Tax INFORM

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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:

- SC upholds the decision allowing depreciation claims on revalued assets.
- Delhi HC overturns assessment notice issued after ITAT's judgment to remand the case to AO, citing it is time-barred u/s 153(3).
- Revenue Audit Objections can be considered as grounds for reassessment proceeding: Allahabad HC.
- Telangana HC confirms that faceless assessment procedure is mandatory and applicable even for NRIs.
- Value of shares granted under Employees Stock Purchase Scheme cannot be added as perquisite: Delhi HC.

Circulars and Notifications:

- Circular No.8/2024 dated August 5, 2024.

INDIRECT TAX

Goods and Services Tax:

Case Laws:

- Madras HC clarifies that issuance of ASMT-10 notice is not a mandatory pre-requisite for adjudication.
- Procedural lapse cannot be a reason to deny export incentives: Madras HC.
- Telangana HC, while clarifying the concept of 'place of supply' in relation to an immovable property, confirms that a re-registered entity under foreign law does not qualify as a separate entity.

Circulars and Notifications:

- Notification No.16/2024 dated August 6, 2024.

DIRECT TAX

A. Recent Case Laws

PCIT v. Dharmanandan Diamonds Pvt. Ltd. [SLP(C) No.14719/2024]

SC upholds the decision allowing depreciation claims on revalued assets.

In this matter, the Assessee (Respondent herein), engaged in the business of manufacturing diamonds and power energy, was formed by converting a partnership business into a company during the Financial Year (FY) 2007-08. The former partnership business claimed depreciation on the written-down value (WDV) until August 31, 2007, whereas the Assessee claimed depreciation on the WDV of assets at the revalued price determined by the government-approved valuer. The Assessing Officer (AO) took the view that the Assessee claimed excessive depreciation and disallowed the depreciation as claimed on the revalued cost.

The Assessee contested the AO's Order before the Commissioner of Income Tax (Appeals), who rejected the plea. After the appeal was allowed by the Income Tax Appellate Tribunal (ITAT), the matter was brought before the High Court of Bombay. The Court ruled in favour of the Assessee noting that the appeal pertained to the FY 2008-09, during which the Assessee owned the asset, and thus, in light of Section 32 of the Income-tax Act, 1961 (Act), in conjunction with Rule 5 of the Income-tax Rules, 1962 (Rules), the Assessee had the right to claim depreciation on the actual cost, which was the amount paid to the predecessor. The Revenue filed a special leave petition against the Court's Order, which the Supreme Court of India dismissed based on the findings of the Court in light of Section 32 of the Act and Rule 5 of the Rules.

Ramesh Chawla (HUF) v. Income Tax Officer [WP(C) 11284/2023]

Delhi HC overturns assessment notice issued after ITAT's judgment to remand the case to AO, citing it is time-barred u/s 153(3).

In this case, the petitioner filed a tax return declaring an income of INR 45,000 in Assessment Year (AY) 2004-05. The income tax department received information that the petitioner had received a gift of one crore, raising suspicions of non-disclosure of income. This amount was added by the Assessing Officer (AO) to the taxable income, stating that the gifts were not genuine. The Commissioner of Income Tax (Appeals) [CIT(A)] dismissed the petitioner's appeal. The petitioner filed an appeal before the Income Tax Appellate Tribunal [ITAT] against the Order of the CIT(A), which remitted the case back to AO. The ITAT once again assessed the petitioner with the same demand. Ultimately, the ITAT directed the AO to reexamine the case and determine who should be assessed for the gift, the donor or the petitioner. The AO did not assess the case within the prescribed time limit (12 months), even though the ITAT stipulated 6 months. Instead, the AO issued notices to the petitioner in 2023, incorporating the gift amount into the total income. The petitioner filed a writ petition before the High Court of Delhi against the AO's reassessment. The Court ruled that the reassessment, not completed

within the stipulated period as mandated by ITAT, was illegal and barred by the statute of limitations. The Court further held that the notices issued in 2023 were invalid and unenforceable. The Court declared that it would accept the income returned by the petitioner, INR 45,000, as total income, excluding one crore, and ordered the refund of INR 37,73,012 within eight weeks.

Gyan Prakash Rastogi v. Union of India and Ors. [Writ Tax No. 195 of 2024]

Revenue Audit Objections can be considered as grounds for reassessment proceeding: Allahabad HC.

In this case, a search and seizure operation was initiated at the joint shop of the petitioner under Section 132 of the Income-tax Act, 1961 (Act), wherein loose documents and sheets were impounded, and valuables such as silver and gold were considered stock in trade and not seized. The assessment proceeding was initiated on December 23, 2020, and notice u/s 142 of the Act was issued with a questionnaire. On January 31, 2021, a tax return was filed declaring the total income to be INR 16,65,590. The assessment proceedings were concluded, with a few additions made.

An appeal was then preferred before the Commissioner of Income Tax (Appeal). Meanwhile, a notice under Section 148A(b) of the Act was issued basis an audit objection. Subsequently, upon response from the petitioner, an order was passed u/s. 148A of the Act for the initiation of reassessment proceedings and the requisite notice was issued. Aggrieved by the said order under Section 148A and notice under Section 148 of the Act, the petitioner approached the Allahabad High Court.

The Court ruled that Revenue Audit Objections are a valid ground for reopening a concluded assessment under Section 148 of the Act. The Court also observed that the natural justice principle of Audi Alterum Partem was not followed as no personal hearing was granted before the issuance of the impugned order. The Court set aside the impugned order and directed that a personal hearing be granted.



Sri Venkataramana Reddy Patloola v. DCIT and Ors. [WP Nos. 13353, 16141, and 16877 of 2024]

Telangana HC confirms that faceless assessment procedure is mandatory and applicable even for NRIs.

In this case, the petitioner challenged the show cause notice issued under Section 148 of the Income-tax Act, 1961 (Act), stating that it did not comply with the faceless scheme, and thus the entire subsequent proceeding and assessment orders stood vitiated. In this regard, the petitioner submitted the procedure outlined in the gazette notification dated March 29th, 2022, which mandates faceless issuance of notices under Section 148 of the Act. The primary issue revolved around whether notices issued under Section 148 of the Act for international tax charges were exempt from following the statutory faceless procedure.

The Telangana High Court held there is no exemption from the faceless procedure for the notices issued under Section 148 of the Act, irrespective of whether the taxpayer is an NRI or an Indian citizen. The Court further observed that the absence of any exemption in the procedure renders the entire assessment process invalid. The Court referred to Section 151A of the Act, which gives the central government the right to establish a faceless assessment scheme. The Court further pointed out that Section 144B(2) of the Act requires faceless assessments in specified cases covering the scope of the Section 148 requirement.

The Court concluded that the notices issued under Section 148 did not comply with the mandatory faceless procedure, and therefore, all subsequent assessment orders were declared invalid. All the impugned notices under Section 148 of the Act and the assessment-related orders were set aside, with the Court emphasising the mandate for adhering to the faceless assessment framework irrespective of citizenship status.

Ravi Kumar Sinha v. Commissioner of Income Tax [ITA 281/2008]

Value of shares granted under Employees Stock Purchase Scheme cannot be added as perquisite: Delhi HC.

In this case, the employer of the Assessee allotted shares under the Employees Stock Purchase Scheme (ESPS) at a concessional rate of Rs 15 per share. A lock-in period restricted these shares' trading. The market price of shares was Rs 49.45 per share at the time of allotment, while a valuation report from Ernst & Young pegged the fair market value (FMV) at Rs 22.50 per share. The Assessing officer (AO) added the difference of 34.45 per share as taxable perquisite income. The Commissioner of Income Tax reduced this prerequisite value to Rs 7.50 per share based on the Ernst & Young valuation, considering the lock-in period. The primary issue revolved around whether the value of shares granted under the ESPS should be considered a perquisite and taxed accordingly, despite the lock-in period, and also around determining the correct value; whether it should be based on the market price at the time of allotment or a discounted value reflecting the lock-in restrictions.

The Delhi High Court upheld the decision to use the face value, taking into account the lock-in period. The Court found that while the shares had some value, the restrictions on their transferability justified a lower perquisite value than the market price.

B. Notifications/Circulars

Circular No.8/2024 dated August 5, 2024

The Central Board of Direct Taxes (CBDT) has clarified that in cases where a higher rate of TDS or TCS was triggered due to the non-linkage of PAN and Aadhaar before May 31, 2024, and the deductee or collectee died before this linkage could occur, there will be no liability on the deductor or collector for higher tax deduction or collection under Sections 206AA or 206CC. Instead, Chapter XVII-B or XVII-BB's standard tax deduction or collection provisions will apply.

Click here to read the circular.



INDIRECT TAX

Goods & Services Tax

A. Recent Case Laws

Mandarina Apartment Owners Welfare Association (MAOWA) v. Commercial Tax Officer/State Tax Officer [WP Nos.15307 & 15330 of 2024]

Madras HC clarifies that issuance of ASMT-10 notice is not a mandatory pre-requisite for adjudication.

In this case, the Madras High Court clarified that issuing a GST scrutiny notice in Form ASMT-10 under Section 61 is not a mandatory prerequisite for adjudication, even if returns were scrutinised. The Court was addressing a batch of Writ Petitions, i.e., WP No.15307 of 2024, where the petitioner received a show cause notice for a mismatch between GSTR-1 and GSTR-3B returns and claimed to be unaware of the proceedings due to a lack of proper notice, and another WP No.15330 of 2024, where the petitioner received a show cause notice for disclosing a lower sales turnover compared to the purchase turnover.

In addition, the Court made it clear that, in the event that differences are discovered during scrutiny and the ASMT-10 notice is not issued, the scrutiny procedure is rendered illegitimate; adjudication proceedings, on the other hand, remain unaffected. In terms of assessment under the GST law, the Court has further confirmed that no assessment is carried out under Section 61 of the Central Goods and Services Tax Act, 2017; rather, under Section 73 or Section 74 of the Central Goods and Services Tax Law, the tax is determined, and adjudication can be initiated based on a variety of sources, not just scrutiny. Accordingly, the proper officer is not required to scrutinise returns, and the obligation to issue Form ASMT-10 arises only if returns are selected for scrutiny and discrepancies are discovered. In this instance, the Court set aside the assessment orders and affirmed that the Assessee be given a chance to challenge tax demands on the merits, particularly if the adjudication decisions were made without taking the Assessee's reply into account.

M/s. Shobikaa Impex Private Limited v. Union of India and Ors. [WP(MD) No.13263 of 2022]

Procedural lapse cannot be a reason to deny export incentives: Madras HC.

In this case, under Rule 96 of the Central Goods and Services Tax Rules, 2017 (CGST Rules), the Assessee, a 100% Export Oriented Unit (EOU), incorrectly claimed a refund of the Integrated Goods and Services Tax (IGST) that it had paid on capital goods and inputs used in the export of goods, instead of claiming under Rule 89 of the CGST Rules. On this issue, a Show Cause Notice (SCN) was issued, and Order-in-Original confirmed the IGST demand proposed under the SCN on account of ineligible IGST refund. The High Court of Madras took a view that

legitimate export incentives ought to be granted as an exporter competes in the international market and relying on the decision of Apex Court in the case of Commissioner of Sales Tax, Uttar Pradesh v. Auriaya Chamber of Commerce, Allahabad, 1986 (3) SCC 50 : (1986) 25 ELT 867, wherein it has been held that the rules or procedures are hand-maids of justice, not its mistress, the Court confirmed that the procedural irregularity committed by the Assessee shouldn't come in the legitimate way of grant of export incentives as admittedly exports were made and the refund claims were itself based on the shipping bills.

Sri Avantika Contractors (I) Ltd v. Appellate Authority for Advance Ruling (GST) and Ors. [WP No.8405 of 2023]

Telangana HC, while clarifying the concept of 'place of supply' in relation to an immovable property, confirms that a re-registered entity under foreign law does not qualify as a separate entity.

In this case, the Government of India (GoI) entered into a Memorandum of Understanding (MoU) with the Government of the Maldives for constructing a police academy [Institute of Security and Law Enforcement Studies (ISLES)] funded by the GoI. In turn, the GoI appointed National Buildings Construction Corporation Ltd. (NBCCL) to execute the Police Academy's construction by itself or through a contractor. NBCCL awarded a contract to the petitioner, Sri Avantika Contractors (I) Limited.

In order to complete the work at the Republic of the Maldives (Maldives), the NBCCL set up an office, and in turn, the petitioner also set up their office in Addu City, Maldives. The Authorized Dealer Bank, Oriental Bank of Commerce (OBC), which acted on behalf of the Reserve Bank of India, approved the establishment of the petitioner's branch office in the Maldives. The petitioner took a stand that it exported various goods to its Maldives office and declared the turnover of such goods under the GST as 'zero rate supplies'.

The petitioner treated the consideration received for the "works contract service of construction," which was completely executed in the territory of the Maldives through their Maldives establishment as falling outside the scope of the GST laws of India.

The High Court of Telangana, while addressing a writ petition filed by the petitioner against the Order of Appellate Authority for Advance Ruling (AAAR), noted that both the petitioner and NBCCL established operations in the Maldives to fulfil the India-Maldives agreement. The High Court also observed that these establishments qualify as 'fixed establishments' under Section 2(7) of the Integrated Goods and Services Tax Act, 2017 (IGST Act) due to their sufficient degree of permanence, which they have used for several years to construct large buildings in the ISLES.

The High Court observed that treating the Assessee and the re-registered Maldivian entity as separate legal entities raised questions about the authority under which the Maldivian entity

executed the work, given that no contract was made with the re-registered entity, and on this fact, the High Court was constrained to agree that merely because the petitioner got a certificate of re-registration under the Maldivian law, the Maldivian entity became a separate legal entity.

The High Court rejected the AAAR's application of Sections 12(3)(a) and 2(14)(a) of the IGST Act to determine the place of supply merely because the recipient, NBCCL, was registered in New Delhi, payment to the petitioner was made in Indian currency, and that immovable property was located outside India. The High Court clarified that since the place of supply shall determine the 'location of recipient', which is Maldives, as per Section 2(14)(b) of the IGST Act, it will be the 'fixed establishment' of NBCCL, thus would be considered as the location of recipient.

The High Court negated AAAR order for incorrectly ruling that the location from which services were supplied is irrelevant in this case and emphasised that the place where the services were received was Maldives in this case, not Hyderabad or New Delhi, which is the determinative factor, and thus further stated that Clause (a) of Section 2 (14) of the IGST Act had no application in the instant case, but Clause (b) of Section 2 (14) will hold the field and be the basis.

Considering the facts of the case, the High Court set aside the AAAR order that upheld the AAR ruling, to the effect that GST applies to a subcontractor providing work-contract services in Maldives for the construction of ISLES under an agreement with NBCCL. The Court dismissed the AAAR finding that the Assessee's re-registered Maldivian company was a separate legal entity and that its Maldivian business place cannot be considered a fixed establishment. The High Court added that Section 13(4) of the IGST Act makes it clear that the 'place of supply' in relation to an immovable property for carrying out construction work shall be the place where the immovable property is located, and hence, as the services and both the recipient and supplier are outside India, the question of levy and collection of tax in the teeth of Section 9 of the CGST Act and Section 5 of the IGST Act does not arise; consequently, the High Court directed the Revenue to reimburse the GST, interest, and penalty (if any) to the Assessee within 90 days.

B. Notifications/Circulars

Notification No.16/2024 dated August 6, 2024

The Central Board of Indirect Tax and Customs (CBIC) has notified the changes proposed in this year's Interim Budget. The 50th GST Council meeting recommended making the input service distributor (ISD) mechanism mandatory. In this context, the Finance Act, 2024, has proposed amendments to Section 2(61) of the Central Goods and Services Tax Act, 2017 (CGST Act), which defines the ISD, and Section 20 of the CGST Act, which specifies the method of credit distribution by ISD. In this regard, vide Notification No. 16/2024-Central Tax dated 6 August 2024, it is notified that the amendments proposed by the Finance Act, 2024, would come into effect from April 1, 2025.

Further, vide Notification No. 04/2024-Central Tax dated January 05th, 2024 with effect from April 1, 2024 (subsequently amended to May 15, 2024), a special procedure for registration of machines by manufacturers of certain pan masala or tobacco products was introduced, and to bring impact to the same, an amendment to penal provision Section 122A of the CGST Act was introduced to provide penalty for non-registration of machines. In this regard, vide the said notification No. 16/2024-Central Tax, the Government has notified that the aforesaid amendment would be made effective from October 1, 2024.

Click here to read the notification.



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