Tax INFORM

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FoxMandal Solicitors & Advocates

www.foxmandal.in | info@foxmandal.in

Contents

4 DIRECT TAX

Recent Case Laws

8 INDIRECT TAX

9 Goods & Services Tax

Recent Case Laws

Highlights of the Issue

DIRECT TAX

Domestic Tax Rulings:

- Supreme Court opines that it is not permissible for an assessee involved in an unlawful business to seek deductions for expenses or losses incurred during the course of such business.
- Supreme Court holds that co-operative Credit Societies are not 'banks' under Banking Regulation Act and consequently, are entitled to deduction under Section 80P of the Income-tax Act.
- Supreme Court holds that addition for unaccounted purchases cannot be deleted merely based on affidavits of a typist and a chartered accountant admitting a typographical error.

INDIRECT TAX

Goods and Services Tax:

Case Laws:

- Telangana AAR states that Input Tax Credit cannot be claimed for the construction of a warehouse as it is immovable property.
- Telangana AAR provides clarity on tax rates for works contract services to Government Authority Pre and Post 2022.
- Gujarat AAR holds that income derived out of accommodation provided by a charitable trust to pilgrims is not eligible for 12AA exemption and is liable to GST if the property is located outside the religious precinct.

DIRECT TAX

A. Recent Case Laws

The Commissioner of Income Tax Jaipur Vs Prakash Chand Lunia & Anr. [TS-206-SC-2023]

Supreme Court opines that it is not permissible for an assessee involved in an unlawful business to seek deductions for expenses or losses incurred during the course of such business.

In this case, a search was conducted by the Directorate of Revenue Intelligence (DRI) at a rented premise belonging to the assessee in Noida. The search resulted in the seizure of 144 silver slabs and two silver ingots. Subsequently, the assessee was arrested under the Customs Act, 1962 for committing an offense. The Collector of Customs concluded that the assessee was the rightful owner of the seized silver, even though it was not documented in his books of accounts. Consequently, the Collector directed the confiscation of the 146 silver slabs. In addition, Rs. 25 lakhs penalty was imposed on the assessee in accordance with Section 112 of the Act.

During the assessment proceedings, the assessee failed to explain the nature and source of the acquisition of the silver, leading the AO to apply the deeming provisions of Section 69A and make an addition of Rs. 3,06,36,909/-. The assessee filed an appeal against the impugned order, but it was dismissed by the CIT(A). Thereafter, he approached the ITAT, which upheld the CIT(A)'s order on Section 69A but partially allowed the appeal on minor additions, remanding the matter to the AO for further examination. After re-examining the issue, the AO made the addition, which was upheld by the CIT(A). The assessee then appealed the fresh order and the ITAT affirmed the decisions of the lower authorities. The penalty proceedings initiated against Mr. Lunia even as a reference was pending before the High Court led to an order under Section 271(i)(c) being confirmed by both the CIT(A) and the ITAT. In an appeal before the High Court, the following questions were raised: (i) whether the Tribunal was correct in holding that the assessee was the owner of the silver bars and sustaining the addition of Rs. 3.06 crore; and, (ii) if the answer to the previous question is in the affirmative, whether the tribunal acted in accordance with the law in not allowing the assessee to claim deductions for losses due to the confiscation. The High Court ruled in favour of the Revenue on the first question, adding the bars found in the rental premises to the assessee's income. Regarding the second issue, the High Court ruled that the loss suffered as a result of the confiscation carried out by the DRI officers was classified as a business loss. The present appeal is against the judgment and order of the High Court.

The Single Judge bench of the Supreme Court opined that it is impermissible for an assessee engaged in an illegal business to seek deductions for expenses or losses incurred in the course of that business, while another assessee involved in a legitimate business cannot claim deductions for losses incurred due to confiscation or penalties. The bench concluded that the

Revenue's appeal deserves to be allowed, acknowledging that Section 115BBE of the Act may not apply to the present case, as it is prospective in nature.

Subsequently, the case was decided in favour of the Revenue.

The Principal Commissioner of Income Tax 17, Mumbai Vs M/S Annasaheb Patil Mathadi Kamgar Sahakari Pathpedi Limited [TS-233-SC-2023]

Supreme Court holds that co-operative Credit Societies are not 'banks' under Banking Regulation Act and consequently, are entitled to deduction under section 80P of the Income-tax Act.

In this case, the assessee initially filed its tax return declaring nil income along with an audit report under section 44AB of the Income-tax Act, 1961. The case was later reopened under section 147 of the Act. It was discovered that the assessee had obtained a significant loan of Rs. 26,99,54,271/- from the Mumbai District Central Co-op Bank and received deposits from some members while granting loans to other members at varying interest rates. The auditors described the nature of the business as a cooperative credit society providing credit facilities to members. The assessee's balance sheet showed substantial reserves and other funds, including provisions under various heads. The interest charged by the assessee on loans was higher than the interest paid to the bank, and the assessee also earned interest income, created provisions for bad and doubtful debts, and allocated funds for dividend payment.

The assessee claimed deductions under various sections, including section 80P(2)(i)(a), which was initially disallowed by the Assessing Officer. The assessee appealed to the CIT(A), who allowed the claim. The revenue then appealed to the ITAT and subsequently to the Bombay High Court, but both appeals were dismissed based on a previous decision involving a similar cooperative credit society. The revenue has now filed this appeal challenging the High Court's decision.

The Supreme Court observed that in the case of Mavilayi Service Cooperative Bank Limited and Others vs. Commissioner of Income Tax, Calicut and Another (2021) 7 SCC 90, it had clarified that primary agricultural credit societies do not fall under the species of cooperative banks under the Banking Regulation Act, 1949. Therefore, these credit societies are entitled to exemption under Section 80(P)(2) of the Income-tax Act, 1961. The court emphasized that providing credit solely to its members does not meet the criteria for cooperative banks or banks under the Banking Regulation Act. The activities of banking under the said Act differ significantly from credit societies that offer credit exclusively to their members. The court also noted that considering the CBDT circulars and the definition of a bank under the Banking Regulation Act, the respondent/ assessee cannot be considered a cooperative bank or bank. Consequently, Section 80(P)(4) does not apply, and the respondent/ assessee is eligible for exemption or benefits under Section 80(P)(2) of the Income-tax Act.

Thus, the SC decided in favour of the assessee and dismissed the revenue's appeal.

Assistant Commissioner of Income Tax, Surat Vs M/S Kantilal Exports Surat [TS-234-SC-2023]

Supreme Court holds that addition for unaccounted purchases cannot be deleted merely based on affidavits of a typist and a chartered accountant admitting a typographical error.

The appellant, a partnership firm involved in the import, manufacturing, and export of diamonds, faced an assessment for 2001-02. The assessing officer discovered a discrepancy in the reported consumption of rough diamonds, with an excess of 1,40,000 carats compared to the available rough diamonds. The appellant explained that it was a typographical error, and the actual consumption was 2,90,701.14 carats. In support of this contention, the appellant provided a correction certificate to the assessing officer. The auditor, in a statement recorded on February 12, 2004, acknowledged the typographical error made by the typist. On March 3, 2004, a partner of the Appellant, explained that the actual consumption of rough diamonds was 2,90,701.14 carats, which matched the manufacturing records, stock and consumption register, labour register, and manufacturing bills. Despite this explanation, the assessing officer added an amount of Rs. 17,50,00,000/- under Section 69C of the Income-tax Act for consumption differences.

The CIT(A) deleted the additions upon appeal. The Tribunal, considering the entire material on record, confirmed the additions even after perusal of affidavits from a typist and a Chartered Accountant stating it was a typographical error. Aggrieved by the order, the assessee appealed to the Gujarat High Court, which deleted the additions based on the submitted affidavits.

The case eventually reached the Supreme Court, which observed that apart from the assessee's statement, no additional evidence was presented to the assessing officer regarding the typing mistake. The assessing officer, considering the yield figures in different assessment years, concluded that the percentage of yield for the year in question was significantly higher. Furthermore, during a search operation, unaccounted manufacturing and trading records were discovered, indicating that the assessee maintained separate books of accounts.

The Supreme Court noted that the High Court solely relied on the affidavits of the typist and the Chartered Accountant, overlooking the fact that these were filed for the first time before the Tribunal. Considering that the assessing officer and the Tribunal made their determinations based on all available information, the Supreme Court overturned the High Court's judgment and upheld the additions made by the assessing officer.

As a result, the case was decided in favour of the revenue authorities.

INDIRECT TAX

Goods & Services Tax

Recent Case Laws:

Sanghi Enterprises [TS-163-AAR(TEL)-2023-GST]

Telangana AAR states that Input Tax Credit cannot be claimed for the construction of a warehouse as it is immovable property.

The applicant was constructing a shed on leased land and the shed was part of a pre-fabricated shed (PFS) system. The applicant wished to claim the input tax credit for the construction of PFS. On this note, the AAR looked into the matter of whether input tax credit was allowed for the construction of a shed using pre-fabricated technology.

The AAR found that as per Section 17(5) of the CGST Act, 2017, goods or services received for an immovable property will not be amenable to claiming the input tax credit. The AAR stated that the intention of a PFS being assembled is to conduct business permanently beneath it and not for it to act as a movable property. The moveable parts of the PFS do not constitute separate properties of the PFS but are parts used to fully construct the single structure. The AAR also noted that PFS cannot be conceived without beneficial enjoyment of the structure, and hence determined it to be classified as immovable property.

The AAR relied on the Supreme Court decision in the case of Solid & Correct Engineering Works, wherein it was held that a shelter built for a temporary period would be considered an immovable property as long as it is for the beneficial enjoyment of the land to which it is attached.

Hence, it was held that the construction of a warehouse on the space of land would be considered as immovable property even if it was constructed using the PFS system and accordingly, the applicant was not eligible for claiming the input tax credit.

Srico Projects Pvt. Ltd. [TS-738-AAR(TEL)-2022-GST]

Telangana AAR provides clarity on tax rates for works contract services to Government Authority Pre and Post 2022.

The applicant was engaged in the business of executing contract works for Central and State Governmental authorities & Governmental entities. The issue brought before the ARR was (1)

Whether the applicant was eligible to avail of the concessional rate of GST at 12% as per the amended notification and (2) If not, what would be the rates before and after January 1, 2022.

In the personal hearing, the representative of the applicant contended that they were rendering services to multiple government and government-owned institutions, some of which may be defined as Government Entities (GE) and Government Authorities (GA), which were to be taxed at a concessional rate (Notification No. 11/2017). However, the terms GE and GA were removed from the initial entry 3(vi), via Notification No. 15/2021, with effect from January 1, 2022, and placed under entry 3(xii).

After a combined reading of Notification No. 15/2021, Notification No. 11/2017, and the relevant legal provisions, it was identified and declared that the tax rate applicable on GA and GE after the necessary amendments would be 6% CGST and SGST [S.3(vi)] up to December 31, 2021, and 9% CGST and SGST [S.3(xii)] from January 1, 2022.

Nandini Ashram Trust [TS-177-AAR(GUJ)-2023-GST]

Gujarat AAR holds that income derived out of accommodation provided by a charitable trust to pilgrims is not eligible for 12AA exemption and is liable to GST if the property is located outside the religious precinct.

The applicant was engaged in providing various professional services such as consulting services, urban design landscape, etc. and was a registered charitable trust under the Bombay Charitable Trust Act and holds a 12AA certificate. As per the terms of the trust deed, the applicant provided rooms on rent at Rs. 1000/- per day to pilgrims who visited the Ambaji Temple.

The applicant claimed that as per Notification No. 9/2017-Integrated Tax (Rate), a registered charitable trust holding a 12AA certificate was exempt from GST for charitable activities, and hence it was not liable to pay GST for the accommodation provided to the pilgrims.

The AAR observed that charitable activities as defined in the Notification No. 12/2017-CT(Rate) included 'advancement of religion spirituality', however, there was nothing to substantiate the claim that only pilgrims would be the ones granted the accommodation and that it was not granted to other individuals. Further, reliance was placed on Chapter 39 of the GST flyer on Charitable and Religious Trusts, which states that income from letting out immovable properties such as rest houses situated within the premises of a religious place is exempt from GST; however, the rooms in the present case were located outside the temple. Hence, the applicant was not eligible for the benefit.

Thus, the court shifted to determine the liability of registration and taxability under GST of the trust. It was found that the applicant was liable to be registered under Section 22 of the CGST Act and to pay GST at the rate of 12% (6% CGST and 6% SGST).

Key Contacts



G.V. GOPALA RAO

DIRECTOR – TAX
BANGALORE

+91 94835 12333
GOPALA.RAO@FOXMANDAL.IN



RANGANATH H.

DIRECTOR – TAX
BANGALORE

+91 98807 44482
RANGANATH@FOXMANDAL.IN

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www.foxmandal.in

info@foxmandal.in

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