exempts non-resident taxpayers who do not have a PAN and are not required to have PAN as per the law, from the mandatory e-filing of Form 10F until Mar 31, 2023. Clarifies that such persons may make statutory compliance by filing Form 10F in manual form, as was being done prior to the issuance of DGIT (Systems) Notification No. 3 of 2022. This step has been taken after considering the practical challenges being faced by non-resident taxpayers not having a PAN in making compliance as per Notification No. 3 of 2022 and with a view to mitigating genuine hardship to such taxpayers.

Link: https://incometaxindia.gov.in/communications/notification/notification-e-filing.pdf

INDIRECT TAX

Goods & Services Tax

A. Recent Case Laws:

Jagdalpur Motors vs. Union of India & Ors. [TS-619-HC(CHAT)-2022-GST]

High Court allows one-time revision of FORM TRAN-1.

In this case, the petitioner's company was unable to file its Form TRAN-1 within the stipulated time period due to technical glitches on the portal. Numerous Assessee's facing similar issues had approached the Hon'ble Supreme Court which had directed the department to reopen the portal for 2 months between 01/09/22 to 31/10/22 which was further extended to 30/11/2022 to file/refile/revise the return irrespective of whether the taxpayer had filed a writ petition before the High Court or not.

The petitioner's consultant, due to an inadvertent clerical error, filled in inaccurate details in the form and was unable to amend the same. The petitioner requested to revise the form, and as no response was received from the GST authorities, the said writ petition was filed before the Chhattisgarh High Court (hereinafter referred to as "HC").

The HC observed the provisions of the Circular and Rule 120A of the Central Goods and Service Tax Rules, 2017 (hereinafter referred to as the "CGST Rules") which provided for the revision of the declaration in Form GST TRAN-1. The HC held that the petitioner cannot be denied an opportunity to revise their return and directed the authorities to reopen the portal for the petitioner to file accurate details within the statutory due date.



Nagson and Co vs Joint Commissioner Of Central Tax [TS-629-HC(KAR)-2022-GST]

HC condones delay in appeal for registration considering financial hardship and COVID-19 as genuine reasons.

In this case, the petitioner submitted a writ petition before the Karnataka High Court (hereinafter referred to as the "HC") claiming that he was unable to make GST payments on time due to financial constraints and the COVID-19 pandemic, which led to a show-cause notice being issued and subsequently an order by the GST authority cancelling the petitioner's registration.

The petitioner preferred an appeal before the Appellate Authority but the same was denied as the Appellate Authority did not have the powers to condone the delay and hence, the petitioner sought redress before the HC. The HC held that the explanation by the petitioner for the non-payment of GST was a genuine concern and justified her being unable to make GST payments. The HC set aside the orders passed by the Appellate Authority and directed them to restore the registration to the petitioner.

Tube Investments [TS-635-AAR(UTT)-2022-GST]

AAR denies ITC on the canteen facility provided in the factory to employees.

In this case, the Applicant was a company engaged in the manufacture of precision tools and equipment. The Applicant had entered into a contract to operate the canteen within the office premises to provide food at a nominal amount charged to the employees. The Applicant had not claimed any tax credits on the services provided by the canteen and was treating them as a cost in the books of account. The Applicant had approached the Uttarakhand Authority for Advance Ruling (hereinafter referred to as "AAR") to obtain clarity on whether the nominal amount recovered from employees would be construed as a supply by the applicant and whether tax was applicable on the said recovery.

The AAR held that providing canteen services by the applicant was not a part of the employment contract and was a mandate under the Factories Act, 1948. The nominal cost recovered from the employee was a 'supply' as per the provisions of the Central Goods and Services Tax Act, 2017 (hereinafter referred to as the "CGST Act") and was liable to tax. The AAR further held that the provisions of Section 17(5), Blocked Credit, of the CGST Act were applicable and denied input tax credit on the services availed of the canteen supplier.

New Jai Hind Transport Service [TS-650-AAR(UTT)-2022-GST]

AAR held that GTA valuation includes the value of free fuel filled by the service recipient.

In this case, the Applicant was in the process of providing transportation by road of goods to the recipient's specified destination. As per the agreement entered between the Applicant and the service recipient, the Applicant would provide a driver, and staff to run/operate but the cost of fuel would be borne by the recipient of the service. Since fuel was not in the scope of supply for the applicant, the tax was charged only on the services provided by the applicant excluding the fuel cost, under the forward charge mechanism. The Applicant approached the Uttarakhand Authority for Advance Ruling (hereinafter referred to as "AAR") to ascertain whether the value of free diesel filled by the service recipient would be subject to tax.

The AAR noted the facts on hand and drew attention to the provisions of Section 15(2)(b) of the Central Goods and Services Tax Act, 2017 (hereinafter referred to as the "CGST Act") which stated the value of supply shall include any amount that the supplier is liable to pay in relation to the supply that has been incurred by the recipient of the supply and was not included in the price actually paid for the goods or services or both. Therefore, the AAR, upon observation of the section stated supra and other relevant judgments, held that the fuel provided free of charge by the recipient of service for the transportation of goods shall form part of the value of the supply.



Tara Genset Engineers [TS-651-AAR(UTT)-2022-GST]

AAR held that a tax rate of 18% was applicable on the cost of diesel incurred for running the Diesel Generator.

In this case, the Applicant was a partnership firm engaged in the business of renting diesel generator sets to various customers. The Applicant would install the generators on a hire basis with reimbursement of diesel costs on usage of the set and would pay taxes on the hire charges and the reimbursement of diesel costs incurred. The Applicant was of the opinion that diesel is outside the purview of Goods and Service Tax and hence, approached the Uttarakhand Authority for Advance Ruling (hereinafter referred to as "AAR") to ascertain whether tax was applicable on the cost of diesel incurred for running the diesel generator in the course of providing a diesel generator for rent. The AAR held that there was no separate cost for the supply of diesel and the reimbursement of expenses as a cost of diesel for the running of the diesel generator set was nothing but an additional consideration for the renting of the generator set and attracted tax at the rate of 18%.

B. Notifications/Circulars

Notification No.23/22 dated November 23, 2022

The Central Government vide Notification No. 23/22 dated November 23, 2022, empowered the Competition Commission of India to examine whether input tax credits availed by any registered person or the reduction in the tax rate have resulted in a commensurate reduction in the price of the goods or services or both supplied by him. The notification came into force with effect from December 1, 2022.

Link: https://taxinformation.cbic.gov.in/view-pdf/1009556/ENG/Notifications

Notification No.25/22 dated November 13, 2022

The Central Government vide Notification No.25/22 dated November 13, 2022, extended the time period for furnishing Form GSTR -1 to December 13, 2022, for registered person whose principal place of business is in the districts of Chennai, Tiruvallur, Chengalpattu, Kancheepuram, Tiruvannamalai, Ranipet, Vellore, Villupuram, Cuddalore, Thiruvarur, Nagapattinam, Mayiladuthurai and Thanjavur in the State of Tamil Nadu.

Link: https://taxinformation.cbic.gov.in/view-pdf/1009573/ENG/Notifications

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

Copyright © 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.

www.foxmandal.in

info@foxmandal.in

Offices at:

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

Follow us: