Tax INFORM

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

Issue XXXIII | September 2023



FoxMandal Solicitors & Advocates

www.foxmandal.in | info@foxmandal.in

Contents

4 DIRECT TAX

Recent Case Laws

Notifications/ Circulars

9 INDIRECT TAX

10 Goods & Services Tax

Recent Case Laws

Notifications

Highlights of the Issue

DIRECT TAX

Domestic Tax Rulings:

- Indian entity's dividend income from its Oman 'Permanent Establishment' under DTAA is not taxable in India—Supreme Court.
- Section 80-IC deduction once allowed in initial Assessment Years, is also allowable in subsequent AYs - Calcutta HC.

Circulars and Notifications:

- CBDT notifies amendments to Rule 11UA for share valuation under Section 56(2) (viib) of the Income-Tax Act, 1961, via Notification No. 81/2023 dated September 25, 2023.
- CBDT expands the list of IFSC-recognised stock exchange securities eligible for tax exemption.
- CBDT notifies Form 71, enabling taxpayers to claim TDS credit for income declared in the previous year.
- Corrigendum to include leased or rented house for valuing rent-free accommodation.
- CBDT notifies Rules and Forms for search & seizure provisions.
- CBDT extends the deadline for audits of charity institutions and ITR-7 filings to October 31 and November 30, 2023.

INDIRECT TAX

Goods and Services Tax:

Case Laws:

- Gujarat HC grants bail in GST evasion case, cites non-issuance of notice by the GST Authority.
- AAAR holds that mixing perfume (not Jarda scent) with raw tobacco without fermentation does not amount to manufacture.
- AAR confirms the eligibility of ITC on inward supply of structural support of plants and equipment.

Notifications:

- AAR confirms the eligibility of ITC on inward supply of structural support of plants and equipment.
- Revenue Department establishes state benches of GST Appellate Tribunals.
- Revenue Department notifies the date for implementation of special procedure for manufacturers of pan masala and tobacco goods.

DIRECT TAX

A. Recent Case Laws

Principal Commissioner of Income Tax Vs. M/s Krishak Bharti Cooperative Ltd (Civil Appeal No. No. 836 of 2018)

Indian entity's dividend income from its Oman 'Permanent Establishment' under DTAA is not taxable in India—Supreme Court.

The Assessee, an Indian government-controlled multi-state cooperative society, formed a Joint Venture, Oman Fertilizer Company SAOC ("JV"), engaged in the business of manufacturing fertilizers for the Central Government.

The Assessee maintained a branch office in Oman and had Permanent Establishment ("PE") status in Oman in terms of Article 25 of the Double Taxation Agreement (DTAA) entered into between the Republic of India and the Sultanate of Oman. The Assessee received dividend income from the JV for which the Assessing Officer allowed credit of tax, which would have been payable in Oman, but was not paid due to an exemption granted under Omani law.

The Principal Commissioner of Income Tax ("PCIT") passed a revisionary order under Section 263 of the Income-Tax Act, 1961, holding that the said Article 25 did not apply as the tax was payable on dividends in Oman that were not paid, and hence, the Assessee was not covered under the exemption.

The Income Tax Appellate Tribunal, Delhi ("ITAT"), and subsequently, the Hon'ble High Court of Delhi (HC) allowed the appeal, holding that the Assessee was entitled to claim the tax credit. The Revenue contested the HC's ruling on the ground that dividend income was not exempt since it was unrelated to the Assessee's primary employment, which consisted only of auxiliary and preparatory work and had no tangible expenditures. On the other hand, the Assessee argued that the terms of the DTAA completely exempt dividend income in Oman, which would therefore exempt taxes in India.

The Hon'ble Supreme Court ("SC") pointed out that Article 25(2) of the DTAA provided for India to deduct from the tax an amount equal to the income tax payable in Oman when a resident of India has income that may be subject to such taxation, and that Article 25(4) of the DTAA clarifies that the tax payable shall be considered to include the tax that would have been due but is exempt.

Accordingly, the SC upheld the HC ruling, allowing credit for the tax payable on dividend income in Oman.

C And E Limited Vs. The Principal Commissioner of Income Tax [ITAT/135/2023]

Section 80-IC deduction once allowed in initial Assessment Years, is also allowable in subsequent AYs - Calcutta HC.

In this case, the Assessee in its return of Income for AY 2013–14 claimed a deduction under Section 80IC of the Act, which was uncontested and allowed. The Principal Commissioner of Income Tax, Kolkata (PCIT) issued a notice under Section 263 of the Act challenging the said deduction. PCIT stated that the Assessee was only entitled to a 30% deduction under Section 80IC (3)(ii) of the Act.

In this regard, the Assessee appeared before the PCIT and challenged the notice, arguing that the Assessee was given a 100% deduction in the AY 2012–2013 under Section 80IC of the Act without a challenge. The PCIT, refused to agree with the Assessee's submissions, aggrieved by which the Assessee preferred an appeal before the Income Tax Appellate Tribunal, Kolkata (ITAT), wherein the appeal was dismissed on the sole ground that the Assessee had not filed Form 10CCB in support of the claim during the course of the assessment proceedings. Aggrieved by the ITAT Order, the Assessee preferred an appeal before the Hon'ble High Court of Calcutta ("HC").

The HC allowed the Assessee's claim for 100% deduction under Section 80-IC of the Act and set aside the revision order passed under Section 263 of the Act, holding that since 100% deduction under Section 80-IC of the Act was granted for the initial Assessment Years, Revenue had no jurisdiction to revisit the claim in subsequent years.

B. Notifications/Circulars

CBDT Notifies Amendments to Rule 11UA for Share Valuation Under Section 56(2) (Viib) of the Income-Tax Act, 1961, Via Notification No. 81/2023 Dated September 25, 2023

Through amendment of Rule 11UA of the Income-Tax Rules, 1962 (Rules), the Central Board of Direct Taxes (CBDT) has set a mechanism to calculate the fair market value for Compulsorily Convertible Preference Shares (CCPS). Sub-rule (3) of Rule 11UA in the draft amendment rules allowed the assessee to use the merchant banker's valuation report date if it was dated 90 days before the issue of shares. In this regard, the notified version of sub-rule (3) has a proviso that says if the merchant banker's valuation date is used, the valuation date in Rule 11U(j) does not apply. For the 10% safe harbour [sub-rule (4)] applicable to unquoted equity shares and CCPS where the issue price exceeds the value of shares, the amended rules define 'issue price' as the company's consideration for one share. The final version of the rules

maintains the five valuation methodologies recommended in the draft amendment rules for non-resident consideration, i.e., Comparable Company Multiple, Probability Weighted Expected Return, Option Pricing, Milestone Analysis, and Replacement Cost Method.

https://incometaxindia.gov.in/communications/notification/notification-81-2023.pdf

CBDT Expands the List of IFSC-Recognised Stock Exchange Securities Eligible for Tax Exemption

Non-residents are exempt from paying capital gains tax on transfers of capital assets made on recognised stock exchanges located in any International Financial Services Centre (IFSC) of a capital asset specified pursuant to Section 47(vii-ab) of the Income-Tax Act, 1961. The Central Board of Direct Taxes (CBDT) via Notification No. 71/2023 dated September 12, 2023, with immediate effect has broadened the scope of the said Section by extending the exemption to transfers of Units of Investment Trust, Units of Exchange-Traded Funds, and Units of Schemes defined under the International Financial Services Centres Authority (Fund Management) Regulations, 2022.

https://incometaxindia.gov.in/communications/notification/notification-71-2023.pdf

CBDT Notifies Form 71, Enabling Taxpayers to Claim TDS Credit for Income Declared in the Previous Year

The Finance Act of 2023, with effect from October 1, 2023, inserted sub-section (20) to Section 155 of the Income-Tax Act, 1961. This newly introduced sub-section applies where income was declared in an income tax return in a relevant assessment year, but the tax was deducted at source (TDS) in the subsequent financial year. To bring impact to this amendment, the Central Board of Direct Taxes (CBDT), via Notification No. 73/2023 dated August 30, 2023, has introduced Rule 134 in the Income-Tax Rules, 1962, and notified Form 71 to enable taxpayers to claim TDS credit for income in such scenarios.

https://incometaxindia.gov.in/communications/notification/notification-73-2023.pdf

Corrigendum to Include Leased or Rented House for Valuing Rent-Free Accommodation

The Central Board of Direct Taxes (CBDT) issues a corrigendum to Notification No. 65/2023, dated August 18, 2023, which replaced Rule 3(1) of the Income-Tax Rules, 1962 with a new rule that provides valuation rules for accommodations owned by the employer and occupied by an employee for more than a year. The corrigendum clarifies that the new proviso shall also

apply to the accommodation taken on lease or rent by the employer, and that the valuation so calculated shall not exceed the valuation for the first previous year arrived at by applying the Cost Inflation Index.

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

CBDT Notifies Rules and Forms for Search & Seizure Provisions

Vide Notification No. 70/2023 dated August 28, 2023, the Central Board of Direct Taxes (CBDT) inserts Rules 13 and 13A to the Income-Tax Rules of 1962 (Rules) and new forms: Form No. 6C and Form No. 6CA. Rule 13 provides procedures to request services under sub-section (2) of Section 132 and to make a reference under sub-section (9D) of Section 132, and Rule 13A prescribes the valuation methods and Form 6CA for the submission of a valuation report. The value of jewellery, archaeological collections, drawings, paintings, sculptures, any work of art, shares, or securities mentioned in Rule 11UA shall be determined in accordance with Rule 11UA (1) of the Rules, and the method of valuation of immovable property shall be the stamp duty value together with the cost of construction and improvements.; and where valuing the property is not feasible as per the specified manner, the value shall be the price that the property would ordinarily fetch on sale in the open market on the valuation date.

https://incometaxindia.gov.in/communications/notification/notification-70-2023.pdf

CBDT Extends the Deadline for Audits of Charity Institutions and ITR-7 Filings to October 31 and November 30, 2023

The initial deadline of September 30, 2023, for the submission of audit reports in Form 10B/Form 10BB for the Previous Year 2022–23 is extended to October 31, 2023. This extension of time brings respite to funds, trusts, organizations, universities, educational institutions, hospitals, and healthcare facilities. CBDT also extends the due date for furnishing ITR-7 for AY 2023–24 to November 30, 2023, from October 31, 2023. With this extension, persons required to furnish returns under sub-sections 4A, 4B, 4C and 4D of Section 139 will get additional time to file the returns.

https://incometaxindia.gov.in/communications/circular/circular_no_16_2023.pdf

INDIRECT TAX

Goods & Services Tax

Recent Case Laws:

Arvindbhai Balubhai Vora Vs State of Gujarat [TS-467-HC(GUJ)-2023-GST]

Gujarat HC grants bail in GST evasion case, cites non-issuance of notice by the GST Authority.

The Applicant in this case sought regular bail in a GST evasion case. The Hon'ble High Court of Gujarat (HC), in addition to relying on the precedent set by the Supreme Court in Sanjay Chandra v. Central Bureau of Investigation [(2012) (1) SCC 40], took into account the time the Assessee had been in custody, the fact that a charge sheet had not been filed, that the other co-accused had been freed on bail, and the fact that the GST Authorities had not issued a notice. Exercising its discretion and without going into details of the matter, the HC accepted the Assessee's plea and granted bail.

Pandey Traders [TS-459-AAAR(UP)-2023-GST]

AAAR holds that mixing perfume (not Jarda scent) with raw tobacco without fermentation does not amount to manufacture.

In this case, the Appellant mixed scent with the unprocessed/raw tobacco dust before sending it to a third party for packing. The third party then returned the same in pouches bearing no brand name. The Appellant contended that mixing scent with tobacco dust did not modify the essential characteristics of tobacco and did not produce a new product with a distinct name, character, and use. The Appellate Authority for Advance Ruling, Uttar Pradesh (AAAR), basis screening of raw tobacco, in which tobacco leaves, its stem, and other tender parts are separated through the processes of drying, winnowing, crushing, and separating, opined that the "process...involves mixing of perfumes (not Jarda scent) to preserve flavour only and thus it does not undergo a set of process/changes…". The AAAR considered the Explanatory Notes to CH 2403 and clarified that for tobacco products to be classified under CH 2403, higher fermentation and liquoring are the basic requirements, whereas in the present case, since the process involved the mixing of perfume only (not Jarda scent) without fermentation at all, the said activity of mixing does not amount to manufacture. With this, the AAAR ruled in the favour of the Appellant.

M/s. Uvee Glass Private Limited [RAJ/AAR/2023-24/05]

AAR confirms the eligibility of ITC on inward supply of structural support of plants and equipment.

In this case, the Applicant intending to set up a plant and machinery for manufacturing glasses sought an advance ruling on the question of whether ITC is eligible on the GST paid on the inward supply of structural support of the plant and machinery that was used for making outward supply of the goods/services. The Rajasthan Authority for Advance Ruling (AAR) observed that Sections 16 and 17 of the Central Goods and Services Tax Act, 2017 (CGST Act) state the requirements and eligibility for claiming an Input Tax Credit (ITC) AAR noted that ITC is available for goods and services or both that a taxable person receives for "Plant and Machinery" construction on his own account, including when such goods and services or both were used in the course of business. Furthermore, AAR noted that the expression “Plant and machinery” has been defined under explanation, which means apparatus, equipment, and machinery fixed to earth by foundation or structural support that are used for making outward supply of goods or services or both and includes such foundation and structural support. Accordingly, AAR held in favour of the Applicant that the ITC of GST paid on the inward supply of structural support of plants and machinery that is used for the outward supply of goods and services is eligible to the extent of the provisions and conditions laid down in Sections 16 and 17 of the CGST Act.

B. Notifications/Circulars

Revenue Department Establishes State Benches of GST Appellate Tribunals

The Ministry of Finance, Department of Revenue, vide Notification No. F. No. A-50050/150/2018-CESTAT-DoR, effective September 14, 2023, establishes the State Benches of the Goods and Services Tax Appellate Tribunal. With three benches at Goa and Maharashtra, two at Bangalore and, Jaipur and Jodhpur, and one each at Delhi, Mumbai, and Chennai, it sets up one State Bench at each of the Union Territories, viz., Dadra and Nagar Haveli, Daman and Diu, Puducherry, Andaman and Nicobar Islands, Chandigarh, and others. The number of State Benches for each state is defined below, specifying the state, the number of benches, and their respective locations.

Sr. No.	Name of State/ Union Territory	No. of Benches	Location
1	Andhra Pradesh	1	Vishakhapatnam and Vijayawada

2	Bihar	1	Patna
3	Chhattisgarh	1	Raipur and Bilaspur
4	Delhi	1	Delhi
5	Gujarat	2	Ahmedabad, Surat, and Rajkot
6	Dadra and Nagar Haveli and Daman and Diu		
7	Haryana	1	Gurugram and Hissar
8	Himachal Pradesh	1	Shimla
9	Jammu and Kashmir	1	Jammu and Srinagar
10	Ladakh		
11	Jharkhand	1	Ranchi
12	Karnataka	2	Bengaluru
13	Kerala	1	Ernakulum and Trivandrum
14	Lakshadweep		
15	Madhya Pradesh	1	Bhopal
16	Goa	3	Mumbai, Pune, Thane, Nagpur, Aurangabad, and Panaji
17	Maharashtra		
18	Odisha	1	Cuttack
19	Punjab	1	Chandigarh and Jalandhar
20	Chandigarh		
21	Rajasthan	2	Jaipur and Jodhpur
22	Tamil Nadu	2	Chennai, Madurai, Coimbatore, and Puducherry
24	Puducherry		
25	Telangana	1	Hyderabad
26	Uttar Pradesh	3	Lucknow, Varanasi, Ghaziabad, Agra and Prayagraj
27	Andaman and Nicobar Islands	2	Kolkata

28	Sikkim		
29	West Bengal		
30	Arunachal Pradesh	1	Guwahati Aizawl (Circuit) Agartala (Circuit) Kohima (Circuit)
31	Assam		
32	Manipur		
33	Meghalaya		
34	Mizoram		
35	Nagaland		
36	Tripura		

https://egazette.gov.in/WriteReadData/2023/248743.pdf

Revenue Department Notifies the Date for Implementation of Special Procedure for Manufacturers of Pan Masala and Tobacco Goods

By Notification No. 47/2023-Central Tax, dated September 25, 2023, the Ministry of Finance, Department of Revenue, and Central Board of Indirect Taxes and Customs, notifies, January 2, 2023, as the date for the implementation of special procedures to be followed by registered persons engaged in the manufacturing of Pan Masala and Tobacco products. Earlier, Notification No. 30/2023-Central Tax, dated July 31, 2023, introduced a special procedure for manufacturers of pan masala and tobacco goods, which required the manufacturers to keep daily records of inputs, waste generation, electricity and generator meter readings, and production details in specific formats (FORM SRM-IIIA and FORM SRM-IIIB).

https://egazette.gov.in/WriteReadData/2023/248982.pdf

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: