Tax INFORM

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DIRECT TAX

A. Recent Case Laws

Ashwinbhai Babubhai Dudhat v. Interim Board for Settlement (IBS) -1 & Anr. [[2024] 164 taxmann.com 77 (Gujarat)]

Gujarat HC holds that Section 54 does not mandate disclosure of cash consideration amount received when claiming exemption.

During search proceedings carried out in 2018, certain incriminating materials were seized, prompting assessment proceedings under Section 153A of the Income Tax Act, 1961. Subsequently, the petitioner applied to the Settlement Commission, disclosing previously undisclosed income related to land transactions and unaccounted investments in property construction. Specifically, for the Assessment Year 2016-17, the petitioner sought exemption under Section 54 of the Act, claiming that cash proceeds from property sales had been reinvested into another property.

The crux of the issue arose when the Interim Board for Settlement rejected the petitioner's claim for exemption under Section 54, specifically denying the portion of the claim that pertained to the cash component of the sale consideration. The Board's rationale was that such claims should have been made in the income tax return and could only be allowed for amounts that had been disclosed. Aggrieved by this decision, the petitioner approached the Gujarat High Court under Article 227 of the Constitution, seeking to overturn the Board's order that denied exemption amounting to Rs. 2,40,14,000.

During the proceedings, the petitioner argued that Section 54 of the Act does not explicitly mandate the disclosure of cash consideration received when claiming exemption. It was contended that the grounds on which the Board rejected the claim were not in accordance with the provisions outlined in Section 54. After careful consideration, the Court ruled in favour of the petitioner, thereby quashing the order of the Interim Board for Settlement. The Court held that Section 54 does not impose a requirement to disclose cash consideration for claiming exemption and that the Board's rejection on this basis was erroneous.

Principal Commissioner of Income Tax v. ITC Limited [[2024] 164 taxmann.com 88 (Calcutta)]

Compensation received by ITC on relinquishment of right to operate hotel as licensee constitutes revenue receipt: Calcutta HC.

In a recent case, the issue revolved around whether compensation received by the assessee, ITC Limited, following the termination of an Operating License Agreement with ELEL Hotels & Investment Ltd. (the licensor), constituted a revenue or capital receipt. The agreement allowed ITC to operate a hotel owned by ELEL, with all operational responsibilities managed by ELEL's

own employees. When ELEL terminated this agreement, ITC received compensation totalling Rs. 32.42 crores, settled through an arbitrator's award based on consent terms.

The crux of the argument is centred on the nature of the compensation. The Operating License Agreement, as detailed in the recitals, did not confer any ownership rights or enduring assets to ITC; rather, it provided ITC with the right to conduct hotel operations under specific contractual terms. This operational framework meant that ITC's involvement was purely in the capacity of managing the hotel's operations without ownership stakes.

Furthermore, the compensation received was explicitly acknowledged as a settlement for the loss incurred from the termination of the operational arrangement. It was not intended to compensate for the loss of any capital asset or enduring value associated with the hotel. This distinction is crucial because revenue receipts, such as those arising from operational losses or contractual terminations, are typically taxable as part of the recipient's income.

Additionally, the amount received by ITC, Rs. 32.42 crores, represented a relatively small fraction compared to ITC's overall disclosed income of Rs. 3040.48 crores for the relevant assessment year. This disparity further underscored that the compensation was tied directly to the operational aspect of the terminated agreement rather than any capital asset depreciation or loss.

The termination of the Operating License Agreement was within the rights of ELEL, as outlined in Article XVII of the agreement, which granted ELEL the authority to terminate the agreement at its discretion. Therefore, the compensation received by ITC was rightly classified as a revenue receipt. This classification implies that the amount forms part of ITC's total income for tax purposes, aligning with the principle that revenue receipts are subject to taxation, whereas capital receipts, which relate to the sale or loss of capital assets, are typically not taxed in the same manner.

In conclusion, the legal assessment upheld that the compensation received by ITC from ELEL was indeed a revenue receipt under the Income Tax Act. This determination was grounded in the understanding that it pertained to the settlement of operational losses from the terminated agreement and did not involve compensation for the loss of any capital asset or enduring value associated with the hotel.

Principal Commissioner of Income Tax v. Haldia Petrochemicals Ltd. [[2024] 164 taxmann.com 409 (SC)]

SC dismisses SLPs challenging order pulling up reopening of assessment and disallowance of amount claimed under VAT provisions as bad in law in absence of allegation by AO that assessee failed to disclose material facts.

The assessee in the instant case submitted its return of income for the assessment year 2008–09. The Assessing Officer (AO) reopened the assessment, stating that the VAT provision was not a permitted expense and ought to have been added back to the income for the pertinent assessment year.

Following an appeal, the Tribunal determined that there was no allegation in the recorded grounds for reopening the assessment that the assessee had failed to completely and truthfully disclose all significant information required for the assessment. As a result, the Tribunal removed the AO's addition. It was made abundantly evident that the information already contained in the books of account had merely been reassessed by the AO, showing that the assessee had not omitted any relevant information that was required for the assessment.

By the contested order, the Calcutta High Court affirmed the Tribunal's ruling. Given that there was no new information or the assessee's refusal to disclose relevant facts, the High Court noted that the Tribunal was right in reevaluating the circumstances and coming to the conclusion that reopening the assessment was unlawful.

The Special Leave Petition (SLP) that was filed challenging the ruling of the High Court was ultimately dismissed. The Supreme Court ruled in favour of the assessee and confirmed that the reopening of the assessment was invalid by upholding the validity of the decisions of the Tribunal and the High Court.

INDIRECT TAX

Goods & Services Tax

A. Recent Case Laws

ATR Malleable Casting (P.) Ltd. v. Inspector of Central Taxes [[2024] 164 taxmann.com 78 (Calcutta)]

Calcutta HC rules that payment of tax during course of search cannot be considered voluntary, and orders GST authorities to refund the amount.

In a recent case, the Court addressed allegations surrounding a payment of Rs. 30 lakhs made under coercive circumstances during a tax search operation. The appellants argued that they were compelled to pay this amount under threat of arrest and coercion. Initially, their writ petition was dismissed on the grounds that there was proper authorization for the search under INS-01, a document provided by the revenue authorities. However, the Court noted that the authorization's validity couldn't be fully determined within the scope of the writ petition itself. Central to the Court's decision was the issue of whether the payment could be considered voluntary. Referring to CBIC instructions, the Court highlighted that tax recoveries during such operations should ideally be based on a clear ascertainment of tax liabilities. In this instance, no such ascertainment had been made. Moreover, the Court observed that no formal acknowledgement in the form of GST DRC-04 was issued for the payment, as required by Rule 142(2) of the CGST Rules, 2017.

Consequently, the Court ruled that the payment of Rs. 30 lakhs could not be deemed voluntary due to the circumstances surrounding its collection. It directed the authorities to refund this amount to the petitioners within six weeks. Additionally, the Court instructed the authorities to issue a show-cause notice within twelve weeks, allowing the petitioners an opportunity to contest the notice, including challenging the validity of the search itself.

Fabricship (P.) Ltd. v. Union of India [[2024] 164 taxmann.com 80 (Bombay)]

Transportation of goods, after customs clearance, from the port to petitioner's own factory cannot be termed as supply under Section 7: Bombay HC.

In this case, the Court addressed multiple petitions challenging penalties imposed under the Maharashtra Goods and Services Tax Act, 2017 (MGST Act) for the non-accompaniment of e-way bills during the transportation of exempted machinery. The petitioner had imported machinery under the EPCG scheme, exempt from Customs and IGST duties, and was transporting it from JNPT to their Surat factory when intercepted in Maharashtra without the required e-way bill.

The Court examined whether penalties under Section 129(1)(a) and (b) of the MGST Act were applicable. Section 129(1)(a) mandates a penalty equivalent to 100% of the tax payable on detained goods, but since the transportation did not constitute a taxable supply under Section 7 of the MGST Act, the court ruled this provision inapplicable. Instead, it applied Section 129(1)(a)'s second limb, imposing a penalty of Rs. 25,000 (the lesser of two percent of the goods' value or Rs. 25,000) for transportation of exempted goods.

The Court also noted the lapse of bank guarantees provided by the petitioner for the release of goods during legal proceedings. Consequently, the Court directed the petitioner to pay a significant cost of Rs. 15 lakhs to the PM Cares Fund, citing negligence in renewing the guarantees and emphasizing the potential revenue loss to the state if the penalties were upheld.

Ultimately, the court modified the penalty to Rs. 25,000 and directed the petitioner to pay Rs. 75,000 (for the three consignments) in total penalties to the State GST authority within four weeks.

GRK Plastic v. Assistant Commissioner [TS-421-HC(MAD)-2024-GST]

Madras HC takes note of rectification of inadvertent error in GSTR-3B, sets aside assessment order thereby lifting bank account attachment.

In the present case, the petitioner filed the Goods and Services Tax Return 3B (GSTR-3B) for October in the assessment period 2017-18. The petitioner mistakenly reported the net Input Tax Credit (ITC) for Central Tax as Rs.6,55,561 instead of Rs.65,561. Upon realizing the mistake, the petitioner contacted the GST authorities. The petitioner was advised to rectify the error by adding the excess ITC amount shown in the October return to the Central Tax toward outward supplies in the GSTR-3B return for the following month. The petitioner followed this advice. Despite submitting replies to the intimation and show-cause notice explaining the inadvertent error, the authorities confirmed the tax demand. Subsequently, an amount of Rs.4,47,300 was recovered from the petitioner's bank account towards the disputed tax demand. The petitioner presented the GSTR-3B returns for October and November 2017-18 to substantiate the claim of the inadvertent error and its rectification. The petitioner's counsel highlighted the recovery of Rs.4,47,300 from the bank account, which was appropriated towards the tax demand.

On examining the petitioner's GSTR-3B returns for October and November 2017-18, the Court found that the error appeared to have been committed was subsequently rectified, irrespective of the irregularity.

The Court indicated that the facts and circumstances of the case warranted a reconsideration of the confirmed tax proposal, considering the inadvertent error and partial recovery of the tax amount. With this, the impugned order was set aside and the case was remanded for reconsideration. The respondent was directed to provide the petitioner with a reasonable opportunity to present their case, including a personal hearing. The respondent was also

directed to issue a fresh order within three months from the date of receipt of this Court order. Due to the setting aside of the assessment order, the attachment of the petitioner's bank account was lifted. The sum of ₹4,47,300/-, which was appropriated from the petitioner's bank account, was held to be subject to the outcome of the remanded proceedings.

B. Notifications/Circulars

Circular No.229/23/2024-GST dated 16/07/2024

The Central Board of Indirect Tax and Customs (CBIC), based on the 53rd GST Council meeting recommendation, has clarified that 12% GST rate will be applicable on solar cookers, fire water sprinklers, and parts of poultry-keeping machinery. The circular further excludes the supply of agricultural farm produce in packages of commodities more than 25 kgs or 25 litres from the scope of 'pre-packaged and labelled', thus it will not attract 5% GST.

Click here to read the circular.

Circular No.213/07/2024-GST dated 26/06/2024

The Central Board of Indirect Taxes and Customs (CBIC) has clarified the Goods and Services (GST) treatment of Employee Stock Purchase Plans (ESPP), Employee Stock Option Plans (ESOP), and Restricted Stock Units (RSU) transferred by an overseas holding company to employees of an Indian subsidiary on the reimbursement on a Cost-to-Cost Basis for the shares/securities. As this is not considered an import of services, CBIC stated that it is not liable to GST. If the foreign holding company charges any additional fee, markup, or commission, it is treated as a supply of services. But these plans are considered part of the employee's compensation package aimed at ensuring better performance. Since securities, including shares, are not classified as goods or services under the GST Act, GST is not applicable on the transaction of sale, purchase, or transfer of these securities/shares. The transfer of securities/shares from the employer to the employee as part of the compensation package is not subject to GST as per Entry 1 of Schedule III of the CGST Act, which excludes such compensation from the definition of taxable supply.

Therefore, the transfer of shares/securities as part of ESPP, ESOP, or RSU plans from a foreign holding company to employees of an Indian subsidiary generally does not attract GST unless additional fees or charges are involved.

Click here to read the circular.

Circular No. 219/13/2024-GST dated 26/06/2024

The Central Board of Indirect Taxes and Customs (CBIC) has provided clarification regarding the input tax credit (ITC) for ducts and manholes (D&M) used in optical fiber cable (OFC) networks for telecommunication services. D&M used in OFC networks are eligible for input tax credit. The D&M can avail of ITC and is not restricted under clauses (c) or (d) of sub-section (5) of section 17 (Blocked Credits) of the CGST Act.

D&M is used as part of the OFC network for transmitting telecommunication signals and for the upkeep and maintenance of the network. Under section 17 of the Central Goods and Services (CGST) Act, D&M used in OFC networks are not specifically excluded from the definition of plant and machinery. So, they do not fall under the categories of land, building, or civil structures, nor are they telecommunication towers or pipelines laid outside factory premises.

Therefore, CBIC clarifies that ducts and manholes essential for optical fiber cable networks in telecommunication services are considered plant and machinery, making them eligible for input tax credit under the CGST Act.

Click here to read the circular.

Circular No.211/5/2024-GST dated 26/06/2024

The Central Board of Indirect Tax and Customs (CBIC) has provided clarity on the time limit under section 16(4) of CGST Act,2017, to avail Input Tax Credit (ITC) for Reverse Charge Mechanism (RCM) supplies received from unregistered persons. For supplies where tax has to be paid under RCM and if the invoice is issued by the recipient as per section 31(3)(f) of the Central Goods and Services (CGST) Act, the relevant financial year for calculating the time limit for ITC will be the financial year in which the recipient issues the invoice. On the condition that the recipient must have paid tax on the supply and met other conditions and restrictions under sections 16 and 17 of the (CGST) Act to avail of the ITC. But if there is any delay in issuing the invoice, the recipient may be liable for interest and penal action.

Therefore, the time limit for availing ITC on RCM supplies from unregistered persons is based on the financial year when the recipient issues the invoice, provided that the tax has been paid and all other conditions are met. Delayed issuance of invoices can result in interest and penalties.

Click here to read the circular.

Circular No.223/17/2024-GST dated 10/07/2024

The Central Board of Indirect Taxes and Customs (CBIC) has amended Circular No. 1/1/2017 regarding the responsibilities of officers under GST. There is a change in the assignment of duties. Previously, the responsibilities for Registration, Amendment & Cancellation of Registration, Revocation of Cancellation of Registration, and Composition Levy were assigned to Assistant or Deputy Commissioners of Central Tax or Assistant or Deputy Directors of Central Tax. The Assistant or Deputy Commissioners and Assistant or Deputy Directors of Central Tax will now be assigned to functions under Section 10(5) of the Goods and Service Tax (CGST) Act, 2017. The Superintendent of Central Tax will be responsible for functions under Section 25(8), 27(1) proviso, 28, 29, 30, and Rules 6, 9, 10, 12, 16, 17, 19, 22, and 23 of CGST Act, 2017, and Rules made thereunder. This amendment ensures that the responsibilities are properly aligned with the new operational framework of the GST back-office system.

Click here to read the circular.

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