Tax INFORM

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DIRECT TAX

A. Recent Case Laws

M/s. S Sagar Enterprise v. Deputy Commissioner of Income Tax [ITA No. 2850/MUM/2023]

Mumbai ITAT reiterates that a mere defect in the notice also would vitiate penalty proceedings.

In this case, the assessee contested the imposition of a penalty amounting to Rs. 4,54,486 under Section 271(1)(c) of the Income Tax Act, 1961. The dispute arose in 2011-2012 when the assessee's income was determined after adding a 5% alleged bogus penalty; this was then reduced to 3% by the CIT(A). In contrast, the assessee submitted all the details and evidence for the same, clarifying that no penalty should be levied. The assessee contended that the penalty was imposed in an arbitrary manner, and the penalty notice was flawed as it did not specify the grounds under Section 271(1)(c).

On January 14, 2022, penalty proceedings were initiated, resulting in the imposition of the penalty. Aggrieved by the decision, the assessee filed an appeal with CIT(A), but the appeal was dismissed, resulting in the filing of the current appeal.

It was asserted that the irrelevant portion was not deleted from the penalty notice issued under Section 274, read with Section 271(1)(c) of the Act, rendering the notice defective and violating principles of natural justice.

Reliance was placed on the decision of the Bombay High Court in *Mohd. Farhan A Shaikh v. DCIT, Central Circle-1, Belgaum* [434 ITR 1 (Bombay)], wherein it was held that a "*penalty proceeding is a corollary; nevertheless, it must stand on its own. These proceedings culminate under a different statutory scheme that remains distinct from the assessment proceedings. Therefore, the assessee must be informed of the grounds of the penalty proceedings only through statutory notice. An omnibus notice suffers from the vice of vagueness*."

Following said decision, the Tribunal proceeded to delete the penalty of Rs. 4,54,486.

Simran Bagga v. Assistant Commissioner of Income Tax [ITA No. 1786/DEL/2023]

Delhi ITAT lays stress on liberal interpretation of Section 54, allows deduction for sale proceeds invested in new house in the name of assessee's spouse.

In the instant case, the assessee, a non-resident individual residing in the United Arab Emirates, sold her property in India during the relevant assessment year 2020-21 for Rs.1.3 Crore. Out of said amount, Rs. 1 Crore was later invested into a new residential house in India, which came to be registered in her spouse's name. Subsequently, she claimed a deduction under Section 54 of the Act and shared the necessary details of this investment. The assessing officer

rejected the claim for deduction under Section 54, stating that the residential property was registered in the spouse's name and not in the assessee's name.

The Tribunal referred to the preference given by Courts to a purposive approach as opposed to literal construction. It was also observed that Sections 54 and 54F were beneficial provisions and necessitated a liberal interpretation in favour of deduction. With this, the Tribunal allowed the appeal and held that the assessee was entitled to claim deduction under Section 54F.

Principal Commissioner of Income Tax-7 v. Trojan Developers Pvt. Ltd. [ITA No. 739/2023]

PCIT erred by exercising powers under Section 263 as assessing officer had indeed conducted an enquiry about shares issued at high premium: Delhi HC.

After the assessee filed its return of income for the assessment year 2014-15, limited scrutiny was conducted and later, the income declared by the assessee was accepted. More than two years later, the matter was picked up by the Principal Commissioner of Income Tax who alleged that the Assessing Officer failed to examine the issuance of shares at a very high premium, invoking Section 56(2)(viib) of the Act and Rule 11UA of the Income Tax Rules, 1962. The Tribunal deemed the Principal Commissioner's order as unsustainable which led to the filing of the present appeal.

The High Court took note of the notices issued to the assessee, the explanations sought, and the justification presented by the assessee. It was explained that the high premium paid was attributable to the assessee's underlying asset, an immovable property valued at Rs. 17.5 Crore. The Court ruled that the assessing officer had indeed conducted an enquiry and the appellant erred by exercising powers under Section 263.

N.Amudha v. Income Tax Officer & Ors. [WP No. 35678 of 2023]

In dispute involving determination of fair market value of property, Madras HC directs revenue to dispose of statutory appeal within 3 months.

The petitioner purchased an immovable property in the year 2023, for a consideration of Rs. 42.5 Lakh which was said to be the fair market value. The stamp duty paid was on the guideline value, which was Rs. 75.18 Lakh. Thereafter, notices were issued to the petitioner, seeking her response as to why the difference amount, i.e. Rs. 32.68 Lakh should not be treated as income from other sources under Section 56(2)(x). The matter was referred to the Departmental Valuation Cell for determining the fair market value of the property purchased by the assessee. However, before the Cell issued its report, an assessment order was issued and a tax demand of Rs.19.41 Lakh was made, prompting the petitioner to file a statutory appeal.

After hearing the parties, the High Court directed that the said statutory appeal has to be disposed of within 3 months, and held that until such disposal, no coercive action could be taken against the petitioner for recovery of the tax demand.

Anamallais Bus Transport P Ltd. v Principal Commissioner of Income Tax-1 [WP No. 31682 of 2023]

Madras HC opines that penalty proceedings under Section 271E were based on wrong assumption, directs Appellate Authority to not insist on any pre-deposit.

The assessee company extended a loan of Rs. 14 Crore to another company, M/s. Shakti Sugar Ltd. Subsequently, the borrower repaid a portion of this loan to three entities, amounting to Rs. 3.55 Crore, Rs. 4.59 Crore, and Rs. 20.50 Lakh respectively, at the request of the assessee. The relevant accounting entries reflecting the reduction of the borrower's liabilities were duly made in the books of both the lender and the borrower.

The Assessing Officer issued an assessment order, imposing a penalty under Section 271E of the Act, for violation of the provisions pertaining to the mode of repayment of loans. On filing an appeal against this order, the assessee was directed to pay 20 per cent of the demand.

The Court opined that the initiation of penalty proceedings against the assessee under Section 271E was based on an incorrect assumption as to the involvement of cash transactions, leading to the prima facie view that the penalty proceedings ought to be set aside. The Court directed the Appellate Authority to not insist on any pre-deposit, to consider the issues discussed in the order and to dispose of the appeal in accordance with the law, within 8 weeks.

B. Notifications/Circulars

Central Government notifies investment in financial products by non-residents with 'IFSC capital market intermediary' for Section 10(4G) exemption

The Central Government, vide notification no.4 of 2024 dated 4.1.2024, has notified that the investment activities of non-residents in financial products facilitated through a contract by a capital market intermediary being a Unit of an International Financial Services Centre are exempted under sub-clause (*ii*) of clause (*4G*) of Section 10 read with Section 80LA of the Act.

Click here to read the notification.

CBDT issues guidelines on tax deduction by e-commerce operators under Section 194-O(4)

In a circular dated 28.12.2023 bearing No. 20 of 2023, the Central Board of Direct Taxes (CBDT) unveiled guidelines on tax deduction by e-commerce operators under Section 194-O. The guidelines are in the form of FAQs and address crucial questions pertaining to the calculation of gross amount, adjustment for purchase returns, etc.

Click here to read the circular.

INDIRECT TAX

Goods & Services Tax

A. Recent Case Laws

M/s. Baba Super Minerals Private Limited v. Union of India & Anr. [DB Civil Writ Petition No. 13746/2022]

Rajasthan HC directs payment of interest for delayed GST refund to the assessee as per Section 56 of the CGST Act.

In this case, the petitioner-assessee had filed applications seeking a refund of an unutilised Input Tax Credit, which was granted beyond 60 days. The assessee approached the Rajasthan High Court contending that interest was payable on the refund as per Section 56 of the Central Goods and Services Tax Act, 2017.

The Court ruled in favour of the assessee upholding its right to receive interest on the refund under applicable provisions. The respondent authorities were directed to determine the actual delay in the refund payment and pay the amount of interest to the assessee. The Court emphasised that the amounts of CGST, SGST, and IGST had been refunded beyond the 60 days, so the authorities were obligated to calculate the delay period from the date of receipt of complete application or the date of removal of deficiencies in case of refund applications with deficiencies. This decision aligns with the provisions of section 56 of the Act.

Tvl. Kalyan Jewellers India Ltd. v. Union of India & Ors. [WP No. 5130 of 2022]

GST is payable at the time of issuance of gift vouchers if used for identified goods specified in vouchers, whereas in unspecified goods at the time of redemption: Madras HC.

In this case, the petitioner, a company manufacturing and selling ornaments across the country, implemented a sales promotion scheme involving gift vouchers. These vouchers were sold in retail outlets and online, utilising third-party service providers. The petitioner sought clarity on the taxability of these gift vouchers under Section 12 of the CGST Act.

The Madras High Court, in its ruling, determined that for gift vouchers issued for specified and identified goods, the tax was payable at the time of issuance; according to Section 12(4)(a), there was a supply of an identified good. On the other hand, for gift vouchers issued for unspecified goods to be purchased in the future, given Section 12(4)(b), the tax was payable at the time of redemption. This clarified the taxability of gift vouchers, and the writ petition was partly allowed.

Kannan Paint & Radhas Hardware v. Deputy Commissioner of State Tax [WP(C) No. 21570 of 2022]

No penalty or late fee should be levied for making payment of Kerala Flood Cess under the wrong head in GSTR-3B: Kerala HC.

In this case, the petitioner faced an issue related to the Kerala Flood Cess (KFC) payment. The Kerala Government had imposed a 1% KFC on tax liability under the GST Act and associated rules. The petitioner mistakenly paid the Cess under the wrong head through GSTR-3B.

The High Court of Kerala ruled in favour of the assessee and directed the revenue to refund the amount of the KFC paid by the petitioner under GSTR-3B. It was held that the petitioner should not be subjected to any penalty or late fee for the incorrect payment of the KFC under the wrong head in GSTR-3B. This decision was made under Section 54 of the CGST Act, 2017, and the Kerala State Goods and Services Tax Act, 2017.

B. Notifications/Circulars

Formation of the principal bench of the GST Appellate Tribunal in New Delhi

By the authority granted under Section 109(3) of the CGST, 2017, the Central Government, vide notification dated 29.12.2023, has notified the constitution of the Principal Bench of the Goods and Services Tax Appellate Tribunal (GSTAT) in New Delhi. This initiative is taken following the recommendation of the Goods and Services Tax Council. The operationalisation of the new Principal Bench is effective from the date of publication of the notification in the official Gazette, replacing the previous notification, except for matters completed or pending before such substitution.

Click here to read the notification.

Government notifies extension of time frame for tax recovery

Exercising the authority vested by Section 168A of the CGST, 2017, the Government, vide notification no. 56/2023 dated 28.12.2023, modified earlier notifications, specifically extending the timeframe stipulated in Section 73(10) for issuing orders under Section 73(9) of the Act. This extension pertains to the recovery of tax liabilities for 2018-19 and 2019-20, covering instances of unpaid or underpaid taxes or incorrectly availed or utilised input tax credits. The extended deadlines are until the 30th day of April 2024 for the financial year 2018-19 and until the 31st day of August 2024 for the financial year 2019-20.

Click here to read the notification.

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