Tax INFORM

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DIRECT TAX

A. Recent Case Laws

CIT, Delhi Vs. Bharti Hexacom Ltd [TS-605-SC-2023]

Supreme Court classifies telecom licence fee as capital expenditure.

In this case, the Assessee, a telecom operator submitted its return, declaring nil income. The case was selected for scrutiny, and it was noted that the licence fees paid as a percentage of annual gross revenue by the Assessee to the Department of Telecommunications ("DoT") were claimed by the Assessee as a revenue expenditure.

Vide an Assessment Order ("Order"), the Revenue disallowed the licence fee expense and added it back to the Assessee's income maintaining that the licence fee paid on a revenue-sharing basis, claimed as a revenue expense, should have been amortised over the remaining licence period as per Section 35ABB of the Income-Tax Act, 1961 ("Act"). Aggrieved by the Order, the respondent filed an appeal before the Commissioner of Income Tax (Appeal), New Delhi ("CIT Appeals)", which ruled in favour of the Assessee. The Tribunal dismissed the Revenue's appeal against the CIT Appeals Order, and the Delhi High Court dismissed it as well.

Thereafter, the Revenue preferred an appeal before the Hon'ble Supreme Court ("SC") to determine whether the licence fee that the Assessee paid to the DoT under the New Telecom Policy of 1999 ("Policy") was a capital expense or a revenue expenditure to be allowed as deduction under Section 37 of the Act. Based on the available facts, the SC noted that the licence fees paid under the New Telecom Policy of 1999 were a successive instalment of the "original obligation" arising from the Old Policy.

Accordingly, the SC allowed the Revenue's appeals against the Assessees (telecom companies) and held that the annual variable licence fee paid to the Government on a revenue-sharing basis under the Telecom Policy of 1999, was a capital expenditure in nature.

Gunwant Singh Saluja Vs. State of Jharkhand and Anr. [CrMP NO. 1244 of 2017]

Jharkhand HC quashes criminal proceedings initiated against the Assessee u/s 276CC of the Act.

In this case, a search action was initiated against the Assessee by the Investigating Wing, Jharkhand. Accordingly, notices u/s 153A were issued for filing of income tax returns for AY 2005-06 to 2009-10. However, the Assessee failed to comply with the notices as he was not provided with the documents seized during the search action. Thus, the assessing officer launched the prosecution proceedings u/s 276CC of the Act for non-filing of return of income in due time.

The Commissioner observed that there was a wilful omission on the part of the Assessee in filing the return since he failed to comply with the notices and the return of income was also not filed. With this, the Commissioner accorded the sanction u/s 279 of the Act for launching the prosecution. The Compliant Case was filed in the Court of the learned Special Judge.

A petition before the High Court of Jharkhand was filed for quashing the entire criminal proceedings against the said Compliant including the order taking cognizance passed by the learned Special Judge, Economic Offences, Ranchi.

The Hon'ble High Court observed that the matter as to whether the criminal case could survive or not was already decided upon by the Supreme Court in the case of K.C. Builders v. Assistant Commissioner of Income Tax [2004 265 ITR 562 (SC)], wherein it was held that the quashing of prosecution under Section 276CC was "automatic" when the penalties were cancelled on the ground that there was no concealment. Further, the Apex Court added, "the petitioner cannot be made to suffer and face the rigorous of criminal trial when the same cannot be sustained in the eyes of law because the entire prosecution in view of a conclusive finding of the Income Tax Tribunal that there is no concealment of income becomes devoid of jurisdiction and under Section 254 of the Act, a finding of the appellate authority supersedes the order of the Assessing Officer under Section 143(3) and more so when the Assessing Officer cancelled the penalty levied".

Allowing the petition, the Hon'ble High Court held that, in the present case, there was no penalty order against the petitioner passed by the competent authority under the Act and accordingly, the Assessee would be covered by the aforesaid ratio of the judgment.

Knight Riders Sports Pvt Ltd. Vs. Assistant Commissioner of Income Tax and Ors. [WP No. 2269 of 2023]

Change of opinion does not constitute justification for initiating the reassessment proceedings u/s 148 of the Act: Bombay HC.

The petitioner, engaged in the business of operating and running a cricket team in the Indian Premium League, filed its return of income for AY 2016-17 declaring a total income of INR 11,17,62,590/-. For the year under consideration, the petitioner had made payments of management fees towards consultancy and management services. Out of this, INR 1.9 Crore was paid to a sports management company, Insignia Sports International Ltd. ("Insignia") without deduction of tax at source.

A regular assessment proceeding was initiated against the petitioner after which a notice u/s 142(1) of the Act was served, requesting for the details of the foreign payments made along with names of parties/players, their addresses, the amount paid and tax deducted at source with narrations. In response, the petitioner furnished details of foreign remittances in the format provided. The petitioner specifically provided details of the consultancy and team management payments (amounting to INR 3,04,85,970/-) and the breakup wherein an amount of INR 1.90 crores was paid to Insignia without TDS being deducted. Against the said response,

the Assessing Officer served a notice asking as to why the TDS was not deducted for the payments made to players, Adrain Le. Roure and Jacques Kallis. Relying on Article 14 of India – South Africa DTAA, the petitioner asserted that the income from rendering professional services in India could be taxed only in South Africa. Then, an assessment order u/s 143(3) of the Act was passed but the same did not refer to the payment made to Insignia or non-deduction of tax at source.

Subsequently, for the year under consideration, the petitioner received a notice u/s 148A(b) of the Act alleging that there was information suggesting that income chargeable to tax had escaped assessment. As per the said information, the petitioner made the payment of INR 1.9 crores to Insignia without deduction of tax at source and hence, it was subject to deduction u/s 40(a)(i) of the Act. An order was passed u/s 148A(d) of the Act rejecting the submission of the petitioner followed by reassessment notice u/s 148 of the Act. The present writ petition was filed before the High Court of Bombay against the said reassessment notices and order.

The Hon'ble High Court ruled that the issue of reassessment notices for the query which was already raised and answered before the AO due to a change of opinion was invalid. This would apply even if the assessment order has not specifically dealt with that issue. Accordingly, the Court took a view that change of opinion does not constitute justification to believe that income chargeable to tax had escaped assessment and the petition was allowed.

B. Notifications/Circulars

Notification No. 89 /2023/ F.No.370142/36/2023-TPL

CBDT notifies Form 15CD under Rule 37BB of the Income Tax Rules, 1962, for the remittance of funds to non-resident and foreign companies by the International Financial Services Centre (IFSC). The said Form shall be filed within 15 days of the end of the quarter in which the remittance was made. This Notification would be operative w.e.f. January 1, 2024.

https://incometaxindia.gov.in/communications/notification/notification89-2023.pdf

Notification No. 83/2023/ F. No.370142/32/2023-TPL

CBDT notifies the insertion of Rule 21AHA and Form 10-IFA for application of Section 115BAE in relation to Resident Co-operative Society in India. The rule specifies the procedure, data structure, standards, and manner of generation of electronic verification code for filing the said Form. This Notification came into effect on September 29, 2023.

https://incometaxindia.gov.in/communications/notification/notification-83-2023.pdf

INDIRECT TAX

Goods & Services Tax

A. *Recent Case Laws*

In re Juspay Technologies Pvt Ltd. [KAR ADRG 31/2023]

Operator of Namma Yatri not liable to pay GST as services not supplied "through" the e-commerce operator: Karnataka AAR.

The Applicant, engaged in the business of providing technology services, launched the Namma Yatri app on the ONDC platform in November 2022. The Applicant company made an application for an advance ruling in respect of certain questions to determine whether it was liable to pay GST on the supply of services provided to customers subscribed to the said app.

The Karnataka AAR observed that the applicant was engaged in a business covered under the definition of an e-commerce operator as per Sections 2(44) and 2(45) of the CGST Act, 2017. Further, AAR examined the charging provision, Section 9(5) of the Act wherein it observed whether the impugned services are supplied "through" the electronic commerce operator. In this regard, AAR held that the applicant is engaged in a unique business model wherein the applicant merely connects auto drivers and passengers, they neither have control over the passengers nor collect any consideration. The supply of service is independent of the applicant.

Accordingly, it was clarified that the supply of service was not through the e-commerce operator and was independent. Thus, the AAR ruled that the applicant does not satisfy the conditions of Section 9(5) of the CGST Act and is not liable for discharging the tax liability under the said Section.

M/s. Kesoram Industries Ltd. Vs. Commissioner of Central Tax [WP No. 23431 of 2023]

Telangana HC holds that the Assessee must be provided with an opportunity of being heard before garnishee proceedings can be initiated.

The petitioner, a manufacturer and supplier of cement under the name of "Birla Shakti Cement", was in receipt of a letter demanding interest u/s 50 of the CGST Act for delay in filing the GSTR 3B return and to pay the said interest within 7 days to avoid recovery proceeding under Section 79 of the Act. The petitioner provided two responses on different dates; through the first response, the petitioner asked for 3 months' time to pay the demand and requested not to take any coercive action and in the second response, the petitioner disputed the interest liability.

However, without considering the responses, the garnishee proceedings were issued, and the bank account of the petitioner was placed under “No Debit” status. The present writ petition was filed before the Telangana High Court, against the said proceedings.

The Court held that the respondent should issue notice to the Assessee in terms of Section 73(1) prior to the issue of garnishee proceedings. Only after providing the petitioner with the opportunity to submit his reply to the notice, the respondent could’ve proceeded further by taking into consideration the reply/explanation. In the present case, the respondent failed to follow the procedure laid down under the provisions of GST laws. Hence, the Court ruled that the impugned garnishee proceeding was bad in law and allowed the writ petition.

M/s. BST Steels Pvt Ltd. Vs. Superintendent of Central Tax [WP No.21384 of 2023]

Telangana HC states that services supplied by the Director to its company (security to bank) are subject to GST under the Reverse Charge Mechanism.

The present writ petition was filed against the order of the Additional Commissioner (Appeal-II) and the order-in-original of the Superintendent of Central Tax. In this case, the petitioner had borrowed funds from the bank where the Managing Director had given his personal properties as security and personal guarantee. The petitioner challenged the order stating that they were not liable to collect tax under the Reverse Charge Mechanism for the payment of fees to the Director for providing such security.

The Hon’ble Telangana High Court held that as per clause 6 of Notification No. 13/2017 - Central Tax (Rate) dated 28/6/2023, the taxpayer was liable to pay GST under RCM for the services supplied by the Director to its company. Accordingly, the petitioner’s plea was rejected, and it was held that the petitioner was liable to pay GST under RCM for services supplied by the director via security.

B. Notifications/Circulars

Notification F. No. CBIC-190354/180/2023-TO(TRU- II)-CBEC

CBIC inserts S. No. 227A entry under Schedule IV of Notification No.1/2017-Central Tax (Rate), dated June 28, 2017. The entry has added an item of specified actionable claim which shall be taxable at 28%. Here, the term "Specified actionable claim" would include betting, casinos, gambling, horse racing, lottery, or online money gaming. The Notification has taken effect on October 1, 2023.

https://taxinformation.cbic.gov.in/view-pdf/1009878/ENG/Notifications

Notification F. No. CBIC-190354/173/2023-TO(TRU-II)-CBEC

CBIC provides an exemption from GST on ocean freight and leviability under the reverse charge mechanism for service supplied by a person located in a non-taxable territory by way of transportation of goods by a vessel from a place outside India up to the Customs station of clearance in India. This Notification came into force on October 1, 2023.

https://taxinformation.cbic.gov.in/view-pdf/1009863/ENG/Notifications

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