Tax INFORM

A Fox Mandal & Associates publication - for private circulation only.

Issue XXXII | August 2023



FoxMandal Solicitors & Advocates

www.foxmandal.in | info@foxmandal.in

Contents

4 DIRECT TAX

Recent Case Laws

Notifications/ Press Releases

10 INDIRECT TAX

11 Goods & Services Tax

Recent Case Laws

Notifications

Highlights of the Issue

DIRECT TAX

Domestic Tax Rulings:

- Filing of belated return of income – Provisions of I-T Act presume culpable mental state under prosecution proceedings– the onus is on the Assessee to prove to the contrary: Madras HC.
- Tax Credit on notional basis upheld, India-Thailand DTAA interpreted in favour of the Assessee.
- Sale consideration is not chargeable to tax – Madhya Pradesh HC condemns Revenue for pursuing a "frivolous" case.
- Supreme Court rules that interest earned on bank deposits made by the clubs is liable to be taxed in the hands of the clubs and that the principle of mutuality would not apply.
- TDS is not deductible on payments made to non-resident telecom operators: Karnataka HC.
- Writ petition challenging the re-assessment order without DIN quashed.

Notifications and Press Releases:

- Income Tax website updated with new features.
- Valuation rules for Rent Free Accommodation notified.
- CBDT sets guidelines on exemption from income tax to 'life insurance policy'.

INDIRECT TAX

Goods and Services Tax:

Case Laws:

- Supreme Court denies pre-arrest protection in GST evasion case.
- Orissa HC confirms that pre-deposit payments can be made via an electronic credit ledger.
- Independent advisory to foreign entities does not constitute a supply by an intermediary: Delhi HC.
- ITC transfer availed through GSTR-3B instead of GST ITC-02 on account of the unavailability of said form on the GST portal remanded for re-evaluation.
- Supreme Court orders release of cash seized during search in respect of investigation under CGST Act.
- Canteen services not forming part of employment contract to attract GST.

Notifications:

- GST law on online gaming notified.
- Procedures for e-commerce operators (ECO) notified to be operative w.e.f. October 1, 2023.
- Procedure for filing GST appeal u/s 73/74 notified.
- CBIC notifies exemption from return filing, etc. pursuant to GST Council's 50th meeting.

DIRECT TAX

A. Recent Case Laws

D.M. Kathir Anand vs. Assistant Commissioner of Income Tax and Anr. (Criminal Original Petition No.4688 of 2017 & Crl.M.P.Nos.3533 and 3534 of 2017)

Filing of belated return of income – Provisions of I-T Act presume culpable mental state under prosecution proceedings– the onus is on the Assessee to prove to the contrary: Madras HC.

The Assessee filed a belated return admitting unpaid taxes against which the Assessing Officer (AO) issued a Show Cause Notice (SCN) for Section 276CC proceedings under the Income Tax Act, 1961 (the Act) and filed a complaint for prosecution with the First-Class Judicial Magistrate, which the Assessee challenged by way of a petition filed before the Hon'ble Madras High Court (HC) under section 482 of the Criminal Procedure Code (CrPC) on the grounds that he paid tax before the PCTI had sanctioned criminal prosecution.

The Revenue argued that the "due time" mentioned in Section 276CC of the Act applies to the time stated under Section 139(1) and not to the extended time under Section 139(4) of the Act. Revenue further stated that payment of self-assessment tax after the issue of notice established the Assessee's wilful avoidance of filing the return of income and paying the tax on time. The HC agreed with the Revenue and dismissed the Assessee's argument, clarifying that Section 278E of the Act creates a statutory presumption of culpable mental state thereby shifting the onus on the Assessee to prove to the contrary, which could be discharged only through evidence.

PCIT vs. Polyplex Corporation Ltd. (ITA 571/2019)

Tax Credit on notional basis upheld, India-Thailand DTAA interpreted in favour of the Assessee.

The Assessee, an Indian company, claimed credit for the tax it did not pay on dividend income received from Thailand, as the said country exempts dividends from tax. Revenue filed appeals before the ITAT and later with the Hon'ble Delhi High Court (HC). The HC affirmed the ITAT ruling allowing the tax credit, quoting "tax sparing".

The HC adopted the view that credit for notional tax is granted to "fillip and/or incentivize economic development or activity", which is a decision made by treaty partners, and that "Thai tax payable" and "Indian tax payable" should be interpreted based on a plain reading of Articles 23(3) and 23(5) of the said DTAA, which "exemplify mutuality of interests in giving stimulus to

investment for securing economic development in both countries". Accordingly, the HC dismissed Revenue's appeal.

Nitin Nema vs. Office Of Principal Chief Commissioner Of Income Tax (Writ Petition No. 8311 of 2023)

Sale consideration is not chargeable to tax – Madhya Pradesh HC condemns Revenue for pursuing a "frivolous" case.

In this case, the Revenue alleged that the Assessee's sale proceeds had escaped assessment, which the Assessee disputed in a writ petition before the Hon'ble Madhya Pradesh High Court (HC) on the grounds that the income referred to in Section 148A of the Income Tax Act, 1961, was not 'income chargeable to tax' but the total gross sale consideration.

HC noted that 'income chargeable to tax' is not defined in the Act, unlike 'income' under Section 2(24) of the Act. It was further observed that the 'income chargeable to tax' is calculated after deducting the permissible deductions from 'income', therefore 'income' is always more than the 'income chargeable to tax, and rejected Revenue's argument that the Assessee cannot challenge the order under Section 148A(d) merely due to his failure to file a return of income as there is nothing to that effect in Section 148, 148A, or 149 of the Act that prevents him from taking advantage of said provisions. Accordingly, HC quashed reassessment proceedings holding the matter to be "frivolous" and imposed a cost on the Revenue.

Secunderabad Club and Ors. [Civil Appeal No(s). 5195-5201 of 2012]

Supreme Court rules that interest earned on bank deposits made by the clubs is liable to be taxed in the hands of the clubs and that the principle of mutuality would not apply.

In this case, the Hon'ble Supreme Court (SC) dealt with Special Leave Petitions on the subject of the principle of mutuality, arising from the decisions of the Hon'ble High Courts of Andhra Pradesh and Madras pertaining to Secunderabad Club, Madras Gymkhana Club, Madras Cricket Club, Coimbatore Cosmopolitan Club, Madras Club, Wellington Gymkhana Club, and the Coonoor Club.

The Court ruled that when several persons contribute to a fund and are paid from the surplus or excess, the transaction is just the return of the contributor's own money. If the surplus fund is invested with a third party who has the right to use it, subject to interest payment and principal repayment when requested by the club, the club loses control over the funds. On the subject of the principle of mutuality, SC clarified that when there is an entry of a third party or non-member to deal with the contributions or funds of the club and to return the same with interest, then the relationship is not mutual. Accordingly, SC dismissed the said petitions and held that interest income earned by the appellant Clubs on fixed deposits be treated as income.

Vodafone Idea Limited vs. DCIT and Ors. [TS-406-HC-2023(KAR)]

TDS is not deductible on payments made to non-resident telecom operators: Karnataka HC.

The Assessee, Vodafone Idea Ltd., signed agreements for international carriage and connectivity services with non-resident telecom operators (NTOs) and paid connectivity charges. In order to get bandwidth capacity on the Europe-India Gateway (EIG), the Assessee also entered into a capacity transfer agreement with a Belgian company and a consortium member of EIG.

This caused EIG to transfer its bandwidth to the Belgian company, which then gave the Assessee its bandwidth capacity for consideration. The Assessing Officer (AO) issued a notice alleging that the Assessee had made payments to NTOs and a Belgian company without deducting TDS in accordance with Section 195 of the Income Tax Act of 1961 (Act), which the ITAT later upheld. The Assessee then filed an appeal before the Hon'ble Karnataka High Court (HC). The HC overruled the ITAT order and said that payments made to NTOs for providing bandwidth and interconnectivity usage charges do not count as royalty or FTS, so TDS is not deductible. Further, HC clarified that "DTAA is a sovereign document between two countries" and that it should be taken into account for determining TDS obligations, and accordingly, the Assessee is entitled to take advantage of DTAA.

Chandra Bhan vs. Union Of India And Anr. [Writ Tax No. 829 of 2023]

Writ petition challenging the re-assessment order without DIN quashed.

In this case, the Assessee filed a writ petition before the Hon'ble Allahabad High Court (HC) against a re-assessment order, saying that the order was made without a document identification number (DIN), which is against CBDT Circular 19/2019, dated August 14, 2019. The said circular stated that all departmental communications must have a unique DIN. HC noted that the Assessee participated in the proceedings and that the re-assessment order was passed only after consideration of the Assessee's reply. HC further noted that the Assessee acknowledged receipt of the notice issued and had also submitted its objections. Remarking that the "non-issuance of notice on DIN would thus not be a ground to entertain the writ petition, notwithstanding the availability of an alternative remedy", the HC dismissed the Assessee's petition.

B. Notifications/Circulars

Income Tax website updated with new features

The Central Board of Direct Taxes, vide its press release dated August 26, 2023, announced the unveiling of the Income Tax national website. The updated website includes a user-friendly interface, new modules with value-added features, cross-references, and hyperlinks for direct tax legislation, allied acts, rules, income tax circulars, and notifications. The website has a 'Taxpayer Services Module' with tax tools to assist taxpayers in filing income taxes and includes a 'Mega Menu' with additional features and capabilities. Users of the website can now compare Acts, Sections, Rules, and Tax Treaties using the new functionality, and for ease of access, all relevant site material is now labelled with Income Tax categories. The new website is redesigned to educate individuals and assist them in complying with tax laws.

https://incometaxindia.gov.in/Lists/Press%20Releases/Attachments/1148/Press-Release-CBDT-launches-the-revamped-National-Website-of-the-Income-Tax-Department-www.incometaxindia.gov.in.pdf

Valuation rules for Rent Free Accommodation notified

The Central Board of Direct Taxes, vide Notification No. 65/2023, dated August 18, 2023, amended Rule 3(1) of the Income Tax Rules, 1961, which deals with the valuation of rent-free accommodation. The amendment will come into effect on September 1, 2023, and will not apply to the temporary accommodation of an employee working at a mining site, an on-shore oil exploration site, a project execution site, a dam site, a power generation site, or an off-shore site where the plinth area is up to 1000 sq. ft. and is located beyond 8 km from the local limits of any municipality or a cantonment board.

https://incometaxindia.gov.in/communications/notification/notification-65-2023.pdf

CBDT sets guidelines on exemption from income tax to 'life insurance policy'

The Finance Act, 2023, amended Clause 10D of Section 10 of the Income Tax Act, 1961 (Act), which provides income-tax exemption on any sum received under a life insurance policy. In respect of exemption from income tax, the amendment prescribed certain exceptions, i.e.,

- The amount received from a life insurance policy, other than a unit-linked insurance policy (ULIP), issued on or after April 1, 2023, will no longer be tax-free under Section

10(10D) if the amount of premiums paid for any previous year during the policy's term was more than Rs. 5 lakhs.

- If the premium is paid for more than one life insurance policy, other than a ULIP, issued on or after April 1, 2023, then the exemption will only apply if the total premium for any of the previous years during the term of any of those policies did not exceed Rs. 5 lakhs.

The Central Board of Direct Taxes, vide Circular No. 15 of 2023 dated August 16, 2023, in relation to the said amendment, has clarified that the above exceptions do not apply to any sum received on the death of a person and also, for the purpose of amended clause 10D, explains the meaning of the terms "eligible life insurance policy", "consideration", “current previous year", and the implications of the amendments under various situations with examples.

https://incometaxindia.gov.in/communications/circular/circular-15-2023.pdf

INDIRECT TAX

Goods & Services Tax

Recent Case Laws:

State of Gujarat vs. Choodamani Parmeshwaran Iyer & Anr. [TS-328-SC-2023-GST]

Supreme Court denies pre-arrest protection in GST evasion case.

The Respondents received a summons for the purpose of interrogation in connection with alleged evasion of GST and contravention of the Finance Act, 1994. Apprehending arrest, two writ applications were filed before the jurisdictional High Court of Gujarat (HC) wherein the Court directed the authority to let the respondents represent their case before it and complete the adjudicatory process in 8 weeks. Further, it was held that if there was a need for any apprehension, the respondents may be given an opportunity of two more weeks to take the necessary steps. Aggrieved by the said decision, the State filed the present appeal before the Supreme Court (SC).

The State contended that the inquiry had been pending for 5 years and after appearing once, none of the respondents appeared for the interrogation. Also, it was submitted that only after the respondents were interrogated, the department would be able to ascertain whether there was any evasion or not. SC allowed Revenue's appeal, set aside the common order of the HC and held that if the respondents failed to appear, then it "shall be open for the authority concerned to proceed further in accordance with law."

M/s. Kiran Motors vs. Addl. Commissioner of CT & GST (Appeal) [TS-408-HC(ORI)-2023-GST]

Orissa HC confirms that pre-deposit payments can be made via an electronic credit ledger.

The Assessee filed a writ petition before the Hon'ble Orissa High Court (HC) for setting aside the decision of the Additional Commissioner of CT and GST (Appellate Authority/ Revenue), which rejected the Assessee's appeal for failing to make pre-deposit payment through electronic cash ledger. The HC cited Circular No. 172/04/2022-GST, dated July 6, 2022, which clarified that payment of pre-deposit could be made via an electronic credit ledger. With this, the Court overturned the appellate order and ruled that the pre-deposit amount could be paid using the electronic credit ledger.

M/s. Cube Highways and Transportation Assets Advisor Private Limited vs. Assistant Commissioner CGST Division & Ors. [TS-399-HC(DEL)-2023-GST]

Independent advisory to foreign entities does not constitute a supply by an intermediary: Delhi HC.

In this case, the Assessee's refund claim filed pertinent to advisory services provided to its overseas group companies in relation to highway projects constructed on a BOT (build, operate, and transfer) basis, was rejected by the Adjudicating Authority (AA) on the sole ground that the place of supply of services was India and therefore, the services rendered could not be considered as an export of services. The AA also observed that the Assessee was providing services to customers of the service recipient and that the Assessee was an intermediary u/s 2(13) of the Integrated Goods and Services Tax Act, 2017 (IGST Act). Revenue, in the impugned appellate orders, affirmed that the Assessee acted as an 'intermediary' since, on its advice, the recipient and its customers invested in India, and furthermore, the services were related to immovable property, viz. roads, tolls, etc., and rendered to an individual, which required the physical presence of the recipient, and therefore, the place of supply was India.

Challenging the order, the Assessee preferred a writ petition before the Hon'ble Delhi High Court (HC). The HC interpreted 'place of supply' provisions envisioned under the IGST Act and clarified that where a party rendered advisory or consultancy services on its own account and did not merely arrange or facilitate it with there being only two entities, namely, service provider and service recipient, the same would not qualify as 'Intermediary service'. Thus, the Court allowed the Assessee's petition against the order denying the unutilized refund claim.

M/s. Tikona Infinet Private Limited vs. State of U.P. and Anr. [TS-391-HC(ALL)-2023-GST]

ITC transfer availed through GSTR-3B instead of GST ITC-02 on account of the unavailability of said form on the GST portal remanded for re-evaluation.

In this case, the Assessee transferred unutilized input tax credit (ITC) through GSTR-3B because Form GST ITC-02 could not be used to transfer ITC on the common portal when it was initially put in place. Before the Hon'ble Allahabad High Court (HC), the Revenue argued that the Assessee could have waited for the relevant form instead of making an illegal adjustment by using Form GSTR-3B. The HC held the denial of ITC by the Revenue to be unjustified and set aside the impugned order of the Deputy Commissioner, State Tax, with liberty for the Commissioner to re-evaluate the case.

State Tax Officer (IB) & Ors. Vs. Shabu George & Anr. [TS-376-SC-2023-GST]

Supreme Court orders release of cash seized during search in respect of investigation under CGST Act.

The Hon'ble Supreme Court (SC) dismissed the Special Leave Petition filed against the order of the Hon'ble Kerala High Court (HC), which in respect of the seizure of cash, held that the power of any authority to seize any 'thing' while functioning under the provisions of a taxing statute must be guided by the concerned statute's objective. The SC upheld the decision of the HC to release the cash seized on the ground that the cash was not part of the Assessee's stock in trade or business.

Kothari Sugars and Chemicals Ltd [TS-309-AAAR(TN)-2023-GST]

Canteen services not forming part of employment contract to attract GST.

In this case, the Appellant, engaged in the manufacture of sugar, molasses, denatured ethyl alcohol, and ethyl alcohol at its manufacturing units, provided canteen facilities for its workers at subsidized rates. The Assessee filed for an advance ruling before the Authority for Advance Ruling, Tamil Nadu (AAR), on the taxability of the said canteen services. The Assessee placed reliance on Circular No. 172/04/2022 dated July 6, 2022, which provided that "any perquisites provided by the employer to its employees in terms of contractual agreement..... are in lieu of the services provided by the employee" and hence, "will not be subjected to GST".

The AAR ruled that providing canteen services to the employees by appointing a third-party vendor as mandated under the Factories Act, 1948, by the employer is a composite supply of food taxable as a 'supply of service'. It was further held that the nominal cost, recovered from the employee's salary as deferred payment, is 'consideration' for such a supply, liable to GST. Against this order, the Appellant preferred an appeal before the Appellate Authority for Advance Ruling, Tamil Nadu (AAAR) which upheld the AAR's decision. The AAAR clarified that the benefit of not charging GST could only be given to the extent that the consideration was paid for by the Appellant out of the total cost of providing food and drinks, but not to the extent that the consideration was paid for by the Appellant's employees at discounted rates.

B. Notifications/Circulars

GST law on online gaming notified

The Government of India, vide Gazette Notifications dated August 18, 2023, 2023, has amended the Integrated Goods and Services Tax Act, 2017 (IGST Act) and the Central Goods

and Services Tax Act, 2017 (CGST Act), notifying the provisions applicable to online gaming in India. In this regard, an amendment is made to the Central Goods and Services Tax Act, 2017 to define the terms "online gaming", "online money gaming", "specified actionable claim" and "virtual digital asset".

Also, in respect of online gaming, i.e., "specified actionable claim", the IGST Act is suitably amended to provide for "place of supply" and registration requirements. The IGST Act is amended to clarify that in the case of specified actionable claims supplied by a person located outside taxable territory, the supplier of online money gaming not located in taxable territory is liable to pay IGST.

https://egazette.gov.in/WriteReadData/2023/248184.pdf
https://egazette.gov.in/WriteReadData/2023/248183.pdf

Procedures for e-commerce operators (ECO) notified vide following Notifications to be operative w.e.f. October 1, 2023

Sr. No	Notification	Subject
1	Notification No. 36/2023 - Central Tax dated August 4, 2023	Notifies special procedure for ECO required to collect TCS u/s 52 of the CGST Act in respect of supplies made by composition taxpayers. The procedure is as follows: (1) ECOs barred from allowing the inter-state supply of goods; (2) ECO obligated to collect TCS; (3) ECOs to file FORM GSTR-8 (details of goods supplied). https://taxinformation.cbic.gov.in/view-pdf/1009818/ENG/Notifications
2	Notification No. 37/2023 - Central Tax dated August 4, 2023	Notifies special procedure for ECO, who are required to collect TCS u/s 52 of the CGST Act in respect of supplies made by a person through it, who has been exempted from obtaining registration vide Notification No. 34/2023 - Central Tax dated July 31, 2023. The procedure specifies that ECOs:

		(1) shall allow supply to only those persons who have been allotted enrolment number on the common portal; (2) shall not allow any inter-state supply of goods through it; (3) shall not collect TCS with respect to the supply of goods made through it by the said person; (4) shall furnish FORM GSTR-8 on the common portal i.e., details of goods supplied through it by said person; (5) In case of multiple ECOs in a single supply of goods, the ECO shall mean who finally releases the payment to the said person for the supply made through ECO. https://taxinformation.cbic.gov.in/view-pdf/1009819/ENG/Notifications

Procedure for filing GST appeal u/s 73/74 notified

Central Board of Indirect Taxes and Customs vide its Notification no. 29/2023 Central Tax dated July 31, 2023, pursuant to the directions of the Hon'ble Supreme Court in the case of Union of India vs. Filco Trade Centre Pvt. Ltd., SLP(C) No.32709-32710/2018, notifies special procedure for filing an appeal against the order passed by proper officer u/s 73 or 74 of CGST Act, 2017. The notification in terms of procedure prescribes the following:

1.1. The form in which the appeal is to be filed;
1.2. The time limit set out for filing the appeal;
1.3. Requirement of pre-deposit waived;
1.4. Documents to be annexed with the appeal and manner of issue of acknowledgement of filing the appeal (GST APL-02).

https://taxinformation.cbic.gov.in/view-pdf/1009807/ENG/Notifications

CBIC notifies exemption from return filing, etc. pursuant to GST Council's 50th meeting

CGST		
Sr. No	Notification	Subject
1	Notification No. 32/2023- Central Tax dated 31-07-2023	Exempts the registered person whose aggregate turnover in the financial year 2022-23 is up to two crore rupees, from filing an annual return. https://taxinformation.cbic.gov.in/view-pdf/1009810/ENG/Notifications
2	Notification No. 33/2023- Central Tax dated 31-07-2023	Notifies "Account Aggregator" as the system with which information may be shared through the common portal based on consent u/s 158A of the CGST Act (Consent-based sharing of information furnished by a taxable person). The same will come into force w.e.f. October 1, 2023. https://taxinformation.cbic.gov.in/view-pdf/1009811/ENG/Notifications
3	Notification No. 34/2023- Central Tax dated 31-07-2023	Specifies the persons making supplies of goods through an e-commerce operator who is required to collect TCS u/s 52 and having an aggregate turnover above which a supplier is liable to be registered in the State or Union territory in accordance with section 22(1), as the category of persons exempted from obtaining registration. Also specifies 8 conditions in this regard. https://taxinformation.cbic.gov.in/view-pdf/1009812/ENG/Notifications
IGST		
1	Notification No. 01/2023– Integrated Tax dated 31-07-2023	Notifies the class of goods or services which may be exported on payment of integrated tax and on which the supplier of such goods or services may claim the refund of tax. https://taxinformation.cbic.gov.in/view-pdf/1009814/ENG/Notifications

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

Copyright © 2023 - 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: