Tax INFORM

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DIRECT TAX

A. Recent Case Laws

Sree Metaliks Ltd. vs. Union of India [CRLMC NO. 1921/2023]

Criminal prosecution not pursued if delay beyond 12 months is justified.

In the instant case, the Assessee failed to deposit Tax Deduction at Source ("TDS") amounts for the fiscal year 2019-20 within the statutory period and a complaint case had been registered against them. Following the complaint, an order had been passed by the CJM court taking cognizance of the offences under Sections 276B and 278B of the Income Tax Act, 1961 ("Act"). Following the court's order, an order was also passed by the Commissioner of Income Tax according sanctions under Section 279(1).

The Assessee had later made the payment along with the interest and maintained that there was no mens rea in the delayed payment, and they presented genuine grounds for the delay that were not sufficiently evaluated by the opposing parties before bringing the statutory complaint.

The court observed that the delay of 394 days was well explained by the Assessee, particularly for the reasons that the Assessee had suffered the I.B. proceeding and the restriction imposed during the COVID-19 pandemic. The court relied on the decisions delivered in *M/s. D.N. Homes Pvt. Ltd., Khurda and another v. Union of India and Dev Multicom Pvt. Ltd. and another v. State of Jharkhand and another*, and quashed the complaint case as well as the consequential proceedings, because the prosecution was initiated by the opposite parties after having received the TDS amount along with the interest.

Millie Dey vs. Income Tax Officer [ITA No. 52/2024]

Indexation benefit to be applied where fair market value cannot be otherwise determined.

In the instant case, the correctness of long-term capital gain/loss from sale of immovable property was in dispute. The Assessee was 50% owner of an immovable property and the share of sale consideration received by her was Rs.50,00,000/-. For the purpose of calculating cost of acquisition as on 01.04.1981, since the property was acquired prior to 01.04.1981, the Assessee had obtained report from the Registered Valuer. In the valuation report, the valuer estimated the fair market value of the property at Rs.1,08,18,000/- and thereafter applying the reverse method of indexation, calculated the cost of property as on 01.04.1981 at Rs.10,00,740/-. The Assessing Officer ("AO") while carrying out the assessment proceedings for Assessment Year: 2016-2017 calculated the impugned amount by taking the cost of acquisition at Rs.5,00,370/-.

However, while calculating the long-term capital gain, the AO had not given the benefit of indexation. Instead, he estimated the indexed cost of acquisition at Rs.5,00,370/- and made

an addition for long-term capital gain at Rs.44,99,630/- and the income assessed at Rs.48,45,690/-. Had he applied the indexation benefit (i.e. Rs.5,00,370/- divided by 100 x 1081), the index cost of acquisition would have worked out at Rs.54,09,000/-, which was more than the sale consideration. The AO had nowhere disputed the sale consideration. Even CIT(Appeals) had adopted the same analogy and had considered the cost of acquisition at Rs.5,00,370/-, but again no benefit of indexation had been given.

The AO had also noted that the Assessee had wrongly considered the amount at Rs.54,09,355/- (i.e. 50% of Rs.1,08,17,750/-) instead of Rs.5,00,370/- (i.e. 50% of Rs.10,00,740/-). He had himself considered the cost of acquisition at Rs.5,00,370/- based on the valuation report by Registered Valuer, which was fair market value of the property (Assessee's share) as on 01.04.1981. For calculating the long-term capital gain, indexed cost of Assessment Year: 2016-2017 acquisition had to be reduced from the sale consideration. However, the AO had merely reduced the cost as on 01.04.1981 and calculated the impugned addition.

The court observed that the AO had not made any efforts to get the information about the Circle rate of the immovable property as on 01.04.1981. Since the fair market value of the property as on 01.04.1981 as calculated by the Registered Valuer had been accepted by the AO and there being no other evidence of the fair market value of property as on 01.04.1981, the court held that considering the cost of acquisition as on 01.04.1981 at Rs.5,00,370/-, the indexed cost of acquisition was Rs.54,09,000/-, and since it was higher than the sale consideration, it resulted into a long-term capital loss.

Hindustan Export & Import Corporation (P.) Ltd. vs. Deputy Commissioner of Income Tax [ITA No. 225/ 2002]

Deduction claimed under section 80-O in respect of fees received from a foreign company for providing information concerning commercial knowledge, experience, or skill, denied because assessee had failed to produce substantial evidence.

In the instant case, the Appellant, a private limited company, had executed an agreement with M/s. Arianespace France ("Arianespace"), owned by government-controlled companies belonging to European Space Agencies. Arianespace was in the business of launching satellites and deploying them in orbit above the earth. To gain entry into the global satellite launch industry, Arianespace sought to reduce costs by placing bulk orders on subcontractors based on intelligence gathered from their international network of consultants. The appellant was one of the consultants appointed per the agreement. The information was shared with Arianespace regularly by post, and assessments and analyses were discussed orally at personal meetings with representatives from both sides to maintain confidentiality.

The Appellant had claimed a deduction under Section 80-O in its return of income filed for AY 1995-96. The Assessing officer (“AO”) refused the deductions on grounds such as (a) the information provided by Appellant comprised only of newspaper cuttings freely available and hence, cannot be treated as 'information concerning commercial knowledge and experience'; (b) there were no written reports of any analysis; (c) Appellant had no experience in Satellite business, and (d) there was nothing to indicate that the information was utilized outside India.

The Bombay High Court observed that the agreement required approval of the CCIT for seeking benefits of Section 80-O of the Act and such approval had been granted but the AO was well within his jurisdiction to verify whether the information shared was attributable to the information or service contemplated by the provision. The AO is in fact required to make such an enquiry and for that purpose the Assessee is required to place on record the requisite material supporting its claim for deduction and on the basis of which approval was procured from the CCIT. The AO simply sought to verify whether Appellant had acted in terms of the approval granted by the CCIT.

The court further observed that there was an obvious attempt to create an illusion of acting in aid of the agreement while at the same time refusing to produce any evidence in respect of which relief was being sought. Merely brandishing newspaper cuttings did not amount to proof of sharing commercial expertise with its French counterpart as mandated by Section 80-O of the Act.

Akshita Jindal vs. Income Tax Officer [WP (C) No. 14354/2022]

Concluded assessment proceedings cannot be reopened in the absence of new evidence. Procedure envisaged in Ashish Agarwal case unambiguously stood confined to matters where although notices may have been issued, proceedings were yet to have attained finality.

In the instant case, the validity of proceedings initiated under Section 148 of the Income Tax Act, 1961 ["Act"] was examined on the strength of the decision of the Supreme Court in the case of *Union of India v. Ashish Agarwal* [*Civil Appeal No. 3005/2022]* for reassessment in the case of an already concluded assessment.

The Assessee had received a notice under Section 148 for the relevant assessment year. In response to the notice, the Assessee duly filed her return. Subsequently, an assessment order under Section 147 read with Section 144A(b) was issued, adding to the Assessee' s income based on alleged accommodation entry through penny stocks of an entity. Aggrieved by the order, the Assessee filed an appeal with the Commissioner (Appeals) National Faceless Assessment Centre ("NFAC"), which is pending disposal. Meanwhile, the Assessee received a show cause notice under Section 148A(b). Following that, an assessment order under Section 148A(d) was issued, alleging an escapement of income that was significantly more than the purported income as stated in the show cause notice. A reopening notice under Section 148 was also apparently given to the Assessee, along with an intimation letter for the relevant assessment year.

The Assessee contended that the assessing officer ["AO"] has erroneously assumed jurisdiction under Section 147 of the Act, despite becoming functus officio, in issuing the impugned notices as the alleged escaped income had already been assessed to tax for the same AY. Therefore, the impugned notices were bad in law. It was further contended that the observations in the case of Ashish Agarwal (supra) does not confer any authority on the respondents to reopen the reassessment proceedings which had already attained finality.

The respondents submitted that since the notice dated 31.03.2021 under Section 148 of the Act, came to be digitally signed and issued only on 01.04.2021, therefore, in terms of the judgment rendered in Ashish Agarwal (supra), it was deemed to be a show cause notice under Section 148(A)(b) of the Act. Accordingly, the said notice had to be construed in the aforenoted terms irrespective of the stage of assessment proceedings following the issuance of notice.
The court observed that the notice fails to take into account the fact that the final order on the Assessee' s alleged income escapement was previously issued in the reassessment procedures. Undisputedly, the revenue has made an order under Section 148(A)(d) based on the same ground of income escapement as stated in the original notice of reassessment filed on 31.03.2021. Therefore, the only question to be examined was whether the decision in Ashish Agarwal (supra) commanded an authority to reopen even concluded assessment proceedings.

The court cited its judgement in *Anindita Sengupta v. Asstt. CIT* [*W.P.(C) 12542/2022 & CM APPLs. 37964-37965/2022]*, where it had extensively dealt with a similar challenge. It was held in that case that the procedure envisaged in Ashish Agarwal was unambiguously limited to matters where, while notices had been issued, proceedings had not yet reached finality. The facts that the evaluation under Section 147 had already been completed, that the procedures had been entirely ignored, and that no new evidence had been discovered substantially resembled the factual picture in the case of Anindita Sengupta. Thus, the ruling in Anindita Sengupta fully addressed the controversy at hand and as a result, the immediate writ petition was granted.



B. Notifications/Circulars

Notification F.NO.225/72/2024IITA-II dated May 3, 2024

CBDT issues guidelines for compulsory selection of returns for complete scrutiny during the Financial Year 2024-25 and procedure for compulsory selection in such cases.

The guidelines outline the criteria and procedures for the compulsory selection of tax returns for Complete Scrutiny for the Financial Year 2024-25. The parameters include cases related to surveys under Section 133A, search and seizure actions, instances where notices under Section 142(1) have been issued with no returns furnished, cases involving specific tax evasion information, and instances of recurring issues of fact or law leading to significant additions in earlier assessment years. The guidelines also provide administrative approval and transfer process, handling of return and notices as well as timelines and compliances.

Click Here to Read the Guidelines.

Circular No. 7/2024 [F.NO. 173/25/2024-ITA-I] dated April 25, 2024

CBDT notifies extension of due date for filing of form no. 10A/10AB.

The Central Board of Direct Taxes ("CBDT") has announced the extension of due date for filing Form 10A & 10B for the FY 24– 25.

- Form No. 10A - In case of an application under clause (i) of the first proviso to clause (23C) of section 10 or under sub-clause (i) of clause (ac) of sub-section (1) of section 12A or under clause (i) of the first proviso to sub-section (5) of section 80G or in case of an intimation under fifth proviso of subsection (I) of section 35 of the Act, till 30.06.2024

- Form No. 10AB - In case of an application under clause (iii) of the first proviso to clause (23C) of section 10 or under sub-clause (iii) of clause (ac) of sub-section (I) of section 12A or under clause (iii) of the first proviso to sub-section (5) of section 80G of the Act, till 30.06.2024.

Click Here to Read the Circular

INDIRECT TAX

Goods & Services Tax

Recent Case Laws:

Centre for International Admission and Visas (CIAV) vs. Telangana State Authority for Advance Ruling (TSAAR Order No.09/2024)

TSAAR: Marketing/Recruitment/Referral of aspiring students to foreign universities/ colleges not 'Intermediary Service'.

The Centre for International Admission and Visas (the Applicant), an Indian company providing marketing, recruitment, and referral consultancy services, had entered into an agreement with foreign universities to provide referral services. The Applicant provided referrals of the aspirants/applicants who aspired to apply and study abroad at universities/colleges located outside India by preparing their case, considering the requirements of the aspiring student and the fitment to the college/ university.

The applicant company received referral income or commission from foreign colleges and universities based on successful admissions resulting from its referrals. The issue for determination was whether the company qualified as an 'intermediary' as defined under Section 2(13) of the IGST Act and whether its activities qualified as 'export of services' as per Section 2(6) of the IGST Act.

As the applicant was located in India while the foreign colleges and universities were located outside India, the place of supply of the services of the Applicant should be the same as the location of the foreign colleges, which was outside India. Accordingly, the Telangana Authority for Advance Ruling held that the Applicant should not be considered an intermediary under Section 2(13) of the IGST Act. The activity of the Applicant's service to a foreign college or university qualifies as an export of service under Section 2(6) of IGST, provided that the payments are received in convertible foreign exchange.

Savio Jewellery Vs Commissioner of Central Goods and Service Tax, (Civil Writ Petition No. 1910/2024)

Rajasthan High Court dismisses challenge to recovery of GST on exhibition services received outside India.

In the present case, a Civil Writ petition had been filed by a jewelry dealer who participated in an exhibition that took place outside India wherein he had received various services. The petitioner challenged the show cause notice wherein Goods and Services Tax ("GST") had been imposed on service received by the Taxpayer outside India at the time of exhibition on the basis of Reverse Charge Mechanism (RCM).

The petitioner contented that the services received outside India cannot be taxed under the Integrated Goods and Services Tax Act, 2017 ("IGST") in India and Section 1 of the Central Goods and Services Tax Act, 2017 ("CGST") stated these laws extended only to India. Since the petitioner had participated in an exhibition outside India, thus services received there should not be taxed under IGST.

The Commissioner for Central Goods and Service Tax contended that sub section (5) of Section 13 of the IGST Act read with Notification dated 28.06.2017 issued under sub section (3) of Section 5 of the IGST Act, specified the tax on such services to be paid on Reverse Charge basis by the recipient and accordingly the petitioner was liable to pay IGST for the services received outside India.

The High Court of Rajasthan observed that the Taxpayer was located in the 'taxable territory' and that the services received outside India were already taxable at the hand of the receiver of services by the virtue of the provisions mentioned supra. Accordingly, the Rajasthan HC dismissed the writ petition finding no merit in the petitioner's claim.



Elsevier BV (TS-219-AAR(KAR)-2024-GST)

Provision of online subscription-based clinical database to AIIMS taxable under reverse charge and the recipient of service, being the importer of service, was liable to discharge the liability.

In this case, the applicant, a company incorporated in Netherlands, offered online content such as educational periodicals, online journals, books etc. covered under the category of online information and database access or retrieval ("OIDAR") services. The applicant sought the rate of tax/exemption on the supplies under 'Clinical Key' subscription, the product supplied to specified customer. The applicant sought advance ruling on whether the supply of database services on a subscription basis is exempt from the Goods and Services Tax (GST) Act, 2017.

The Karnataka Advance Ruling Authority held that the supply of services (subscription of Clinical Key) to the All India Institute of Medical Sciences ("AIIMS") or other educational institutions was not exempt from GST under Entry No. 69 (b) (v) of the Notification No. 9/2017-IT (Rate) dated 28.06.2017. Further, the recipient of service, being the importer of service, was liable to discharge the GST liability (i) for the period up to 30.09.2023 and (ii) for the period after 01.10.2023.

The exemption was denied since the applicant provided services by way of online access and retrieval services to a systematically organized clinical/medical database, not covered under subject entry of the Notification. The exemption was clear and very specific to online educational journals or periodicals and not to the entire gamut of OIDAR services, which was a composite supply of service, provided to educational institutions.

Further, the GST liability was imposed on AIIMS since it was a person located in the taxable territory other than non-taxable online recipient (NTOR) in terms of Sl. No. 1 of the Notification 10/2017 dated 28.06.2017. AIIMS did not satisfy the definitions of NTOR in terms of Section 2(16) although it qualified as a 'governmental authority' under clause (i) of Explanation of the said section.

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