Tax INFORM

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DIRECT TAX

A. Recent Case Laws

Seema Gupta v. Assistant Commissioner of Income Tax [WP(C) 8614/2016]

Delhi HC holds that minor linguistic variation between reasons conveyed to Assessee and reasons recorded by AO cannot invalidate proceedings.

In this case, the Directorate of Income Tax (Investigation) initiated a reassessment proceeding. The Assessee was alleged to have evaded tax by shifting profits through the misuse of Client Code Modification ("CCM"). The Assessee preferred a writ petition before the Hon'ble High Court of Delhi ("HC") seeking quashing of the reassessment proceedings initiated under Section 148 of the Income Tax Act, 1962 ("Act") and the notices issued in this regard. The petitioner contended before the HC that there were discrepancies between the reasons provided to them and those recorded by the Assessing Officer ("AO").

Preliminary hearings revealed two sets of recorded reasons for initiating the reassessment proceedings. The petitioner argued that the discrepancies between the reasons provided to them and those recorded by the AO itself justified the quashing of proceedings. However, the HC noted that the foundational material and reasons for reassessment were consistent, despite minor differences in language between the petitioner's and the assessing officer's recorded reasons.

The HC dismissed the writ petition, observing no merit in the petitioner's challenge, while upholding the notices and orders under scrutiny and allowing the petitioner to raise all merit-based contentions during the assessment proceedings. The Court held that the reasons conveyed to the Assessee must be the same as those recorded by the AO, and minor linguistic variations did not invalidate the proceedings.

Saksham Commodities Limited v. Income Tax Officer, Ward 22(1), Delhi & Anr. [WP(C) 1459/2024]

Incriminating material for specific AY does not warrant proceedings in all AYs, confirms Delhi HC.

In this case, the Hon'ble Delhi High Court ("HC") clarified that finding evidence in one Assessment Year ("AY") did not automatically allow the use of Section 153C of the Income Tax Act, 1962 ("Act") for all AYs. The HC further clarified that under said Section, the discovered material, and the AY subject to assessment had to have a clear nexus.

Relying on the Sinhgad Technical Education Society case, the Court confirmed that the AO was bound to identify the AY with the incriminating material and observed that material recovered in the search could be incriminating material for more than one AY and that in such a situation, the AO was required to record reasons for such material to be incriminating for more than one

AY. The HC further observed that the material handed over and received under a search was likely to influence the determination of the total income and be relevant for the assessment or reassessment and that in such cases, the AO could proceed against the Assessee to issue a notice and assess or reassess the income of the Assessee.

The HC held that the AO had to identify the specific AYs affected by the discovered material and record reasons if the material had implications for multiple AYs. Importantly, the HC clarified that the searched person's AO was not required to form an opinion regarding income escapement but had to ensure that the material pertained to another entity.

Vodafone Idea Ltd. v. Deputy Commissioner of Income Tax, Circle 5(2)(1), Mumbai & Ors. [WP No. 2108/2023]

Bombay HC sets aside order under Section 148A(d) on account of difference in quantum of income escaping assessment.

In this case, the High Court of Bombay ("HC") observed that the income that had escaped assessment as per the sanction, under Section 151 of the Income Tax Act, 1962 ("Act"), accorded by the Principal Chief Commissioner of Income Tax ("PCCIT") amounted to Rs. 42,858.47 crore pertaining to companies that merged into Vodafone Idea, and such income was reduced to Rs. 12,431.99 crore in the order passed u/s 148A(d) of the Act, leading to a difference of Rs. 30,426.48 crore.

The HC observed negligence on the part of the PCCIT and held the PCCIT's satisfaction statement under Section 151 of the Act to be incorrect. The HC opined that the authorities had not read the record carefully and also observed that there was no explanation as to how the amount in the PCCIT order and 148A(d) order had changed.

According to the Revenue's counter affidavit, the Section 148A(b) notice treated the transaction value as gross, and the Section 148A(d) order subsequently corrected duplicate entries. However, the HC observed that the notice did not contain any duplicate entries, and the Assessing Officer ("AO") should have provided clarification and details of any duplicates in the order.

Additionally, the HC underscored the importance of officers thoroughly examining the material the AO relied on before approving reassessment proceedings. The Court expressed regret over the casual approval process, highlighting its adverse effects on assessment and reassessment proceedings including the nation's revenue. The HC criticised the casual manner in which approvals were granted, stressing the obligation of officers to apply their minds diligently to prevent errors and delays in tax proceedings.

Considering the difference, the HC quashed the order issued u/s 148A(d) and consequential notice under Section 148 of the Act, stating that the approval process for issuing the notice under Section 148 seemed mechanical and lacked proper application of mind by the concerned authorities.

Agra Portfolio Pvt. Ltd. v. Pr. Commissioner of Income Tax – 1 & Anr. [ITA 1385/2018]

Valuation method under angel tax provision is solely the Assessee's choice: Delhi HC.

The Assessee in this case allotted 3,15,000 equity shares of a face value of Rs. 10 each at a premium of Rs. 40 per share for a total amount of Rs. 1,26,00,000. For the above valuation of the shares offered for subscription, the Assessee relied on a valuation report drawn by a merchant banker. As per this report, the value arrived at for each share was Rs. 9.60. But the report was rejected by the Assessing Officer ("AO"), who independently determined the value of the share at Rs. 40.40 and quantified the disallowance u/s 56(2)(viib) of the Income Tax Act, 1962, at Rs. 1,27,26,000.

The additions made by the Assessing Officer were upheld by the Commissioner of Income Tax (Appeals), and thereafter by the Income Tax Appellate Tribunal (ITAT). The Assessee then filed the present appeal before the Hon'ble High Court of Delhi ("HC"), challenging the said decision of the ITAT. It was contended that the AO was not at liberty to substitute the method of valuation adopted by the Assessee, i.e., the Discounted Cash Flow (DCF) method, for the AO's preferred method of valuation, the Net Asset Value (NAV) method.

The HC held that even if the AO had the liberty to reject the valuation report based on the DCF method, the AO could not substitute the means and method of valuation on its own by adopting the NAV method. The HC stated that the AO was open to doubting or rejecting a valuation, but the AO could not evaluate the face value of the unquoted equity shares independently by adopting a valuation method other than the one chosen by the Assessee. The Assessee had to determine the fair market value ("FMV") of the unquoted equity shares either with the formula provided under Rule 11UA(2)(A)(a) of the Income Tax Rules, 1962 or based on a report by a merchant banker as per the DCF method. Accordingly, the ITAT order was quashed.

Commissioner of Income Tax-Exemptions v. M/s. National Association of Software and Service Companies (NASSCOM) [ITA 22/2024]

Delhi HC upholds Section 11 exemption to NASSCOM based on the principle of mutuality.

In this case, the Delhi Income Tax Appellate Tribunal ("ITAT") allowed the Assessee exemption u/s 11 and 12 of the Income Tax Act, 1962 ("Act") for the Assessment Year ("AY") 2011–12 regarding subscription fees received from its members, based on the principle of mutuality.

The respondent-Assessee, National Association of Software and Service Companies ("NASSCOM"), registered under Section 12A of the Act as a charitable institution, had previously claimed exemption under Section 11 for income earned until AY 2008–09 but ceased to do so from AY 2009–10 onwards. The same was owing to an amendment, brought into effect from AY 2009-10, to the definition of "charitable purpose" under Section 2(15).

In the impugned AY, NASSCOM opted to tax income from various activities while claiming an exemption for subscription fees under the principle of mutuality.

The ITAT, referring to the NASSCOM case for AY 2009–10 with similar facts, granted an exemption based on the principle of mutuality and allowed the appeal. The Hon'ble High Court of Delhi ("HC") noted that the factual circumstances remained consistent for AY 2011–12 and dismissed the Revenue's appeal in the absence of substantial questions of law. NASSCOM clarified its consistent stand of not falling within the ambit of Section 2(15) of the Act or intending to claim benefits under Section 11 of the Act. The Court stated that the same ought to alleviate the appellant's apprehensions.

Consequently, the Court disposed of the appeal, affirming NASSCOM's entitlement to an exemption under the principle of mutuality for subscription fees. Accordingly, the HC dismissed the appeal and ruled in favour of the Assessee on the basis that the said income was exempt from taxation.

B. Notifications/Circulars

CBDT facilitates taxpayers to file commonly used ITRs from April 1

The Central Board of Direct Tax ("CBDT"), vide its press release dated April 4, 2024, has enabled the filing of Income Tax Returns ("ITRs") on the 1st day of the Financial Year 2024 to ease compliance and ensure seamless taxpayer services. Consequently, the e-filling portal now offers ITR 1, 2, 4, and ITR 6 Forms for Companies, while the facility to file ITRs 3, 5, and 7 will be available soon.

Click here to read the press release.

CBDT notifies forms for verification and acknowledgement of ITRs for AY 24–25

The Central Board of Direct Taxes ("CBDT"), vide Notification No. 37/2024 dated March 27, 2024, notified ITR verification forms, i.e., ITR-5, and acknowledgement of ITRs for AY 2024–25. Consequentially, when ITR data is electronically transmitted, the "date" of filing shall be

interpreted as (i) the date of transmitting the data electronically if ITR-5 is submitted within 30 days of the transmission of data, or (ii) the date of ITR-5 submission if ITR-5 is submitted beyond the time limit of 30 days of transmission of data.

Click here to read the notification.

Finance Ministry invokes MFN clause, notifies lower Royalty & FTS Tax Rate under India-Spain DTAA

The Ministry of Finance, vide Notification No. 33/2024, dated March 19, 2024, notified amendments in Article 13 of the Convention between the Government of the Republic of India and the Kingdom of Spain for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income and on capital, that deals with Royalty and Fee for Technical Services ("FTS").

The notification substitutes Article 13(2) to read as follows: "However, such royalties and fees for technical services may also be taxed in the Contracting State in which they arise and according to the law of that State, but if the recipient is the beneficial owner of the royalties or fees for technical services, the tax so charged shall not exceed ten per cent of the gross amount of royalties or fees for technical services."

This amendment was notified in light of the India-Germany Double Taxation Avoidance Agreement ("DTAA") read with paragraph 7 of the Protocol to India-Spain DTAA, which contains the Most Favoured Nation ("MFN") clause for Organisation for Economic Cooperation and Development ("OECD") member entering into a treaty with India and limiting source-based taxation of royalties, or FTS, to a rate lower than the rate provided in the India-Spain DTAA.

Click here to read the notification.

INDIRECT TAX

Goods & Services Tax

A. *Recent Case Laws*

Tvl. Lakshmi Tex v. Deputy State Tax Officer - 1 [WP No. 7005 of 2024]

Although SCN reply filed subsequent to issuance of assessment order, Assessee to be given opportunity to explain alleged disparity: Madras HC.

In this case, the Assessee, a dealer of woven fabrics in cotton and ready-made garments, challenged an order dated October 6, 2023, alleging the lack of reasonable opportunity to contest a tax demand pursuant to the scrutiny of returns filed by the Assessee. The Assessee could not respond to the Show Cause Notice ("SCN"), issued on June 23, 2023, as specific details from his supplier were awaited. Subsequently, the petitioner provided relevant purchase invoices on November 22, 2023, asserting no discrepancy, and disputing the tax liability.

The Hon'ble High Court of Madras ("HC") noted that while the petitioner was negligent in not providing supporting documents earlier, their subsequent explanation warranted a fair opportunity to explain the alleged disparity. Consequently, the impugned order was quashed with the condition that the petitioner remit 10% of the disputed tax demand within two weeks. The petitioner was also granted permission to submit a reply within the same period. The Assessing Officer ("AO") was directed to provide a reasonable opportunity, including a personal hearing, and issue a fresh assessment order within two months upon receipt of the petitioner's reply and satisfaction of the 10% payment condition.

Good Life Zip India v. Commissioner of Delhi Goods and Service Tax & Anr. [WP(C) 3931/2024]

Delhi HC holds that GSTIN cannot be cancelled retrospectively 'merely' because of non-filing of GST returns.

In this case, the petitioner challenged an order cancelling its GST registration. The petitioner also contested a Show Cause Notice ("SCN") which lacked specific details and failed to notify the petitioner about the retrospective cancellation. The petitioner explained that its failure to file returns was due to business setbacks during the lockdown period.

The cancellation of the Assessee's GST registration was based on the grounds of the non-filling of returns under Section 39 of the Central Goods and Services Tax Act, 2017 ("Act"). The Hon'ble High Court of Delhi ("HC") clarified the position under Section 29(2) of the Act, stating

that registration could only be cancelled retrospectively if specific criteria were satisfied; mere non-filling of returns for a certain period did not automatically warrant retrospective cancellation of registration.

The HC modified the SCN pertinent to the retrospective cancellation of GST registration. The HC ruled that the registration would be treated as cancelled from the date when the SCN was issued. It noted that both the SCN and the subsequent order lacked sufficient details and failed to specify the reasons for the retrospective cancellation.

M/s. Prinsep Association of Apartment Owners, In re [Appeal Case No.01/WBAAAR/APPEAL/2024]

West Bengal AAAR confirms that contributions to sinking fund are taxable at the time of receipt as per Section 13(2) of the GST Act.

Before the West Bengal Appellate Authority for Advance Rulings ("Appellate Authority"), the appellant, a Residents' Welfare Association ("RWA"), sought an advance ruling u/s 97 of West Bengal Goods and Services Tax Act, 2017 ("Act"), on whether the tax would be charged on the amount collected from its members for setting up a corpus fund for future contingencies and on the taxability of collection of common area electricity charges paid by members.

On the first issue, the Appellate Authority held that the amount collected by the appellant from its members for setting up a sinking fund was an advance payment towards a future supply of services, and such payment came within the ambit of "consideration" as defined under Section 2(31). Hence, the appellant was held liable to pay tax on such a supply, at the time of receipt of such amount as per Section 13(2) of the Act.

On the second issue, the Appellate Authority decided that the appellant collected the electricity charges consumed for the common area on a pro-rata basis from its members and that the electricity services were a supply of goods and services sourced from a third party for the common use of its members, hence, the said supply formed a part of a composite supply. With this, the Appellate Authority ruled that the rate of the principal supply, i.e., the GST rate on maintenance of the premise, was applicable.

B. Notifications/Circulars

Technical glitches in portal: 'Nil' interest for GSTR-3B filing delays

The Central Board of Indirect Tax and Customs ("CBIC"), vide Notification No. 07/2024, dated April 8, 2024, notified that the interest rate will be 'nil' for certain Goods and Service Tax Identification Numbers ("GSTINs"), on account of technical glitches in the portal in filling out monthly returns (Form GSTR 3B), from the due date until the actual date of filing such returns. No interest is chargeable if the Assessee is categorised under the class of registered persons specified in the notification. The Assessee must have had sufficient balance in the electronic cash ledger or credit ledger or had deposited the amount through challan, and only those who have failed to file a return due to a technical glitch in the portal are eligible for this exemption. In all the above situations, interest will not be charged for delay in filing monthly returns in the GSTIN portal.

Click here to read the notification.

CBIC issues investigation guidelines to improve the ease of doing business

The Central Board of Indirect Taxes and Customs ("CBIC"), vide Instruction No. 01/2023-24-GST(Inv.) dated March 30, 2024, has issued guidelines for Central Goods and Service Tax ("CGST") field formations towards maintaining ease of doing business while engaging in investigations with regular taxpayers.

Guidelines include checking whether a concurrent investigation on the same subject regarding the Goods and Service Tax Identification Number ("GSTIN") has been launched by another Investigating Officer ("IO") and getting approval from the Pr. Commissioner before initiating any investigation, which should be concluded no later than 12 months.

The notification provides that the official should be proactive in issuing the Show Cause Notice ("SCN") after the investigation. The officials must adhere to Section 70 of the Central Goods and Services Tax Act, 2017, regarding summons. Further, summons should disclose the specific nature of the inquiry initiated.

Click here to read the instruction.

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