Tax INFORM

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

Issue XXXV | November 2023



Fox Mandal
Solicitors & Advocates

www.foxmandal.in | info@foxmandal.in

Contents

4 DIRECT TAX

Recent Case Laws

Notifications/ Circulars

8 INDIRECT TAX

9 Goods & Services Tax

Recent Case Laws

Notifications/ Circulars

Highlights of the Issue

DIRECT TAX

Domestic Tax Rulings:

- Interest received from investments made in co-operative banks is deductible under Section 80P(2)(d) of the Income-Tax Act, 1961: Madras HC.
- Madras HC upholds prosecution under Section 276CC on account of wilful concealment of income by the Assessee.
- Bombay HC invalidates reassessment proceedings against an amalgamating entity with active PAN.

Circulars and Notifications:

- Income-tax agreement between India and Saint Vincent signed for information exchange.
- Delay in filing Form 10-IC condoned for Assessment Year 2021-22 with conditions.
- Due date of Form 56F filing for AY 2023-24 extended.

INDIRECT TAX

Goods and Services Tax:

Case Laws:

- Detention of goods not justified if discrepancy in documentation rectified before movement of goods: Allahabad HC.
- Allahabad HC sets aside orders imposing penalty for expiry of e-way bill as transport delay was "beyond control" of the Assessee.
- Affiliation and inspection fee collected by universities attracts GST: Telangana HC.

Circulars and Notifications:

- CBIC enforces biometric Aadhaar authentication for GST in Andhra Pradesh.
- State of Rajasthan issues guidelines for filing of GST appeals.
- Delhi issues instructions for GST returns scrutiny for FY 2017-18.
- GST Amnesty Scheme for filing of appeals notified.
- Place of supply for transportation, co-location & advertisement services clarified.
- Export proceeds received in Special INR Vostro accounts for export of service qualify as receipt in foreign exchange: CBIC.
- CBIC clarifies on taxability of personal and corporate guarantee.

DIRECT TAX

A. Recent Case Laws

Thorapadi Urban Co-op Credit Society Limited vs. Income Tax Officer [TS-667-HC-2023(MAD)]

Interest received from investments made in co-operative banks is deductible under Section 80P(2)(d) of the Income-Tax Act, 1961: Madras HC.

In this case, the Assessee, a co-operative society, earned interest on investments made with a co-operative bank and claimed the same under Section 80P(2)(d) of the Income-Tax Act, 1961. Subsequently, the Assessee was subject to reassessment proceedings by issue of notice under Section 148A(b) of the Act. The Revenue passed an order under Section 148A(d) of the Act holding that the Assessee was not entitled to deduction as the deduction under Section 80P(2)(d) of the Act could be availed of only in respect of income in the form of interest or dividend received from the co-operative society and not from the co-operative bank, and accordingly, a reassessment notice under Section 148 of the Act was issued, against which, the Assessee preferred a writ petition before the Hon'ble Madras High Court ("HC").

The HC observed that under Section 2(19) of the Act, a co-operative society means a co-operative society registered under the Co-operative Societies Act, be it a co-operative society carrying on banking business or co-operative society carrying on other businesses or a co-operative bank. Following this observation, HC held that the Assessee would be entitled to deduction under Section 80P(2)(d) of the Act on the interest receipts on the investment made in a co-operative bank and rejected the Revenue's contention that the SC ruling in Totgars Co-operative case applied to the present circumstances since the said case dealt with deduction under Section 80P(2)(a)(i) and not Section 80P(2)(d) of the Act.

R. P. Darrmalingam vs. Assistant Commissioner of Income Tax [CRL.O.P.No.28572 of 2018 and Crl.M.P.No.16630 of 2018]

Madras HC upholds prosecution under Section 276CC on account of wilful concealment of income by the Assessee.

In this case, the Revenue conducted a search and issued a notice under Section 153A of the Income-Tax Act, 1961, ("Act") calling upon the Assessee to file the return of income within 30 days from the date of receipt of the said notice. The Assessee failed to file his return within the stipulated time as per the notice. Consequently, the Revenue launched prosecution against the Assessee under Section 276CC of the Act for the offence of non-filing of the income tax return within the stipulated time as per Section 153A notice.

Assessee submitted before the Revenue that the delay occurred on account of difficulty in gathering information as the books of account and other materials were seized by the Revenue during the search. This submission was rejected by the Revenue.

Revenue noted that the Assessee, in his original return of income for the relevant Assessment Year did not disclose about the purchase of immovable property and also concealed the same in the return filed belatedly.

From the facts presented before the Hon'ble High Court of Madras ("HC"), the HC observed that the Assessee willfully concealed the purchase of property and did not disclose the true and real income in his returns. Accordingly, HC refused to quash the prosecution proceedings initiated by the Revenue under Section 276CC of the Act.

Diversey India Hygiene Private Limited vs. The Assistant Commissioner of Income Tax [TS-673-HC-2023(BOM)]

Bombay HC invalidates reassessment proceedings against an amalgamating entity with active PAN.

In this case, the Assessee challenged a reassessment notice issued on an amalgamating entity, i.e., Diversey India Private Limited, which got amalgamated with the Assessee, i.e., Diversey India Hygiene Private Limited, through a court order, which was informed to the Revenue. The Assessee contended that notices issued in the name of a non-existent entity were substantially illegal, and against this, the Revenue argued that the Permanent Account Number ("PAN") of the amalgamating company was not deactivated. The Hon'ble High Court of Bombay ("HC") held that a PAN not deactivated would not justify the issue of notices and reassessment on a non-existing entity, particularly when the Revenue was aware that the entity was not in existence. Accordingly, the HC quashed the reassessment proceedings.

B. Notifications/Circulars

India and Saint Vincent sign income-tax agreement for information exchange

The CBDT, vide Notification No. 96/2023, dated November 1, 2023, notifies the agreement signed between India, St. Vincent, and the Grenadines for the exchange of information, providing assistance in the collection of taxes, and enforcing their respective domestic tax laws. The Agreement establishes a mechanism for tax determination, assessment, collection, recovery, and enforcement. The agreement covers both countries' respective Central Government, political subdivisions, and local authorities. The Agreement requires the requesting party's competent authority to give information upon request. Subject to domestic

laws and regulations, competent authorities of the requesting party may visit the requested party's territory for tax examinations under Article 6 of the Agreement. The Agreement also empowers a requested party to refuse to furnish information if the request is not in conformity with the Agreement or if it violates public policy. Pursuant to the Agreement, contracting parties shall enact the necessary legislation to bring impact to the provisions of the Agreement.

https://incometaxindia.gov.in/communications/notification/notification-96-2023.pdf

Delay in filing Form 10-IC condoned for Assessment Year 2021-22 with conditions

The Central Board of Direct Taxes, invoking Section 119(2)(b) of the Income-Tax Act, 1961, governing the condonation of delay, vide its Circular No. 19/2023 dated October 23, 2023, extends the deadline for filing Form No. 10-IC for Assessment Year (AY) 2021-22 till January 31, 2024, subject to the following conditions: Firstly, a return of income must be filed on or before the Section 139(1) due date. Secondly, Assessee opts for item (e) of 'Filing Status' in 'Part A-Gen' of ITR-6, and thirdly, Form 10-IC is e-filed on or before January 31, 2024.

https://incometaxindia.gov.in/communications/circular/circular-no-19-2023.pdf

Due date of Form 56F filing for AY 2023-24 extended

The Central Board of Direct Taxes vide its Circular No. 18/2023 dated October 20, 2023, through an Order issued under Section 119 of the Income Tax Act, 1961, extends the due date of filing of CA's report in Form 56F for AY 2023-24 to December 31, 2023, from the date specified under Section 44AB of the Act.

https://incometaxindia.gov.in/communications/circular/circular%2018-2023.pdf

INDIRECT TAX

Goods & Services Tax

Recent Case Laws:

M/s Galaxy Enterprises vs. State of U.P. & Ors. [TS-580-HC(ALL)-2023-GST]

Detention of goods not justified if discrepancy in documentation rectified before movement of goods: Allahabad HC.

In this case, the Assessee, engaged in the business of manufacturing and sale of laminated papers was aggrieved by the penalty imposed on the ground that the goods intercepted during transit were found to be different from the supporting paperwork. When the goods were intercepted, the truck driver's statement was recorded, and FORM GST MOV-02 was issued. Further, after physical verification, Form GST MOV-04 was issued with a penalty.

The Hon'ble High Court of Allahabad ("HC") observed that the Assessee had produced a tax invoice and an E-way bill prior to the seizure order, which the Revenue had refused to accept on the grounds that the documents were produced after the movement of goods. Revenue had claimed that upon interception of goods in transit, the goods were different from those mentioned in the accompanying documents. After determining that the inconsistencies had been resolved prior to both the detention or seizure order and the transportation of the commodities, the HC annulled both the seizure and detention order as well as the related proceedings.

M/s Sun Flag Iron and Steel Company Limited vs. State of U.P. and Ors. [TS-576-HC(ALL)-2023-GST]

Allahabad HC sets aside orders imposing penalty for expiry of e-way bill as transport delay was “beyond control” of the Assessee.

The Assessee in this case was in the business of manufacturing and selling iron and steel. On its journey to Rajasthan, the e-way bill expired as the vehicle broke down, resulting in the issuance of an SCN and the demand order with penalty. After noting that the Assessee's vehicle was unable to arrive at its destination within the time frame specified in the e-way bill for reasons outside of the Assessee's control and that there was no deliberate attempt to avoid paying taxes, the Hon'ble High Court of Allahabad ("HC") quashed the orders imposing penalties and demands holding it legally baseless.

Care College of Nursing and Others vs. Kaloji Narayana Rao University of Health Sciences [WP No. 34617 of 2022]

Affiliation and inspection fee collected by universities attracts GST: Telangana HC.

In this case, the Kaloji Narayana Rao University of Health Sciences affiliated nursing colleges filed a series of writ petitions before the Hon'ble High Court of Telangana ("HC"), challenging the demand notice of payment of 18% GST (9% SGST and 9% CGST) on affiliation and inspection fees collected from July 2017 onwards. In light of the GST Exemption Notification No. 12 of 2017 dated June 28, 2017, which grants exemptions to certain services provided by educational institutions to their students, faculty, and staff, including services of transportation, catering, security, cleaning, and services related to admissions and examinations, the educational institutions argued that they should be exempt from GST. In response to the writ petitions, it was argued that the GST law made educational services taxable.

The HC confirmed that under the taxing law, the Petitioners cannot be allowed to claim exemption unless there is a specific exemption granted specifically on the fees for inspection and affiliation, and if the Government intended to exempt the universities and educational institutions from the purview of the GST law, they would have simply incorporated it under the exemption notification.

The HC ruled that affiliated colleges associated with Kaloji Narayana Rao University (the Respondent University) must pay GST on affiliation and inspection fees and clarified that the Notification No. 12/2017, dated June 28, 2017, listed certain services that were exempt from GST and excluded affiliation and inspection fees and consequently the plea of the Petitioners was held unsustainable.

B. Notifications/Circulars

CBIC enforces biometric Aadhaar authentication for GST in Andhra Pradesh

The Central Board of Indirect Taxes and Customs, the Ministry of Finance, Department of Revenue, vide Notification No. 54/2023-Central Tax dated November 17th, 2023, in pursuance of the powers conferred by sub-rule (4B) of Rule 8 of the Central Goods and Services Tax Rules, 2017, further amends Notification No. 27/2022-Central Tax, dated December 26, 2022, which initially included States of Gujarat and Puducherry for the biometric-based Aadhaar authentication. With the said amendment, the mandate of biometric-based Aadhaar authentication for GST registration is extended to the State of Andhra Pradesh.

https://taxinformation.cbic.gov.in/view-pdf/1009941/ENG/Notifications

State of Rajasthan issues guidelines for filing of GST appeals

The Commercial Tax Department, Government of Rajasthan, vide its GST Circular No. R-1/2023 dated November 1, 2023, clarifies the procedures for manual appeal filing under the Rajasthan Goods and Services Tax Rules, 2017. The Rajasthan GST Department quotes Rules 108 and 109 of the Central Goods and Services Tax Rules, which allow taxpayers to file manual appeals in cases where Orders to be appealed against are not accessible online.

http://rajtax.gov.in/vatweb//download/cir_noti/CIR/offilineappeal.pdf

Delhi issues instructions for GST returns scrutiny for FY 2017-18

The Government of National Capital Territory of Delhi, Department of Trade and Taxes (Policy Branch) vide Instruction No. F.3/432/GST/Policy/2023/1048-1053 dated October 31, 2023, prescribes instructions regarding the scrutiny of GST returns for the Financial Year 2017-18. The instructions require that the SCNs that were issued during the audit processes be retracted. In cases where SCNs were issued after the scrutiny of return procedures concluded, the instructions urge that they be revoked when the subject matter is already covered in earlier proceedings. The instructions state that the Proper Officer must thoroughly verify every input used for taxable or non-taxable supply, as well as input used for non-business or personal purposes or exempt supplies, in order to reverse the Input Tax Credit (ITC). Furthermore, in situations where SCNs have been issued based on Harmonized System of Nomenclature (HSN) or Service Accounting Code (SAC) codes. The instructions advise the Proper Officers to review the facts and supporting documents and prescribe that the taxpayer must be granted a personal hearing in accordance with Section 75(4) of the Central Goods and Services Tax Act, 2017 after the filing of a reply or representation, or after the 30-day deadline has passed, and prior to the issue of any unfavourable rulings.

https://delhitradetax.delhi.gov.in/sites/default/files/dvat/public-notice/scrutiny_of_gst_returns.pdf

GST Amnesty Scheme for filing of appeals notified

The Central Board of Indirect Taxes and Customs, the Ministry of Finance, Department of Revenue, vide Notification No. 53/2023-Central Tax dated November 02, 2023 introduces an amnesty scheme that permits taxable persons unable to file an appeal against an order issued by the proper officer on or before March 31, 2023, under sections 73 or 74 of the Central Goods and Services Act, 2017 ("CGST Act"), to do so until January 31, 2024. The scheme will apply to taxable persons whose appeal against the aforementioned order was denied solely on the basis that it was not filed within the time prescribed under Section 107 of the Central Goods and Services Act, 2017, and it provides special procedures in such cases. It further states that no appeal under this notification may be filed unless the appellant has paid (a) the full amount of the tax, interest, fine, fee, and penalty arising from the impugned order that he has admitted, and (b) a sum equal to 12.5% of the remaining tax in dispute arising from the said order.

https://taxinformation.cbic.gov.in/view-pdf/1009932/ENG/Notifications

Place of supply for transportation, co-location & advertisement services clarified

The Central Board of Indirect Taxes and Customs, Ministry of Finance, Department of Revenue, vide its Circular 203/15/2023-GST, October 27, 2023, clarifies on the place of supply (PoS) in cases of (i) transportation of goods, including mail and courier, (ii) advertising sector, and (iii) co-location services.

In the case of transportation of goods, the Circular refers to amended section 13(9) of the Integrated Goods and Services Tax Act, 2017 (“Act”) and clarifies that when the location of the supplier of a service or the service recipient is outside India, PoS is to be determined by the default rule u/s 13(2) of the Act [i.e., location of the service supplier] and not as performance-based services u/s 13(3) of the Act [i.e., where services are actually performed]. It further provides that, if the service recipient location is known, PoS should be the service recipient location, and if not, PoS shall be the service supplier location. In the case of advertising services, where the advertising company wants to display its advertisement on hoardings or billboards at a specific location, the POS is the location of the hoarding. In terms of "co-location services," which are "hosting and information technology (IT) infrastructure provisioning services," the PoS shall be determined by the default PoS provision u/s 12(2) of the Act [i.e., the location of the recipient of the co-location service]. However, where the supplier and recipient agreement are restricted to providing physical space on rent along with basic infrastructure, without components of hosting or Information Technology, then the POS is to be determined by Section 12(3)(a) of the Act [i.e., the location where the immovable property is located].

https://taxinformation.cbic.gov.in/view-pdf/1003186/ENG/Circulars

Export proceeds received in Special INR Vostro accounts for export of service qualify as receipt in foreign exchange: CBIC

The Central Board of Indirect Taxes and Customs, Ministry of Finance, Department of Revenue, vide its Circular 202/14/2023-GST, October 27, 2023, clarifies that for the purposes of Section 2(6)(iv) of the Integrated Goods and Services Tax Act, 2017, export proceeds in INR from Special Rupee Vostro Accounts of correspondent banks of the partner trading country, opened by AD banks, shall be deemed to be received in convertible foreign exchange, subject to the conditions and restrictions mentioned in Foreign Trade Policy, 2023 and existing RBI Circulars.

https://taxinformation.cbic.gov.in/view-pdf/1003185/ENG/Circulars

CBIC clarifies on taxability of personal and corporate guarantee

The Central Board of Indirect Taxes and Customs, Ministry of Finance, Department of Revenue, vide its Circular 204/16/2023-GST, October 27, 2023, clarifies that a director's personal guarantee to banks or other financial institutions in order to secure credit facilities for their companies is a taxable service, even if it is given without consideration. However, since the director cannot be paid for the same under RBI guidelines, the value of the taxable supply will be valued at zero; similarly, a corporate guarantee given by a business to a "related" party, i.e., a subsidiary company, will be deemed a service, the taxable value of which will be ascertained in accordance with Rule 28, Sub-rule 2 of the Central Goods and Services Tax Rules, 2017

https://taxinformation.cbic.gov.in/view-pdf/1003187/ENG/Circulars

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: