Tax INFORM

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- AAR held that health care service does not include door-step medical monitoring and logistics service.

DIRECT TAX

A. Recent Case Laws

Domestic Tax Rulings

Pfizer Healthcare India Private Limited Vs Deputy Commissioner of Income Tax [TS-1025-HC-2022(MAD)]

Madras High Court held that Section 92CA is a machinery provision and Section 153 deals exclusively with time limitation.

The Assessee Company, engaged in the business of manufacturing generic drugs, R&D, and export, filed a writ petition before the Madras High Court ("HC") questioning the time limit for completion of assessment u/s 153 of the Income Tax Act, 1961 ("the Act"). The Assessee contended that the assessment order dated 26.07.2019 is barred by limitation since it ought to have been passed on or before 22.07.2019 reckoning the period of 60 days from 24.05.2019 (being the date on which the TPO order was ultimately passed after excluding the time taken for receipt of exchange of information and considering multiple other interim time extensions). The learned counsel for the revenue argued that it is the date of receipt of the Transfer Pricing Order from the Assessing Officer that would constitute the effective date for computing the period of 60 days for completion of the assessment. The order of the TPO was received by the DCIT, Corporate on 29.05.2019 and DCIT, Corporate Circle-5(2), Chennai on 03.06.2019, and thus the 60 days period, according to revenue, would run from 03.06.2019 and expire on 02.08.2019.

The HC held that section 92CA of the Act is a machinery provision that provides the procedure for passing the TP order. On the other hand, section 153 was held to deal exclusively with limitation and statutory extensions/exclusions therefrom, as set out under Explanation thereto while section 92CA(3A) of the Act sets out limitations which are to be construed in the context of and within overall limitation provided for u/s 153 of the Act. Accordingly, the HC set aside the assessment order as the same was barred by limitation.

Vedanta Ltd Vs Assistant Commissioner of Income Tax [TS-1023-HC-2022(DEL)]

Delhi High Court quashed the reassessment proceedings due to Revenue's non-application of mind.

The Assessee Company, involved in the manufacturing of copper and other non-ferrous metals, phosphoric acid, and sulphuric acid, was subjected to reassessment proceedings. The

same was done based on the information received from the investigation wing on the following two issues:

- Disallowance under Section 40(a)(i) of the Income Tax Act, 1961 ("the Act") for non-deduction of tax at source on payment of Rs.22.45 Cr. made to the foreign entities; and
- One-Time Settlement (OTS) of Rs.45.37 Lac with Vijaya Bank against which interest was written-off in the year under consideration although claimed in earlier years.

The Assessee filed a writ petition before Delhi High Court ("HC") contending that the issue of non-deduction of tax at source is covered by the coordinate bench ruling wherein reassessment was quashed on the ground that payment of management consultancy fees was already disclosed both in accounts and audit and examined during assessment under Section 143(3) of the Act. On the issue of interest written-off, the Assessee contended that Vijaya Bank filed a suit for recovery of Rs.45.37 Lac against it (in the name of the erstwhile entity "Sterlite") and other defaulters on the premise that they were jointly and severally liable to pay the defaulted loan amount along with 'further interest' at the rate of 24.5% per annum from the date of suit till actual realization. The HC considered the lack of dispute regarding the issue of a bond by the Assessee to indemnify Vijaya Bank against the losses that could arise by the reason of misuse of dividend warrants. The court further observed that Vijaya Bank's claim against the Assessee in respect of the indemnity bond furnished was dismissed vide order of the Debt Recovery Tribunal and therefore, no loan was taken by the Assessee and quite logically no OTS could have been arrived at between the Assessee and Vijaya Bank. The Assessee had only furnished an indemnity bond for possible misuse of dividend warrants and a deduction against its profit could not have possibly been claimed. Observing that there was no application of mind on behalf of Revenue in issuing the reassessment notice, the HC quashed the reassessment notice.

CU Inspections & Certifications India Pvt. Ltd Vs Assistant Commissioner of Income Tax [TS-1024-ITAT-2022(Mum)]

ITAT held that License Fee is taxable as per revenue recognition policy, over agreement tenure.

In this case, the Assessee followed the mercantile system of accounting in AY 2014-15 (first year of operation) and declared income of Rs.2.21 Cr being accrued on Mar 31, 2014, and accounted unaccrued income of Rs.3.35 Cr as "License fees billed but not accrued" under current liabilities of financial statement and accordingly, carried forward the unaccrued fees to subsequent AY 2015-16. During assessment proceedings, the Revenue rejected the Assessee's method of accounting and added back the fees "billed but not accrued" of Rs.3.35 Cr and assessed total income of Rs.5.58 Cr.

Aggrieved, the Assessee filed an appeal before the CIT(A) which was dismissed. It was held that the liability of Rs.3.35 Cr being license fees has to be assessed under the cash system since the same was actually received in the year under consideration and the Assessee's attempt in presenting it as deferred revenue recognition is contrary to accounting principles. Subsequently, the Assessee approached the ITAT, Mumbai which relied on the jurisdictional High Court ruling in CU Inspections India (Assessee's Holding Company) and observed that the Assessee is also following the same method of accounting wherein the Assessee received

license fees for conducting an inspection of its client's project and for issuing certificate (with 12 months validity w.e.f. from the date of inspection). The appeal was then allowed by the ITAT while ordering the deletion of the added license fee amount which was recognised on an accrual basis following the mercantile system of accounting.

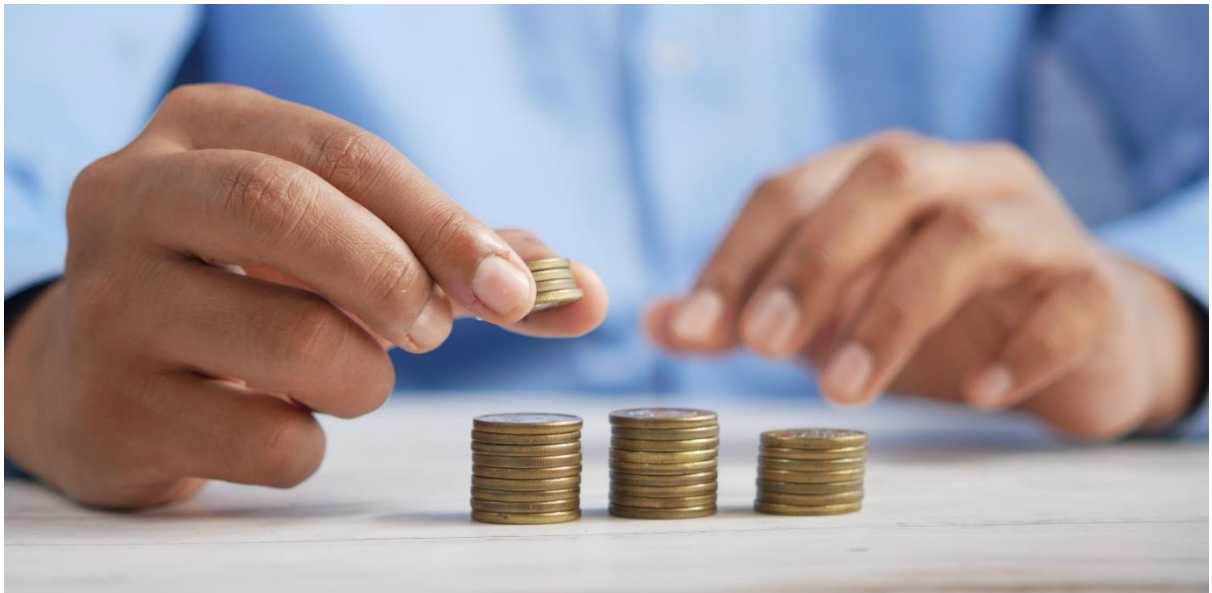
Assistant Commissioner of Income Tax Vs Sabre Decision Technologies International LLC [TS-02-ITAT-2023(DEL)]

ITAT held that the Assessee does not have PE in India considering that no equipment/server was installed in India and there was no dependent agent in India.

The Assessee which provides travel-related products and services to airlines through computer servers located in the USA filed its return of income on the assumption (without admitting) that it constitutes a business connection in India within the meaning of Section 9 of the Income Tax Act, 1961 ("the Act"). The Assessee had offered its income to tax in India, under the provisions of the Act without claiming any benefit under the India-USA DTAA, since the Assessee does not possess a valid Tax Residency Certificate. For AY 2013-14, the Revenue held that the Assessee has a fixed place PE in India and made an addition at 40% without allowing any expenses as against the 15% of net profits offered by the Assessee attributed to business connection in India.

Upon appeal, the CIT(A) declared that the Assessee does not have a PE in India and the receipts of the Assessee from Indian customers were held to constitute royalty, taxable at 10% as per Section 115A of the Act. Then, an appeal was filed before the ITAT by the revenue challenging the order of the CIT(A). The Assessee submitted that it does not have any office/ place of business in India, nor does it have any employees based out of India yet filed its return of income based on the jurisdictional HC ruling in the case of Assessee's group company wherein it was decided that the group company constitutes a business connection in India and has a PE in India.

Finally, the ITAT, Delhi clarified that the Assessee does not have a PE in India since it neither has a fixed place of business in India nor a dependent agent in India. The order of the CIT(A) was upheld and it was resolved that the Assessee's income was in the nature of royalty under Section 9(1)(vi) of the Act, taxable at the rate of 10% as against 40% which was initially determined by the Revenue.



Kulkarni & Sahu Buildcon Pvt. Ltd Vs The Deputy Commissioner of Income Tax [TS-969-ITAT-2022(RAI)]

ITAT held that business income is not taxable as undisclosed income under section 69 merely because it was declared during Survey proceedings.

The Assessee Company which undertakes civil construction work was subject to a survey under Section 133A of the Income Tax Act 1961 ("the Act") whereby it surrendered excess WIP of Rs.30.71 Lacs and excess stock of building material worth Rs.24.60 Lacs and credited the said amount in its trading/works account. It was observed by the Revenue that the excess stock or unexplained investment or cash surrendered during the survey was nothing but the accumulation of the Assessee's profits and the same was liable to be assessed as undisclosed income under Section 69 of the Act. Moreover, the Assessee failed to provide any explanation for it. Hence, the excess WIP and stock were treated as unexplained investments, and the Revenue made an addition of the same (as undisclosed income) under Section 69 of the Act. This action of the Revenue was confirmed by the CIT(A) aggrieved by which, the Assessee preferred the present appeal before the ITAT, Raipur.

The ITAT opined that the Revenue's remarks regarding the income surrendered by the Assessee being an accumulation of profits reflects that the said income was sourced out of the Assessee's business activities. The order of the CIT(A) was set aside and it was held that the Assessee had rightly offered the surrendered income of Rs.55.31 Lacs to tax under the head business income.

B. Notifications/Circulars

Circular No. 1 of 2023 [F. NO. 225/49/2021-ITA-II] dated 06/01/2023

The CBDT circular extended the time for adhering to the compliance requirements u/s Sections 54 to 54 GB of the Income Tax Act, 1961. It provides that if the last date for completing the compliances required to be made by the taxpayers in order to claim any of the exemptions provided for under Sections 54 to 54 GB of the Act, falls between April 1, 2021, and February 28, 2022, then the same can be complied with on or before March 31, 2023. This Circular has been issued in view of the COVID-19 pandemic and its impact on the taxpayers who encountered several difficulties in complying with said provisions.

https://incometaxindia.gov.in/communications/circular/circular-1-2023.pdf

Notification No. 1 of 2023, F No. DGIT(S)/ADG(S)-2/Reporting Portal/2021/180 dated 05/01/2023

The Directorate of Income Tax (Systems) modified the Notification No. 2/2021 dated Apr 20, 2021, regarding the reporting of interest income in Statement of Financial Transactions as per Section 285BA and Rule 114E. The new Notification mandates that account or deposit holders have to report all interest paid or credited during the financial year irrespective of the interest amount. Hence, if the interest exceeds zero per account in the given financial year, then reporting is imperative. In this regard, an exception has been created whereunder, the interest on Jan Dhan Accounts need not be reported. The Notification is operative w.e.f. from Jan 5, 2023. It is interesting to note that earlier, the reporting requirement was limited to cases where the cumulative interest exceeded a certain limit (i.e., Rs.5,000/- per person) in the financial year.

https://incometaxindia.gov.in/communications/notification/notification-1-2023-systems.pdf

INDIRECT TAX

Goods & Services Tax

Recent Case Laws:

Wipro Ltd India vs. The Assistant Commissioner of Central Taxes and Ors. [TS-02-HC(KAR)-2023-GST]

Karnataka High Court allows rectification of Form GSTR 1 considering that the mismatch in GSTIN was an unintentional error.

In this case, a writ petition was filed before the Karnataka High Court (hereinafter referred to as "HC") seeking permission and grant of access to rectify FORM GSTR 1 uploaded on the GST portal during the FY 2017-18 and 2018-19. The said petition was filed to enable the recipient to avail of credit for the tax paid by the petitioner. The HC took notice of the Circular No.183/15/2022-GST dated 27th December 2022 issued by the Government of India which contemplates rectification of the bonafide, and inadvertent mistakes made during the filing of Forms and submitting returns. In the instant case, the petitioner erred by showing the wrong GSTIN on the portal which occurred due to bonafide reasons and unavoidable circumstances. The High Court ruled that the Circular was squarely applicable to the petitioner and accordingly, directed the Revenue to reopen the portal for the petitioner.



Sunny Jain vs UOI & Ors. [TS-659-HC(DEL)-2022-GST]

Delhi High Court held that mere non-payment to suppliers cannot restrict credit to the recipient and directed the Revenue to unblock the E-credit ledger.

In this case, a writ petition was filed before the Delhi High Court (hereinafter referred to as "HC") challenging the actions of GST authorities in blocking the credit available to the petitioner in the E-credit ledger. The petitioner requested the respondents via email and personal representations to unblock the credit but the respondents did not accede to the same. The Revenue then directed the petitioner to deposit interest on account of non-payment of consideration to the supplier within 180 days and the petitioner objected to this demand. The petitioner contended that the credit was never utilized and there was no interest liable. The HC upon reading the provisions of the law held that the Revenue had completely misdirected themselves in the proceedings on the basis that a taxpayer is ineligible to avail of the ITC lying to his credit in the ECL unless he or she pays the supplier. The court held that in the facts and circumstances of the case, the action of the respondents in continuing to block the ITC available in the E-credit ledger of the petitioner for such an extended period is without the authority of law and directed the revenue to unblock the credit of the petitioner.

Krishna Institute of Medical Sciences [TS-700-AAAR(AP)-2022-GST]

AAAR held that administration of COVID-19 vaccine was taxable at the rate of 5%.

In this case, the Appellant, a multi-specialty hospital rendering healthcare services, was permitted to administer the COVID-19 vaccine. To ascertain whether the administration of the COVID-19 vaccine was a supply of goods or a supply of services and whether the same was chargeable to tax, the Appellant filed an application before the Andhra Pradesh Authority for Advance Ruling (hereinafter referred to as "AAR"). The AAR held that the administration of vaccine was a 'composite supply' wherein the principal supply is the 'sale of vaccine' and the auxiliary supply is the service of 'administering the vaccine' and the total transaction is taxable at the rate of principal supply i.e. 5%. Aggrieved by the impugned order, the Appellant preferred an appeal before the Appellate Authority for Advance Ruling (hereinafter referred to as "AAAR"). The AAAR on observation of the facts held that the administration of vaccines is primarily a supply of goods and not a service component of healthcare. It further held that it doesn't qualify as 'health-care services' as the vaccines are administered before the disease is contracted. With the foregoing, the AAAR upheld the ruling of the AAR.

Andhra Pradesh Industrial Infrastructure Corporation Ltd [TS-669-AAR(AP)-2022-GST]

AAR held that GST is payable on interest amount receivable on annual instalments.

In this case, the Applicant, a wholly owned undertaking of the Government of Andhra Pradesh, allotted lands and collected the amount in annual instalments along with interest duly providing a moratorium period. In this regard, the Applicant filed an application before the Andhra Pradesh Authority for Advance Ruling (hereinafter referred to as "AAR") to ascertain whether the interest amount receivable was taxable under GST or not. The AAR noted that as per the facts on hand, the amount collected would carry an interest rate of 16% p.a. The AAR observed that the said service does not form part of "Schedule III – Transactions which shall be treated neither as a supply of goods nor a supply of services" under Section 7 of the Central Goods and Services Tax Act, 2017 (hereinafter referred to as "CGST Act"). The service provided by the Applicant would fall under "Schedule II - Transactions which shall be treated as supply of goods or a supply of services" under Section 7 of the CGST Act and hence, AAR held that the said service was taxable.



Snehador Social & Health Care Support LLP. [TS-692-AAR(WB)-2022-GST]

AAR held that health care service does not include door-step medical monitoring and logistics service.

In this case, the applicant was engaged in providing services for health care to senior citizens. The Applicant filed an application before the West Bengal Authority for Advance Ruling (hereinafter referred to as "AAR") to inquire whether the services rendered by the applicant for health care to senior citizens at their doorstep comes under the exemption category and what will be the classification of such services. The Applicant contended that the services provided by them were similar to health care services provided by a clinical establishment and hence, the applicant would be eligible for an exemption under Notification No.12/2017 dated 28/06/2017. The AAR after observing the facts on hand and analysing the provisions of the Circular held that supply by way of healthcare services qualifies for an exemption under the said Circular if the same is provided by either a clinical establishment or an authorized medical practitioner or para-medics. Admittedly, the applicant doesn't fall under any of the aforesaid categories of suppliers, and the services provided by the applicant, therefore, fail to qualify as exempted services. Hence, the service provided by the Applicant was not eligible for an exemption and was chargeable to tax at the rate of 18%.

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