Tax INFORM

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

Issue XXXIX | March 2024



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/ Circulars

Highlights of the Issue

DIRECT TAX

Domestic Tax Rulings:

- Raipur ITAT confirms that FMV of preference shares cannot be determined based on 'net asset value' method, but takes note of 'serious lapses' in FMV determination by AO.
- Income earned out of mutual funds taxable not in the hands of the revocable trust but its settler: Mumbai ITAT.
- Madras HC agrees that delay in filing return was owing to pandemic, sets aside orders denying plea for condonation.
- As notice issued under Section 148A(b) was based on incorrect information, subsequent order passed by AO 'defies sense': Bombay HC.

Circulars and Notifications:

- Certain payments made to IFSC units exempted from tax deduction.
- Transfer of VDAs: Due date for reporting tax deduction extended.
- Inter-trust donations: Balance 15% eligible for exemption.

INDIRECT TAX

Goods and Services Tax:

Case Laws:

- Considering that supply to SEZ unit was inadvertently reported as taxable supply in GSTR-1, Madras HC remands matter back to AO.
- Issuance of summons for conducting inquiry is not initiation of proceedings under Section 6(2)(b) of CGST Act: Rajasthan HC.
- Delhi HC lays stress on need to follow objective criteria in cancelling GST registration with retrospective effect.
- Madras HC quashes assessment order which was passed disregarding reply to show cause notice.
- Madras HC allows petitioner to reply to show cause notice in case involving claim of transitional credit.

Circulars and Notifications:

- Rectification of assessment orders: Delhi Govt issues instruction for correcting errors.

DIRECT TAX

A. Recent Case Laws

M/s. Avinash Developers Pvt. Ltd. v. Deputy/ Assistant Commissioner of Income Tax [ITA No.157/RPR/2022]

Raipur ITAT confirms that FMV of preference shares cannot be determined based on 'net asset value' method, but takes note of 'serious lapses' in FMV determination by AO.

In this case, the assessee company challenged the order through which an amount of Rs.8.16 Cr was added to its returned income for AY 2017-18, as income from other sources with respect to the preference shares issued to the assessee company's director and ex-director.

The assessing officer determined the fair market value (FMV) of preference shares based on the 'dividend discounting method' as opposed to the 'net asset value' (NAV) approach adopted by the assessing company. Consequently, the excess premium was added back to its returned income for AY 2017-18, as income from other sources under Section 56(2)(viib) of the Income-tax Act, 1961, read with Rule 11UA of the Income-tax Rules, 1962.

This decision of the assessing officer was later upheld by the Commissioner of Income-tax (Appeals). Aggrieved, the assessee company approached the Income Tax Appellate Tribunal, Raipur. Applying the rule of strict literal interpretation, the Tribunal rejected the contentions of the assessee and held that provisions of Section 56(2)(viib) applied in the present case (i.e., consideration in excess of FMV amounted to income from other sources), especially in light of the absence of an exception carved by the legislature in this regard.

As to the determination of FMV of subject preference shares, the Tribunal concurred with the view taken by the assessing officer in dismissing the NAV method adopted by the assessee company. The Tribunal took this view considering that the preference shares did not carry any stake in the company's ownership and the NAV of the company represented the value of equity shares and not that of preference shares.

However, it was noted that there were '*serious lapses/infirmities*' in the factual observations and assumptions drawn by the assessing officer in determining the FMV. For instance, the assumption that the assessee company would pay a 10% dividend every alternate year was observed by the Tribunal to be without justification. Accordingly, the Tribunal directed the assessing officer to redetermine the FMV of the subject preference shares.

M/s. Reporter Family Private Trust v. Assessing Officer [ITA No.3858/Mum/2023]

Income earned out of mutual funds taxable not in the hands of the revocable trust but its settler: Mumbai ITAT.

This appeal pertains to a revocable private trust that purchased units of mutual funds of Rs.2.59 Cr during AY 2010–11. The assessee trust was revoked by the settler in the year 2015. As the assessee was identified as non-filer and it was determined that the purchase of mutual funds was made during AY 2010-11, the matter was picked up for scrutiny and the said amount was assessed as income of the assessee trust.

The Commissioner of Income-tax (Appeals) upheld the decision of the assessing officer stating that the case was reopened to ascertain the sources for the investment which were not furnished by the appellant. However, on appeal, the Tribunal pointed out that the same was not mentioned by the assessing officer in the assessment order. On the contrary, the assessing officer had held that the income earned was not offered to tax by the assessee trust.

It was observed by the Tribunal that, as per Section 61 read with Section 63 of the Act, income arising from a revocable transfer of assets had to be included in the total income of the transferor, i.e., the settlor in the present case. The Tribunal also took note of the return of income filed by the settler for the relevant AY, in which the income earned out of mutual funds was offered to tax as capital gains. Allowing the appeal, the Tribunal proceeded to delete the addition.

Shri Nivas v. Commissioner of Income Tax (International Taxation) [WP Nos.2687 & 3690 of 2024]

Madras HC agrees that delay in filing return was owing to pandemic, sets aside orders denying plea for condonation.

The present writ petitions were filed challenging the denial to condone delay in filing the return of income for AYs 2020-21 and 2021-22. The petitioner, a resident of the United States of America, sold a residential property during FY 2018-19 and deposited the earnings under the Capital Gains Accounts Scheme, claiming exemption under Section 54. Due to the pandemic, the petitioner was not able to file the return of income for said AYs.

After discovering that a sizeable amount was deducted at sources for relevant AYs, the petitioner filed applications for condonation of delay under Section 119(2)(b), which allows for delay condonation in cases of genuine hardship, but the applications were rejected by the Commissioner of Income Tax. In light of the loss of his passport, the death of a family member and other personal exigencies cited by the petitioner, the Madras High Court adjudged that the delay in filing the returns ought to be condoned. With this, the Court set aside the impugned

orders rejecting the petitioner's applications and issued a direction for the processing of the returns filed for relevant AYs in accordance with the law.

Banas Finance Ltd. v. Assistant Commissioner of Income Tax [WP No.2046 of 2023]

As notice issued under Section 148A(b) was based on incorrect information, subsequent order passed by AO 'defies sense': Bombay HC.

In this case, the petitioner company challenged the notice issued under Section 148A(b), which alleged that the petitioner and two other entities it had merged with had booked fictitious losses, as per information from the Insite portal.

Refuting the allegations, the petitioner gave specific details in its reply to the said notice. The assessing officer, without considering the petitioner company's justifications, proceeded to issue an order under Section 148A(d). The assessing officer stood by his prima facie belief on the ground that the petitioner had admitted to transacting in penny script. He also maintained that conclusive proof that income had escaped assessment was not required at the stage of issuance of notice under Section 148.

Expressing that the impugned order 'defies sense', the Court noted that the assessing officer should have considered the petitioner's submissions. The Principal Commissioner of Income Tax was also condemned by the Court for providing approval. Finally, the Court set aside the impugned order and the impugned notice and ruled that before passing a fresh order, the assessing officer had to confront the petitioner with details of the necessary information.

B. Notifications/Circulars

Certain payments made to IFSC units exempted from tax deduction

The Central Board of Direct Taxes has issued a notification bearing no.28/2024/F.No.274/21/2023-IT(B), dated March 7, 2024, stating that no deduction of tax will be made in respect of payments made to specified International Financial Services Centre (IFSC) units. A total of 14 IFSC units or payees have been listed in the notification including banking units, finance companies, investment bankers, etc. along with the nature of payments in respect of which exemption from deduction is provided.

For instance, tax need not be deducted from investment advisory fees under Section 194J, payable to investment advisors in the IFSC. However, the provisions are made subject to the conditions laid down in the notification.

Click here to read the notification.

Transfer of VDAs: Due date for reporting tax deduction extended

In a circular bearing no.4/2024/F.No.275/01/2023-IT(B), dated March 7, 2024, the Central Board of Direct Taxes announced that the due date for filing Form No.26QE, i.e., for reporting deduction (at the rate of 1%) on consideration for transfer of a virtual digital asset (VDA), has been extended to May 30, 2023. This ex-post facto extension applies to persons who deducted tax under Section 194S during the period from July 1, 2022, to February 28, 2023.

During this period, the form was unavailable, and TDS could not be paid on time, which resulted in the levy of fine and interest. However, as per the circular, the fee levied, and the interest charged for the period up to May 30, 2023 (extended due date) will be waived.

Click here to read the circular.

Inter-trust donations: Balance 15% eligible for exemption

The Central Board of Direct Taxes has come out with a circular bearing no.3/2024/F.No.370142/5/2024-TPL, dated March 6, 2024, pertaining to inter-trust donations.

As per the amendment made by the Finance Act, 2023, eligible donations made by a trust or institution to another trust or institution are to be considered as application (of income) for charitable or religious purposes only to the extent of 85% of such donations. This amendment caused concerns among donor entities regarding the taxability of the balance 15% of donations as actual funds were already disbursed and hence, not available for accumulation. The circular has brought clarity in this regard by confirming that the balance 15% of donations will be eligible for exemption.

Click here to read the circular.

INDIRECT TAX

Goods & Services Tax

A. Recent Case Laws

Southern Engineering Services v. Deputy State Tax Officer [WP No.6523 of 2024]

Considering that supply to SEZ unit was inadvertently reported as taxable supply in GSTR-1, Madras HC remands matter back to AO.

The instant case concerns a supply of services that was made to an SEZ unit during AY 2017-18. Though it was a zero-rated supply, the petitioner inadvertently reported it as a taxable supply while filing the GSTR-1 return. The said supply was reported correctly in the GSTR-3B return.

Later on, an assessment order was passed, and challenging the same, the petitioner approached the Madras High Court. The petitioner asserted that it was a zero-rated supply and maintained that she could not participate in the proceedings as the emails from authorities ended up in the spam folder and the notices and the order were uploaded in one of the tabs on the GST portal not accessed by her.

Upon perusal of the invoice and returns, the Court noted that the supply was made during the early stages of the GST regime. Subsequently, the Court ruled in favour of the petitioner, set aside the impugned assessment order, and remanded the matter back to the assessing officer.

Rais Khan v. Add. Commissioner and Ors. [D.B. Civil Writ Petition No.3087 of 2024]

Issuance of summons for conducting inquiry is not initiation of proceedings under Section 6(2)(b) of CGST Act: Rajasthan HC.

In this case, the petitioner challenged the summons issued by the DGGI under Section 70 of the Central Goods and Services Tax Act, 2017, pertaining to the Input Tax Credit (ITC) limit claim that was based on fake documents.

It was contended by the petitioner that notices were already issued by state authorities, and hence, as per Section 6(2)(b), proceedings could not be initiated by the proper officer on the same subject matter. Rejecting this stand, the Court observed that the scope of both the Sections was different and the issuance of summons for conducting an inquiry (as envisaged under Section 70) did not amount to initiation of proceedings under Section 6(2)(b).

Holding that the said Section did not impose a bar on the issuance of summons, the Court dismissed the writ petition.

Krishan Mohan v. Commissioner of GST and Anr. [WP(C) No.3597 of 2024]

Delhi HC lays stress on need to follow objective criteria in cancelling GST registration with retrospective effect.

In this case, the petitioner, legal heir of registered person, challenged the retrospective cancellation of his GST registration. The show cause notice issued prior to the impugned order, which made no reference to retrospective cancellation, indicated that returns were not filed for a continuous period of six months.

The Court noted that neither the show cause notice nor the order contained reasons for the retrospective cancellation. It was observed that while Section 29(2) empowered the proper office to cancel GST registration with retrospective effect, the same could not be done on a mechanical basis. Underscoring the necessity of following objective criteria, the Court added, "*Merely, because a taxpayer has not filed the returns for some period does not mean that the taxpayer's registration is required to be cancelled with retrospective date also covering the period when the returns were filed and the taxpayer was compliant*".

As the petitioner did not wish to continue with the GST registration, the Court modified the impugned order so that it would take effect from the date of death of the registered person.

Bhagyam Exports v. Assistant Commissioner [WP No.6619 of 2024]

Madras HC quashes assessment order which was passed disregarding reply to show cause notice.

The present writ petition was filed by the petitioner claiming that the assessment order as to the wrong availment of ITC disregarded his reply to the show cause notice.

In the said reply, it was asserted that the audit report was issued beyond the period of limitation as prescribed under Section 65(4). As per said Section, the audit by tax authorities has to be completed within three months, extendable by a further period of up to six months.

The Court did not delve into the merits of the contentions as contained in the reply. However, the Court observed that findings in respect of such contentions were not recorded in the impugned order. Further, 10% of the disputed tax demand was remitted by the petitioner. Holding that the circumstances warranted interference, the Court set aside the impugned assessment order and remanded the matter to the assessing officer for reconsideration.

M/s. Agra Coal Impex v. Deputy State Tax Officer and Anr. [WP No.6355 of 2024]

Madras HC allows petitioner to reply to show cause notice in case involving claim of transitional credit.

In this case, the petitioner challenged the assessment order pursuant to which the entire demand, including tax, interest as well as penalty, was recovered from the petitioner's bank account. The petitioner averred that he replied to the show cause notice in the year 2020, stating that a certain amount was eligible to be transitioned to the GST regime under Section 140. However, it was maintained that the petitioner was not aware of the subsequent show cause notice which resulted in the issue of impugned order.

The Court noted that a personal hearing was indeed offered to the petitioner, but at the same time, the impugned order did not make a reference to the petitioner's earlier reply. With this, it was decided that the petitioner had to be conferred with an opportunity of being heard. The Court allowed the petitioner to reply to the show cause notice within two weeks. As to the amount already recovered, its retention was made subject to the fresh assessment order to be passed by the assessing officer.

B. Notifications/Circulars

Rectification of assessment orders: Delhi Govt issues instruction for correcting errors

In an instruction bearing F.No.3(543)/GST/POLICY/2024/1312-18, dated March 1, 2024, the Delhi Government advised field formations to adhere to provisions of the Delhi Goods and Services Act, 2017, pertaining to rectification of errors. Attention was drawn to demand orders with apparent errors including clerical or arithmetical mistakes.

Click here to read the instruction.

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 © 2024 - 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: