Tax INFORM

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DIRECT TAX

A. Recent Case Laws

Deputy Commissioner of Income Tax Vs British Agro Products (India) Pvt. Ltd [TS-177-ITAT-2023(CHNY)]

Growing White Button Mushrooms in a temperature-controlled facility constitutes 'agricultural activity' says ITAT.

For AY 2017-18, the Assessee company, engaged in the production of white button mushrooms in a temperature-controlled facility filed the return of income declaring a total income of Rs. 6,76,24,270/-. The return of the Assessee was revised on October 31, 2018, declaring the income as Nil. The revised return was filed claiming total income as agricultural income which is exempt from tax u/s 10 of the Income Tax Act, 1961. The return was selected for scrutiny and the assessment proceedings were concluded by the Assessing Officer treating the agricultural income as income from business on the ground that the company's activities do not fall under the definition of 'agricultural activity'. However, CIT(A) allowed Assessee's appeal and held that the term 'agriculture' does not confine to the production of grains but extends to all products culminated from land which can be either used for consumption or trade/commerce. Thus, the production of mushrooms can be covered under 'agricultural activity'.

Thereafter, the revenue preferred an appeal before the ITAT, Chennai. The Assessee relied on the case of Inventaa Industries Special Bench ruling and also submitted various documents and letters issued by the Ministry of Agriculture & Farmers' Welfare wherein mushroom cultivation was considered an 'agricultural activity'. The revenue contended that none of the essential aspects of an 'agricultural activity' such as tilling of the soil, sowing of seeds, planting etc. were involved since the Assessee was growing mushrooms in a temperature-controlled room.

ITAT relied on the Supreme Court ruling in the Raja Benoy Kumar case wherein it was held that to consider an activity as 'agricultural activity' there should be two operations i.e., basic and subsequent operations in the land for the purpose of plantation. After assessing the activities, the ITAT deduced that the Assessee is carrying out basic and subsequent operations. Basic operation includes the digging of clay out of land to mix it with paddy straw (seeds) and load it in trays placed vertically to culture it from matured mushrooms. Further, it carried out subsequent operations like the weeding of soil, usage of bactericide, plucking and harvesting etc.

Based on the above-mentioned observations, ITAT held that basic and subsequent operations were involved in agricultural operations for the cultivation of mushrooms and even if such activity was carried out in a greenhouse and under temperature-controlled conditions, the said activity can only be construed as 'agricultural activity' and not 'commercial activity'.

Accordingly, ITAT concluded that income derived from the cultivation and sale of white button mushrooms is income from agricultural activity.

Rachit V Shah Vs ITO [TS-127-ITAT-2023(HYD)]

ITAT held that gift of a house to the Assesses's father before the sale of land is camouflage, for claiming exemption u/s 54F.

While filing the return of income, the Assessee-Individual claimed exemption under Section 54F pertaining to the sale of land for a consideration of Rs.4.41 Cr. After limited scrutiny was initiated, the impugned order was passed u/s 143(3) for the said AY 2015-16 by disallowing exemption u/s 54F and the total income was assessed as Rs.2,71,48,595/-. Aggrieved, the Assessee preferred an appeal before the CIT(A).

The revenue contended that, prior to the sale of land, the Assessee had gifted his self-occupied house to his father to ensure that he had ownership of only one house property to claim the benefit under Section 54F. CIT(A) stated that in this case, the gift was a colourable device since it was designed in a manner to avail the benefit of exemption under Section 54F while not parting with the property and thus, upheld the denial of Section 54F deduction.

Subsequently, the said order was confirmed by the ITAT. After perusal of the documents, the ITAT observed that Rs.2.18 Lakh was received in cash prior to entering into the agreement and there was no evidence furnished as to when this cash amount was received by the Assessee i.e., whether prior to execution of the gift deed or at the time of execution of the sale agreement. ITAT stated that the gift deed was "merely a paper gift deed as it was not covered with the transfer of possession. It was not executed with love and affection but was for the purpose of taking undue benefit of the provision of law". Further, the Assessee continued to live on the same property which was gifted to his father. ITAT notes that the self-occupied property, out of two properties, was gifted immediately prior to the execution of the sale agreement and the proceeds from this sale were invested in buying another residential property. Consequently, the ITAT concluded that the gift deed was executed in an attempt to avoid paying the applicable taxes to the Government and upheld the order of the CIT(A) denying the deduction under Section 54F to the Assessee.

PCIT and ACIT Vs Jaico Realtors Pvt. Ltd [TS-174-HC-2023(KAR)]

HC upholds the ITAT order for deletion of addition under Section 68 to prove the shareholder's creditworthiness.

A search under Section 132 of the Act was conducted on the premises of Shri. K.G. Krishna and Group and the residence of the Assessee company's director, Shri. Chandrakanth Shah. On March 30, 2015, a notice under Section 148 of the Act was issued to the Assessee and the assessment was reopened. The revenue held that Assessee had not furnished any documentary evidence to prove the creditworthiness of the remitter namely Shri. Samyak C.

Veera (the director's son) as he declared a huge loss in the previous years and accordingly, the investment of shares amounting to Rs.4,06,98,779/- was brought to tax as unexplained credit under Section 68 of the Act. However, the ITAT recorded in para 4 of the impugned order that there were bank entries dated May 31, 2007, for remittance of USD 1,000,006.53 and dated June 5, 2007, for an amount equivalent to INR 4,06,98,779/-. The Assessing Officer's specific case was that in view of the loss incurred in earlier years, the remitter's creditworthiness was in doubt. The ITAT noted that Shri. Samyak C. Veera, even after suffering losses in the earlier years was having a net income of USD 33,12,256 from a foreign country and had made a remittance of only USD 10 Lakhs. The revenue's appeal was dismissed on said grounds after which the revenue preferred an appeal before the Karnataka High Court.

The HC held that there was no ground to interfere in the revenue's appeal insofar as the creditworthiness of the investor was concerned. On the issue as to whether the Tribunal was right in setting aside the addition made, the court held that the proper course for the Assessing Officer as held in para 11(ii) of NRA Iron and Steel (P.) Ltd. was to investigate the creditworthiness of the creditor and to ascertain whether the transaction was genuine. However, the Assessing Officer chose a reverse mode by calling upon the Assessee to show that the investor was creditworthy. Holding that the question pertaining to the validity of the Tribunal's order setting aside the addition does not merit consideration, the court dismissed the appeal.



B. Notifications/Circulars

CBDT notifies Cost Inflation Index for FY 2023-24 as 348

Vide Notification S.O. 1692 (E) [NO. 21/2023/F.NO. 370142/5/2023-TPL], dated April 10, 2023, the CBDT has notified the Cost Inflation Index for FY 2023-24 as 348. This notification shall come into force with effect from AY 2024-25.

Exemption granted to NRI taxpayers without PAN from electronic filing of Form 10F extended

In the earlier circular, non-resident (NR) taxpayers who did not have PAN and were not required to have PAN as per relevant provisions of the Act were exempt from mandatory electronic filing of Form 10F till March 31, 2023.

The competent authority to extend the above-mentioned partial relaxation further till September 20, 2023, through circular F. NO. DGIT(S)-ADG(S)-3/E-FILING NOTIFICATION/FORMS/2023/13420, dated March 28, 2023. The compliance of filing Form 10F may be carried out manually.



INDIRECT TAX

Goods & Services Tax

Recent Case Laws:

Indian Metals and Ferro Alloys Ltd. [TS-88-AAR(OD)-2023-GST]

AAR held that 'residential dwellings' used as guest houses for company employees are liable for tax on a reverse charge basis.

In this case, the Applicant, a manufacturing entity having its place of business in Odisha had taken on certain premises in New Delhi and Odisha as guest houses and the said premises were utilized for the purpose of providing food and accommodation to its employees. One of the places was taken on rent from a registered person and the other was taken from an unregistered person. The Applicant approached the Odisha Authority for Advance Ruling (hereinafter referred to as "AAR") to ascertain whether services received by a registered person by way of renting residential premises used as a guest house of the registered person is subject to tax under forward charge or reverse charge mechanism. The AAR noted the submissions made by the applicant and upon analysis of the law and the relevant notifications issued by the Government, concluded that a residential property given on rent to a registered person whether for residential purposes or otherwise shall attract a tax under the reverse charge mechanism.



YB Constructions Pvt. Ltd. v. UOI & Ors [TS-93-HC(ORI)-2023-GST]

Orissa High Court allowed the assessee to claim the input tax credit by rectifying the return after the due date for submission had expired.

In this case, the Petitioner filed a writ petition before the Orissa High Court (hereinafter referred to as "HC") requesting the HC to direct the opposite parties to permit rectification of the GST returns filed for 2017-18 and 2018-19 in order to get the Input Tax Credit (ITC) benefit from the principal contractor. The Petitioner contended that by allowing for rectification of the return, no revenue loss would be caused and on the contrary, if it is not permitted, then the Petitioner will unnecessarily be prejudiced. After perusal of the facts and various other judgments issued in this regard, the HC permitted the Petitioner to resubmit the correct returns for the aforementioned periods.

AS&D Enterprise LLP [TS-736-AAR(HAR)-2022-GST]

AAR held that LLP is liable to pay tax on security services under forward charge and not on a reverse charge basis.

In this case, the Applicant, an entity engaged in the business of providing security services filed an application before the Haryana Authority for Advance Ruling (hereinafter referred to as "AAR") to ascertain whether the security services provided by the Applicant are liable for tax under the forward charge or reverse charge mechanism. The Applicant submitted that services provided by it were taxable at the rate of 18% as per Notification No.11/2017-CT. The AAR heard the submissions made by the Applicant and noted that the primary query is whether an LLP is a 'body corporate' or not. It was remarked that tax under the reverse charge mechanism was applicable when the supplier of services was any person other than a body corporate. The AAR also looked into other relevant laws and notifications issued by the Government and reasoned that an LLP was a separate legal entity and a 'body corporate'. Therefore, the Applicant was exempted from the payment of tax under the reverse charge mechanism and was directed to charge tax on the invoices raised.

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