Tax INFORM

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DIRECT TAX

A. Recent Case Laws

Urmila Saxena v. Central Board of Direct Taxes and Ors. [WP No. 24807 of 2023]

Notice under Section 148 issued in the name of deceased assessee unenforceable in reassessment proceedings: Madhya Pradesh HC.

In this case, re-assessment proceedings for the assessment year 2015-16 were initiated by issuing a notice under Section 148 of the Income-tax Act, 1961, in the name of the deceased assessee. The petitioner, the widow and legal heir of the deceased filed a writ petition seeking the cancellation of the re-assessment proceedings. She argued that the death of the assessee was timely communicated and contended that the notice issued to a dead person lacked enforceability.

The ruling of the court favoured the assessee, and the impugned notice was quashed. The court held that the notice issued under Section 148 for reopening a deceased person's assessment was null and void. The fact of the deceased's death was undisputed, rendering the notice issued in the name of the deceased person unenforceable in the eyes of the law. The court referred to a previous order, establishing that notices and consequential proceedings conducted in the name of a deceased assessee were not sustainable. However, the court granted the respondent the liberty to reinitiate proceedings against the petitioner/ legal heir of the deceased if deemed necessary.

Bhanuprasad Maganlal Patel v. Deputy Commissioner of Income-tax [ITA No. 07/Ahd/2019]

Ahmedabad ITAT confirms revenue's decision holding profit arising on sale of property as business income and not LTCG, in view of intention of doing real estate business.

In this case, the assessee and seven co-owners purchased a property in 2006, formed a partnership for development, and entered into a development agreement for 18 bungalows. Despite the assessee reporting long-term capital gain (LTCG) on the property sale, the Assessing Officer treated it as business income, denying the Section 54F deduction. The Commissioner (Appeals) upheld this decision, leading to the assessee's appeal to the ITAT, Ahmedabad Bench.

The decision of the ITAT favoured the revenue. Upon investigation, it was discovered that the assessee and co-owners formed a new partnership in 2010, engaging in similar activities, with an observed pattern of real estate business intentions, including additional land purchases in 2014. The Tribunal deemed the assessee's LTCG claim and Section 54F exemption as an attempt to avoid taxes, especially with the non-filing of the Wealth Tax Return. Considering the overall evidence, the Tribunal affirmed the decision to categorize the land sale profit as business income. Notably, similar reassessments were conducted for other co-owners, with one settling under the Vivad Se Vishwas Scheme.

Shendra Advisory Services P. Ltd. v. Deputy Commissioner of Income-tax [Income Tax Appeal Nos. 299 & 300 of 2021]

Bombay HC clarifies that the Income-tax Act does not consider non-compliance with other Acts as a basis for converting capital receipt into revenue receipt.

In this case, the assessee issued shares to its promoters at a premium in the assessment year 2011-12. The Assessing Officer raised concerns about a potential violation of Section 78(2) of the Companies Act, 1956, treating the entire share premium as an unexplained cash credit under Section 68. The contention was that there was no justification for charging a share premium.

The High Court of Bombay examined the case and clarified that there was no evidence in the balance sheet to suggest that the share premium was misused. The court stated that the Income-tax Act, 1961, does not convert a capital receipt into a revenue receipt due to non-compliance with provisions of another Act. Even if there were a breach of Section 78(2) of the Companies Act, 1956, the share premium received would not be considered a revenue receipt.

The court ruled in favour of the assessee, affirming that money received on share issuance at a premium is on the capital account and does not generate income. Moreover, it highlighted the absence of any provision under the Income-tax Act, 1961, to tax share premium receipts for the relevant assessment year.

Ashok Chaganlal Thakkar v. National Faceless Assessment Centre and Ors. [WP No. 3099 of 2022]

Bombay HC reiterates that actual carrying on of agricultural operations is not necessary for deciding whether land qualifies as agricultural land.

In this case, the assessee sold parcels of land in the assessment year 2013-14, claiming that the land was agricultural. However, the Assessing Officer (AO) rejected this claim, stating that the land was a capital asset held for less than two years. The Commissioner (Appeals) also did not allow the claim due to a lack of evidence, even though actual agricultural operations were unnecessary. The matter reached the Tribunal, which remanded it to the AO for reconsideration. After the remand, the AO passed an order but did not follow the Tribunal's directives. This prompted the Bombay High Court to intervene and emphasize that the AO's role was limited to examining the assessee's evidence and determining the land's true nature.

The court held that the AO had exceeded the scope of the remand by disregarding the Tribunal's directives. Therefore, the court ruled in favour of the assessee, quashing the latest AO order and remanding the matter again. The AO was instructed to evaluate only the evidence submitted by the assessee, conduct inquiries if necessary, and pass a fresh order strictly adhering to the Tribunal's directions. This ruling underscores that actual agricultural operations are not mandatory, and the AO must respect the findings regarding the agricultural nature of the land.

M/s. Shyam Oil Extractions Pvt. Ltd. v. Principal Commissioner of Income-tax [WP (T) No. 9 of 2024]

Chhattisgarh HC dismisses petition as assessee fails to provide adequate evidence to support the genuine hardship claim for waiver of pre-deposit of 20% of the tax demand.

In this case, the assessee applied to waive the pre-deposit of 20% of the assessed tax liability under Section 220(6) for the assessment year 2018-19. The contention was that the tax demand was high-pitched. The application was rejected, leading to the filing of the present writ petition.

The High Court reviewed the case and observed that the revenue authorities had already granted instalment facilities to the company while considering the waiver request. The court found that the company did not present genuine hardship during the initial application or the subsequent proceedings. The court also noted that the company provided vague statements without supporting materials or evidence regarding financial crises or business losses. As a result, the High Court concluded that the revenue authorities properly exercised their discretionary power in granting instalment facilities and found no irregularity or illegality in rejecting the company's request.

B. Notifications/Circulars

CBDT notifies ITR-6 for the Assessment Year 2024-25

The Central Board of Direct Taxes (CBDT), vide Notification No. 16/2024/F.No. 370142/49/2023-TPL dated January 24, 2024, has notified the Income-tax (First Amendment) Rules, 2024, exercising powers conferred by Sections 139 and 295 of the Income-tax Act, 1961. Effective April 1, 2024, these rules introduce amendments to the Income-tax Rules, 1962, specifically in Appendix II. Form ITR-6 has been substituted with a new version for the Assessment Year 2024-25. This revised form, titled ITR-6, is designated for Indian Income Tax Return filing by companies other than those claiming exemption under Section 11. The amendment aims to streamline and update the tax return process for the specified category of entities, as outlined in the notification.

Click here to read the notification.

CBDT notifies 16 CIT(A) units in Guwahati, Kochi, Bhubaneshwar, and Nagpur

The Central Board of Direct Taxes (CBDT) has issued an amendment to the notification (S.O. 4156(E), dated 2nd September 2022). According to the latest notification (No. 20/2024/F. No. 279/Misc./66/2014-ITJ dated 6th February 2024), changes include substituting "Schedule"

with "First Schedule" in clause (a) and corresponding amendments in clause (b). Additionally, a new clause (c) is inserted, designating Commissioner of Income-tax (Appeals) Units in Guwahati, Kochi, Bhubaneshwar, and Nagpur, as specified in the Second Schedule, to be subordinate to the Principal Chief Commissioner of Income-tax. Serial numbers and entries in the First Schedule are omitted, and a new Second Schedule is introduced, specifying the Principal Chief Commissioners and corresponding Commissioner of Income-tax (Appeals) Units. This notification is effective from January 22, 2024.

Click here to read the notification.

Individuals and HUFs required to be audited under Section 44AB can now verify ITR through electronic verification code

The Central Board of Direct Taxes (CBDT), vide Notification No. 19/2024/ F. NO. 370142/47/2023-TPL dated January 31, 2024, has introduced amendments through the Income-tax (Second Amendment) Rules, 2024, as per the powers conferred by Sections 139 and 295 of the Income-tax Act, 1961. These rules, effective from April 1, 2024, involve changes in rule 12 of the Income-tax Rules, 1962. Individuals or Hindu Undivided Families (HUFs) subject to audit under section 44AB can now verify their Income Tax Returns (ITR) using Electronic Verification Code (EVC) or under digital signature. The manner of furnishing returns varies based on different conditions. Additionally, new versions of ITR forms have been substituted for the Assessment Year 2024-25: ITR-2 for individuals and HUFs without income from business or profession, ITR-3 for individuals and HUFs with income from business or profession, and ITR-5 for entities other than individuals, HUFs, companies, and those filing Form ITR-7. These amendments aim to streamline the filing process and verification methods for taxpayers.

Click here to read the notification.

INDIRECT TAX

Goods & Services Tax

A. *Recent Case Laws*

M/s. Engineering Tools Corporation v. Assistant Commissioner (ST) [WP No.3505 of 2024]

ITC claim cannot be rejected solely based on supplier's retroactive GST registration cancellation: Madras HC.

In this case, the Engineering Tools Corporation had their Input Tax Credit (ITC) rejected due to their supplier's GST registration being cancelled retrospectively. Despite providing invoices and payment proofs as evidence of legitimate transactions, the petitioner faced ITC reversal based on their supplier's registration status.

The Madras High Court deemed the rejection solely on the basis of the retrospective cancellation unjust. The court emphasized the importance of assessing transactions based on evidence and instructed the assessing officer to reconsider the matter. This directive included a thorough examination of relevant documents to determine transaction authenticity.

Great Heights Developers LLP v. Additional Commissioner and Anr. [WP No.1324 of 2024]

Madras HC directs Appellate Authority to consider belated GST appeal, accepting that delay was owing to petitioner's illness.

In this case, the petitioner appealed against the imposition of a penalty and interest under the Central Goods and Services Tax Act, 2017 (CGST Act). However, due to health issues, specifically septic shock, there was a delay on the part of the petitioner in filing the appeal against the assessment order. The Madras High Court had to examine whether a belated appeal could be entertained due to genuine health-related reasons.

The court acknowledged the petitioner's valid health grounds and the brief 24-day delay despite the usual 120-day limit for condoning delays under Section 107 of the CGST Act. The court observed that the petitioner had fulfilled their tax liabilities, and the appeal focused on penalty and interest. Therefore, the Appellate Authority was instructed to receive and assess the appeal on its merits. The court emphasized the importance of fair treatment, considering the genuine challenges faced by the taxpayer.

Paras Enterprises v. Union of India and Ors. [WP(C) No. 1983 of 2024]

Delhi HC cancels GST order and show-cause notice due to absence of fair hearing.

In this case, a show cause notice was issued to demand Rs. 10,11,855.60, which included penalties, under Section 73 of the Central Goods and Services Tax Act, 2017. The petitioner responded by providing a detailed explanation, but unfortunately, the adjudicating authority dismissed it without conducting a proper assessment or holding a hearing for the defence. As a result, procedural lapses occurred.

It was asserted that the adjudication order was cryptic and lacked engagement with the taxpayer's disclosures. The Delhi High Court observed that the adjudicating authority did not attempt to seek clarification or documents from the petitioner. The Court also highlighted the denial of an adequate opportunity for a hearing. Consequently, the Court set aside both the order and the show cause notice, instructing a fair chance for the taxpayer to present their case. This decision laid stress on the principles of natural justice and procedural fairness in the tax adjudication process.

Tvl. Transtonelstory Afcons – Joint Venture v. Assistant Commissioner (CT) and Ors. [W.P.Nos.3547 & 3548 of 2020]

Madras HC rules that Chennai Metro Rail Limited (CMRL) is responsible for deduction of TDS, not its contractors.

In this case, the petitioner, a contractor involved in the design and construction of underground stations, faced challenges related to Tax Deducted at Source (TDS) for the assessment years 2012-2013 and 2013-2014. These challenges were particularly related to Form S applications and exemption claims. As a result, disputes arose around the complex contracts and TDS obligations, which led to legal proceedings.

The Madras High Court assessed the TDS framework under the Tamil Nadu Value Added Tax Act, 2006. It scrutinized the petitioner's compliance with Form S requirements and emphasized the role of Chennai Metro Rail Limited (CMRL) in payment and TDS deductions. The court directed proceedings against CMRL, and not the petitioner, if TDS deductions were lacking. Proposed demands were quashed, and the petitioner was granted the liberty to assess their liability under relevant sections. The judgment clarified TDS jurisdiction and stressed the importance of proper deduction procedures, providing insights into tax laws in contractual scenarios.

J. Kumar v. State Tax Officer and Anr. [WP(C) No. 970 of 2024]

Kerala HC orders reopening of the GST portal to enable tax filing by petitioner whose registration was restored by Appellate Authority.

In this case, the petitioner faced challenges when his GST registration was cancelled, which prevented him from filing returns. As the blocked portal hindered the petitioner's compliance efforts, he approached the Kerala High Court and requested a writ to direct the State Tax

Officer to comply with the Appellate Authority's order, which had reinstated his GST registration.

The Kerala High Court directed the respondents to reopen the GST portal for the petitioner within ten days, rectifying the administrative oversight.

M/s. Sarathy Cars Private Ltd. v. State Tax Officer and Ors. [WP(C) No. 4166 of 2024]

Kerala HC emphasises the importance of the statutory appeal remedy available for assessment orders under Section 107 of the CGST Act.

In this case, the petitioner company challenged the assessment and rectification orders under the CGST/SGST Act, 2017. Instead of opting for the statutory appeal available under Section 107 of the CGST/SGST Act, 2017, the petitioner chose to file a writ petition under Article 227 of the Constitution.

The Kerala High Court emphasized the limited scope of Article 227, which is focused on identifying jurisdictional errors or errors that are apparent on the face of the record. The court clarified that it cannot delve into the merits of the lower court or statutory authority orders. After finding no error or lack of jurisdiction in the impugned orders, the court dismissed the writ petition and directed the petitioner to avail of the statutory appeal remedy under Section 107 of the CGST/SGST Act, 2017.

B. Notifications/Circulars

CBIC Notifies 'Public Tech Platform for Frictionless Credit' to facilitate information sharing

The Central Board of Indirect Taxes and Customs (CBIC), through Notification No. 06/2024 – Central Tax, designated the ‘Public Tech Platform for Frictionless Credit’ as the system for sharing information via the common portal with consent under subsection (2) of Section 158A of the Central Goods and Services Tax Act, 2017, on February 22, 2024. This advanced technology platform was developed by the Reserve Bank Innovation Hub, a subsidiary of the Reserve Bank of India. It is part of policies announced on August 10, 2023, and is designed to facilitate the smooth operation of a wide credit ecosystem by providing digital access to information from diverse data sources. Financial service providers and multiple data service providers converge on the platform through a standardized and protocol-driven architecture, utilizing an open and shared Application Programming Interface (API) framework.

Click here to read the notification.

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