Tax INFORM

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DIRECT TAX

A. Recent Case Laws

Principal Commissioner of Income Tax-1, Kolkata v. M/s. Thakur Prasad Sao & Sons Pvt Ltd (ITA/66/2018)

Calcutta HC upholds penalty proceedings despite Assessee's voluntary disclosure of concealed income.

In this case, the Assessee, a private limited company, filed the original return of income for the Assessment Year ("AY") 2006–2007 and AY 2007–2008 and during a search conducted and assessment initiated under Section 153A of the Income-tax Act, 1961 ("Act"), the Assessee admitted to having concealed taxable income and voluntarily revised the returns for the relevant AYs to the extent of concealed income found and admitted by the Assessee and consequentially, a sum to the extent of concealed income was added to the Assessee's income for the relevant AYs, followed by penalty proceedings under Section 271(1)(c) of the Act through the order passed under Section 153A of the Act.

The Assessee participated in the penalty proceedings and sought a waiver of penalty on the ground that the Assessee had voluntarily made disclosures of the concealed income. The Assessing Officer ("AO") rejected the Assessee's request for waiver of penalty and confirmed the levy of penalty under Section 271(1)(c) of the Act to the extent of undisclosed income.

Aggrieved by the Order of the AO, the Assessee preferred an appeal before the Commissioner of Income Tax (Appeals) ["CIT(A)"], which was decided against the Assessee, against which the Assessee filed an appeal before the Income Tax Appellate Tribunal, Kolkata ("ITAT").

ITAT cited the decision of the Karnataka High Court in the case of Manjunatha Cotton and Ginning Factory. On the ground that the show cause notice served upon the Assessee under Section 274 of the Act was invalid on account of failing to specify the grounds on which penalty was sought, the ITAT allowed the appeal.

Aggrieved by the ITAT's ruling, the revenue preferred an appeal before the High Court of Calcutta ("HC"). The HC observed that the disclosure of income by the Assessee was not voluntary but instead a result of the search conducted by the revenue. The HC upheld Explanation 5A to Section 271(1) of the Act, which presumes concealment if a disclosure is made subsequent to a search conducted by the Revenue, and accordingly, the HC upheld the penalty imposed by the AO.

Sanjay Baweja v. DCIT and Anr. [WP(C) 11155/2023]

One-time voluntary payment made to compensate loss in value of unexercised ESOPs pursuant to disinvestment of subsidiary not 'perquisite': Delhi HC.

In this case, the Assessee was an ex-employee of Flipkart Internet Private Limited, a step-down subsidiary of Flipkart Pvt. Ltd., Singapore (FPS). FPS rolled out a Flipkart Stock Option Plan (FSOP), wherein FPS granted "employee stock option plans" (ESOPs) to the employees of its subsidiaries. The Assessee was granted stock options with a vesting schedule of four years.

In December 2022, FPS announced the disinvestment of its wholly-owned subsidiary, PhonePe, and consequently, the value of FPS's stock options fell. To compensate the ESOP holders for the loss in the value of options, in April 2023, FPS granted the option holders a one-time payment per option based on the number of options held by the ESOP holders as of December 2022. Consequentially, the Assessee made an application under Section 197 of the Income-tax Act, 1961 ("Act") seeking a 'Nil' tax withholding certificate in respect of the payment by FPS on the ground that one-time compensation was a capital receipt and did not constitute income under Section 2(24) of the Act.

The Assessing Officer ("AO") denied the application, stating that Section 17(2)(vi) of the Act would tax one-time compensation as perquisites, regardless of whether it comes directly or indirectly from a former employer. The Assessee, aggrieved by the Order of the AO, filed a writ petition before the Hon'ble Delhi High Court ("HC"). The Court evaluated the granted ESOP and observed that the Assessee had not exercised his vested right arising from the ESOP. The HC cited the rulings of the Hon'ble Supreme Court in the cases of (1) CIT v. Saurashtra Cement Ltd. (2010), 11 SCC 84, (2) Shrimant Padmaraje R. Kadambande v. CIT (1992), 3 SCC 432, (3) Godrej and Co. v. CIT 1959 SCC Online SC 101, and (4) Empire Jute Co. Ltd. v. CIT (1980), 4 SCC 25 and held its decision in Assessee's favour by setting aside the Order passed under Section 197, confirming that the one-time voluntary payment for the diminution in value of the stock options granted to the Assessee was a capital receipt, not taxable as perquisites under Section 17(2)(vi) of the Act.

Pr. Commissioner of Income Tax-1, Chandigarh v. M/s I.A. Hydro Energy (P) Limited (ITA/4/2024)

Himachal Pradesh HC confirms decision setting aside addition under Section 56(2) (viib) as unsecured loans were converted into equity shares at premium and no consideration was received for such issue of shares.

In this case, the Assessee was engaged in the generation and distribution of hydroelectricity in Himachal Pradesh. The Assessee filed its Return of Income for the Assessment Year ("AY") 2018-19 declaring a loss. The Assessee had an opening balance of unsecured loans as of April 1, 2017, which were converted into share capital by issuing shares to resident entities which were earlier partners in the Assessee firm at a face value of Rs. 10 per share and at a premium

of Rs. 90 per share. The shares were valued using the Discounted Cash Flow ("DCF") method, as permitted by Rule 11UA of the Income Tax Rules, 1962 ("Rules").

The case of the Assessee was selected for Limited Scrutiny under the e-assessment scheme, and the Assessment was completed by the Assessing Officer ("AO") vide its Order under Section 143(3) read with Sections 143(3A) and 143(3B) of the Income-tax Act, 1961, by making an addition under the Head 'Income from Other Sources' under Section 56(viib) of the Act on account of the excess premium paid per share. The AO vide its Order rejected the valuation report furnished by the Assessee citing the DCF valuation used by the Assessee as bogus.

Hence, the AO computed the fair market value of the unquoted shares on the basis of balance sheet figures as per the Net Asset Value ("NAV") method. Aggrieved by AO's Order, the Assessee filed an appeal before the Commissioner of Income Tax (Appeals) ["CIT(A)"], who deleted the additions made by the AO.

The Revenue Department challenged the Order of the CIT(A) before the Income Tax Appellate Tribunal, Bench 'A,' Chandigarh ("ITAT"). The ITAT confirmed that the Assessee did not receive any consideration for the allotment of shares to the Indian entities and upheld the view of the CIT (Appeal) that if no consideration was received in the previous year under consideration, Section 56(2) (viib) of the Act had no application.

Against the Order of the ITAT, the revenue preferred an appeal before the High Court of Himachal Pradesh ("HC") which came to be dismissed, with the Court confirming the decisions of the ITAT and CIT(A). It was held that the AO is not authorised to pick and choose a particular method of valuation of shares, since the option in that regard was specifically given only to the Assessee as per Rule 11UA(2) of the Rules and that the AO could only verify the method of valuation adopted by the assessee, but the same could be substituted by the AO by a different method, i.e., the NAV Method, once the Assessee had exercised the option for the DCF Valuation Method. The HC, on the ground that the Assessee did not receive any consideration for converting the pre-existing unsecured loans into equity shares at a premium, held that Section 56(2) (viib) of the Act did not apply to the case at hand.

Denso (Thailand) Co. Ltd v. ACIT [ITA/1986/Del/2023]

In absence of FTS clause in India-Thailand DTAA, receipts to constitute business income as AO failed to show that services were not related to Assessee's business: Delhi ITAT.

In this case, the Appellant was a company incorporated under the laws of Thailand and a tax resident of Thailand for the Assessment Year ("AY") 2020–21. The Appellant functioned as a regional service centre for the Denso Group ("Group") in Asia and Oceania, providing the Group with business administration, material engineering services, design and development services, testing, and technical services for automotive components.

During the AY 2020-21, the Appellant earned INR 16,60,43,718 and declared this amount as Fees for Technical Services ('FTS') for services rendered to its five Indian group companies. The Appellant submitted before the Assessing Officer ("AO") that the amount the Appellant

had received was non-taxable in the absence of the FTS clause in the India-Thailand Double Taxation Avoidance Agreement ("DTAA'"). In support of this, the Appellant contended that its services were in the nature of business activities and hence, the income ought to be treated as business income and not 'Other income' under Article 22 of DTAA. The Appellant further submitted before the AO that, in the absence of permanent establishment ('PE') of the Appellant in India, its business income was not liable to be taxed in India.

The AO accepted the submission of the Appellant that the receipts from the services rendered by the Appellant were in the nature of FTS. However, the AO was of the view that in the absence of the FTS clause in the DTAA, the income of the Appellant was covered under Article 22 (i.e., other income) of the DTAA and accordingly the same had to be taxed as FTS at 10% as per Section 9(1)(vii) of the Income-tax Act, 1961 ("Act"). The AO concluded the assessment proceedings by holding that total receipts of the Appellant amounting to INR 16,60,43,718 were covered under clause 3 of Article 22 of the DTAA, and such receipts attracted tax at 10% as per Section 5(2) read with Section 9(1)(vii) of the Act. Aggrieved by AO's Order, the Appellant preferred an appeal before the Income Tax Appellate Tribunal, Delhi ("ITAT"). The ITAT observed that the services provided by the Assessee were rendered in the regular course of its business and therefore clearly dealt with by Article 7 of the DTAA, however in the absence of PE the same could not be brought to tax. The ITAT rejected Revenue's contention that since the receipts qualified as FTS under Section 9(1)(vii) of the Act, the domestic law provisions were applicable, and the case was covered under Article 22 of the DTAA (relating to 'Other Income') in the absence of the FTS clause in the DTAA. The ITAT accepted the submission of the Appellant that the services provided by the Appellant were in the nature of business activity covered under Article 7 of DTAA but in the absence of a PE of the Assessee in India, the same could not be brought to tax in India.

Akshay Devendra Birari v. DCIT [ITA/782/PUN/2024]

To opt for New Tax Regime, requirement to file Form 10IE is directory in nature and not mandatory: Pune ITAT.

In this case, the Appellant, an individual, derived income under the head "Salaries" and income from Futures and Options in shares. The Appellant opted for the "New Tax Regime" under Section 115BAC of the Income-tax Act, 1961 ("Act") and filed its "Return of Income" (RoI) for the Assessment Year (AY) 2023–24 and declared an income of Rs. 40,54,450.

The said RoI was processed under Section 143(1)(a) of the Act, denying the benefit of the New Tax Regime. The Appellant, aggrieved by the "Intimation Order," filed an appeal before the Commissioner of Income Tax (Appeals) ["CIT(A)"], who confirmed the Intimation Order on the ground that the Appellant delayed in filing Form No. 10IE, further to which the Appellant preferred an appeal before the Income Tax Appellate Tribunal, Pune ("ITAT"). The ITAT observed that to opt for the New Tax Regime, the requirement of filing Form No. 10IE was not mandatory but directory in nature.

ITAT also observed that although the Appellant had failed to submit the prescribed Form No. 10IE before the due date for filing the return of income, the same was filed on the date when Appellant's return was processed under Section 143(1)(a) of the Act and that the said form was very much available with the Income Tax Department Centralized Processing Centre ("CPC"), and the CPC ought to have considered the same, allowing the benefit of the New Tax Regime. Accordingly, ITAT decided the appeal in favour of the Appellant and directed the Revenue to amend the intimation by taking into consideration Form No. 10IE, already available with the CPC.

B. Notifications/Circulars

Notification Nos. 45 and 46 of 2024 dated May 27, 2024

The Central Board of Direct Taxes ("CBDT") has excluded RBI from the definition of "specified person" for the purposes of Section 206AB and Section 206CCA of the Income-tax Act ("Act"). For the purpose of the said Sections, a "specified person" is a person who has not furnished the return of income for the assessment year relevant to the previous year immediately preceding the financial year in which tax is required to be deducted, for which the time limit for furnishing the return of income under Section 139(1) of the Act has expired and the aggregate of tax deducted at source and tax collected at source in his case is INR 50,000 or more in the said previous year.

Click here and here to read the notifications.

Notification No. 44 of 2024 dated May 24, 2024

The Central Board of Direct Taxes ("CBDT") vide its Notification No. 44 of 2024 dated May 24, 2024, has notified 363 as Cost Inflation Index for Financial Year 2024-25.

Click here to read the notification.

INDIRECT TAX

Goods & Services Tax

A. Recent Case Laws

M/s Enkay Polymers v. State of UP & Ors. (Writ Tax No.1155 of 2023)

Allahabad HC reiterates that appeal should not be dismissed on mere non-filing of certified copy of order appealed against.

In this case, the Additional Commissioner (Appeals) rejected the appeal filed by the Assessee on the ground that it was time-barred on account of non-submission of the self-certified copy of the Order within time as per proviso to Rule 108 of the Central Goods and Services Tax Rules, 2017 ("CGST Rules, 2017").

Aggrieved by the Order of the Additional Commissioner (Appeals), the Assessee filed a writ petition before the Hon'ble High Court of Allahabad ("HC") and submitted that when the appeal was electronically filed and uploaded on the GST common portal in FORM GST APL-01, there was no requirement to file a self-certified copy of the decision appealed against. The Appellant cited case laws to assert that non-submission of certified copy ought to be treated as a mere technical defect, and the appeal should not be dismissed on the sole ground of non-submission of certified copy within time. On noting the submission of the Assessee, the HC decided the petition in favour of the Assessee and held, "When an appeal has been filed electronically within the time frame prescribed, that is, three months, the authority should not dismiss the appeal on the ground that the certified copy of the decision was not filed within time."

M/s Karnataka Co-operative Milk Producers Federation Ltd. (KAR ADRG 13/2024)

Document having details of an e-way bill is a consignment note: Karnataka AAR.

In this case, the Applicant was engaged in the manufacture of cattle feed and invited tenders from the individual truck owners, i.e., transporters, for the transport of different raw materials and finished goods from the factory to the customer's place. Once the tendering process concluded, work orders were issued to the transporters who provided the lowest quote for the tender work.

In view of the discussed tendering process, the Applicant sought an advance ruling from the Karnataka Authority for Advance Ruling ("AAR") in respect of the question, "Whether services

provided by individual truck owners for transport of raw materials and finished goods including loading and unloading are liable for GST?”

The basis of the Applicant's application was that individual truck owners, selected through the tender process, did not issue consignment notes; hence, they did not qualify as Goods Transport Agency “GTA”.

AAR relied on the definition of GTA in Sr. No. (ze) of Notification No. 12/2017-CT(Rate), which prescribes that a GTA is "anyone who provides service in relation to the transport of goods by road and issues a consignment note, by whatever name called," and that any document from a transporter that has these details "qualifies to be a consignment note." Relying on the referred definition, the AAR confirmed that, the transporter or contractor issuing such a consignment note was a GTA and accordingly bound to discharge GST as per the provisions of the Central Goods and Services Tax Act, 2017 ("CGST Act, 2017").

M/s Bhagat Dhanadal Corporation (GUJ/GAAR/R/2024/13)

Gujarat AAR rules that seed mix is classifiable under HSN 120740090 and taxable @ 5%.

In this case, the Applicant was in the business of trading various types of seed mixes, two of which are 'Mix Mukhwas' and 'Roasted Til & Ajwain’, which the Applicant claimed to have been made up of mixed roasted and salted seeds. In this regard, the Applicant raised questions before the Gujarat Authority for Advance Ruling ("AAR") about "whether the products 'Mix Mukhw-as' and 'Roasted Til & Ajwain' prepared and sold are covered by HSN code 12074090? and whether the products 'Mix Mukhwas' and 'Roasted Til & Ajwain' prepared and sold are covered by entry no. 70 of Schedule I of Notification No.1/2017-Central Tax (Rate) and taxed at the rate of 2.5% CGST, 2.5% SGST, or 5% IGST".

The Applicant, in its application for Advance Ruling, submitted that there was a dominant quantity of sesamum seeds of 60% in the Mix i.e., Mix Mukhwas, and 97% in the roasted Til and Ajwain and, in Mix Mukhwas, in addition to sesamum seeds, the dhanadal content was 27%, which, when combined, was a total of 87%.

The Applicant also submitted that there was no element of pan masala, sugar or chocolate, preservatives, or any other artificial flavouring substances used in the Mix and that the said products were purchased by customers who desired to consume sesamum seeds normally as a seed mix. In respect of the classification of the product, the Applicant submitted that, at the time of filing the application for Advance Ruling, the Applicant, was classifying the products under HSN 12074090 of Chapter 12 of the First Schedule to the Customs Tariff Act, 1975.

The AAR placed reliance on Rule 2(b) of the General Rule for Interpretation [GRI] of Customs Tariff as it applies to GST Tariff, which, for the purpose of classification of goods, provides that, "owing to the mixture, when the goods are classifiable under two or more headings, the product shall be classified as if they consisted of material or component which gives them their essential character.”

The AAR observed that the composition of both Mukhwas, and roasted Til and Ajwain products, in respect of which the advance ruling was sought, clearly established that the said products comprised sesamum seeds, i.e., 60% in respect of Mukhwas and 97% in respect of the roasted Til and Ajwain products.

Based on the Applicant's product assessment, the AAR clarified and confirmed that the product 'Mix Mukhwas', having the given ingredients, was classifiable under tariff item 12074090 of the Customs Tariff Act, 1975. According to entry no. 70 of the Schedule to the Notification No. 1/2017-Central Tax (Rate), they will be subject to a tax rate of 2.5% for Central Goods and Services Tax ("CGST"), 2.5% for State Goods and Services Tax ("SGST"), or 5% for Integrated Goods and Services Tax ("IGST").

B. Notifications/Circulars

Form GST SRM-II Now Available on GST Portal

The GST Network (GSTN) has rolled out Form GST SRM-II for manufacturers of pan masala and tobacco products to report to the tax authorities details of inputs and outputs consumed in the manufacturing of pan masala and tobacco products. The aforementioned Form GST SRM-II follows Form GST SRM-I, which was released for registering machines of manufacturers of pan masala and tobacco products. With the Form GST SRM-II, taxpayers engaged in the manufacture of pan masala and tobacco products can report the details of outputs and inputs consumed and procured in a relevant month.

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