Tax INFORM

A Fox Mandal & Associates publication - for private circulation only.

Issue XLVI | Nov 2024

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DIRECT TAX

A. Recent Case Laws

Commissioner of Income Tax (LTU) & ANR. vs. State Bank of India [SLA (C) No. 29581/2018]

Notice under Section 274 must specifically include the ground for initiation of penalty proceedings.

A notice issued under Section 274 of the Income Tax Act, 1961 (the "IT Act"), read with Section 271(1)(c) of the IT Act, must specify under which limb of Section 271(1)(c) are the penalty proceedings being initiated, i.e., whether for concealment of particulars of income or furnishing of inaccurate particulars of income.

In this case, the Revenue Authority objected to the reliance of the Karnataka High Court in the ruling of CIT vs. Manjunatha Cotton and Ginning Factory, where the Karnataka High Court held that a notice under Section 274 of the IT Act must specifically include the ground for initiation of penalty proceedings.

While dismissing the Special Leave Petition (SLP) against the judgement of the Karnataka High Court, the Supreme Court held that the decision in the Manjunatha Cotton and Ginning Factory case has been relied upon by the Karnataka High Court in Commissioner of Income Tax vs. M/s SSA's Emerald Meadows, and the same was sustained by the Supreme Court, holding that issuance of notice under Section 271 of the IT Act read with Section 271(1)(c) of the IT Act without specifying the specific penalty is bad in law.

Institute of The Franciscan Missionaries of Mary Vs Union of India [SLA (C) No(s). 10456/2019]

Claim against TDS in view of Canon Law is untenable.

The Madras High Court had held that the application of the provisions of Section 192 of the Income-tax Act, 1961 (the "IT Act") relating to TDS (Tax Deducted at Source) is uniform, irrespective of the 'religious character' of the recipient of the income.

In this case, it was argued that the Nuns, Sisters, Priests or Fathers, serving as teachers in schools receiving grant-in-aid from the State Government are bound by the Canon law and cannot be taxed in respect of the grant-in-aid or salary received from the State Government. The salaries that are directly transferred to the individual bank accounts of the teachers are considered by them to belong to the institution or church rather than to them personally, as they have taken the vows of poverty in their Canon law and renounced the world.

The Madras High Court held that the salary is paid under the contract of employment to which Educational Institution, or the Church or Diocese, is not even privy in relation to the State Government. The Madras High Court further observed that "neither the Income Tax Department nor the State Government have anything to do with the religious character of the institution, may be Teachers or Nuns or Missionaries and therefore, they cannot take a stand for not making the tax deduction at source in view of the Canon Law."

The Supreme Court of India refused to entertain the Special Leave Petitions filed under Article 136 of the Constitution and dismissed the same.

Reena Garg Vs National Faceless Assessment Centre [CM-15475-CWP-2024]

Assessee's right to a personal hearing cannot be denied if explicitly requested, regardless of SOP.

The Standard Operating Procedure (SOP) for Faceless Authorities that restricted access to personal hearing for the Assessee cannot override the right of the Assessee to be heard, even if the request made in the reply of the Assessee did not reflect in the portal of the department.

In this case, the Assessee had made a request for a personal hearing in her reply to the Revenue Authority, however, the Assessee was not granted the request of a personal hearing as part of the faceless assessment scheme. The Revenue Authority contended that the Assessee did not opt for a personal hearing through their portal, and the same was evident from the order sheets and record of the case.

However, the Hon'ble Punjab & Haryana High Court observed that the SOP specifically mentioned it to be strictly for the purpose of department alone and was not available for knowledge of the Assessee and therefore held that the Assessee had not been accorded a fair opportunity of hearing.

Commissioner of Income Tax (TDS) vs National Highway Authority of India [ITA 1145/2017]

Financial support intended as viability gap funding cannot be interpreted as payment for "work" under Section 194C.

A subsidy or financial support extended by NHAI to the concessionaire, which was intended as viability gap funding, could not be interpreted as payment for a "work" under Section 194C of the Income Tax Act, 1961 (the "IT Act"), and hence is not liable for withholding tax under Section 194C of the IT Act.

In this case, the Revenue Authority had argued that the assistance in the form of payment to the concessionaire (Assessee) should be subject to withholding tax under Section 194C of the IT Act, as the same fell within the meaning of "work" performed by contractors. The Income Tax Appellate Tribunal (ITAT) had ruled in favour of the Assessee and had held that the

payment was in the form of a subsidy as it was only envisaged to work as viability gap funding and could not be classified as payment for “work” under Section 194C of the IT Act.

The Delhi High Court, while dismissing the appeal, upheld the ruling of ITAT and observed that “the word “work” in the context of Section 194C is liable to be understood as relating to labour that is expended, the undertaking of a task or operation which produces a result. The infusion of equity capital as a measure of financial support, while surely a contractual obligation, cannot consequently be understood to mean the payment for a work undertaken.”



B. Notifications/Circulars

Circular No. 15/2024, dated Nov 4, 2024

Order under section 119(1) of the IT Act, 1961, fixing the monetary limits of the Income-tax authorities in respect of reduction or waiver of interest paid or payable under Section 220 (2) of the IT Act

The Central Board of Direct Taxes (CBDT) has issued a circular specifying the monetary limits for reduction or waiver of interest under Section 220(2) of the Income Tax Act, 1961 (‘the Act’) dealing with consequences of non-payment of income tax. A simple interest of 1% is levied for

the period of delay, and Section 220(2A) of the Act empowers the Principal Chief Commissioner (Pr.CCIT) or Chief Commissioner (CCIT) or Principal Commissioner (Pr.CIT) or Commissioner (CIT) for a reduction or waiver of the amount paid or payable.

The Central Board of Direct Taxes (CBDT) specified the following monetary limits according to the authorities:

S.No.	Income Tax Authority	Monetary limits for reduction or waiver of interest
1.	Pr. CIT/ CIT	Upto Rs. 50 lacs
2.	CCIT/ DGIT	Above Rs. 50 lacs to Rs. 1.5 crore
3.	Pr. CCIT	Above Rs. 1.5 crore

The powers of reduction or waiver of the interest will continue to be subject to satisfaction of conditions specified under Section 220(2A) of the Act.

Click here to read the circular.

Circular No. 16/2024, dated Nov 18, 2024

Condonation of delay under Section 119(2)(b) of the Income-tax Act, 1961 in filing of Form No. 9A110/10B/I0BB

The Central Board of Direct Taxes (CBDT) has issued a circular directing that Pr. CCITs/CCIT/Pr. CIT/CIT, while entertaining applications for condonation of delay in filing Form No. 9A/10/10B/10BB for Assessment Year 2018-19 and subsequent assessment years where there is a delay of more than 365 days, shall satisfy themselves that the applicant was prevented by reasonable cause from filing such Forms before the expiry of the time allowed and the case is of genuine hardship on merits.

However, no application shall be entertained beyond three years. In addition, condonation applications should be disposed of, preferably within six months. Further, for Form 10, they shall also ensure that the amount accumulated or set apart has been invested or deposited in anyone or more of the forms or modes specified in sub-section (5) of Section 11 of the Act.

Click here to read the circular.

INDIRECT TAX

Goods & Services Tax

A. Recent Case Laws:

SSM Exports Vs Commissioner of Central Excise and Service Tax and CGST & Ors [SLA (C) No(s). 13683/2022]

Central and state tax officers are authorized to initiate 'Intelligence-based enforcement' actions across the entire taxpayer base.

There is no prohibition on the transfer of investigations by multiple Goods & Services Tax (GST) authorities against different entities, which unveils a common thread.

The Assessee had filed a Special Leave Petition (SLP) before the Supreme Court of India against the ruling of the Delhi High Court, where it was held that the above-mentioned transfer of investigations by multiple GST Authorities to a single authority is not barred by Section 6(2)(b) of the Central Goods and Services Act, 2017 ("CGST Act") and the Circular dated 05th October, 2018 (D.O. F.No. CBEC/20/43/01/2017-GST (Pt.).

The circular explicitly clarified that both Central and State tax officers are authorized to initiate 'intelligence-based enforcement' actions across the entire taxpayer base, regardless of which authority administratively oversees the taxpayer. Further, the Delhi High Court rejected the argument that transferring investigations initiated by different authorities under 'Intelligence-based enforcement' to a single authority for consolidation under a single authority is prohibited.

Considering the foregoing, the Supreme Court of India refused to interfere in the said matter and dismissed the Assessee' s SLP.

Delphi World Money Ltd vs. The Union of India [WP (L) No. 28914 of 2024]

System-generated provisional acknowledgment of the appeal serves as evidence of the pre-deposit payment.

System-generated provisional acknowledgment of the appeal documents itself demonstrates that the pre-deposit has been made as required under Section 107(6) of the Central Goods and Services Act, 2017 ("CGST Act").

In this case, the Commissioner (Appeals) had dismissed the appeal of an assessee, a public limited company, on the ground that the assessee had not submitted any valid proof

regarding payment of the mandatory pre deposit or any valid documents, such as Board Resolution, to establish that he is the authorised signatory to sign the appeals. The assessee argued that they had paid a pre-deposit amount (10% of the disputed tax amount) when filing their appeal before the Respondent.

The court observed that Electronic Credit Ledger and the Electronic Cash Ledger downloaded from the GSTN portal reflected that the assessee had made the said payment. In addition, a screenshot/extract from the GSTN Portal, submitted by the petitioner company reflected that they had duly authorised a person to sign the appeal documents.

The Bombay High Court therefore held that if the Respondent had concerns regarding the amounts claimed to have been paid or submission of valid documents, appointing the person as an authorised signatory, the Petitioner should have been informed about the same and should have been granted an opportunity to clarify the same.



Lakhwinder Singh Stone Crusher Vs Union of India & Ors. [CWP No. 8637/2023]

Royalty is not a tax, and GST can be levied on royalty paid by mineral-concessioner to State.

Royalty is not a tax as held by a Nine-Judge Bench of the Hon'ble Supreme Court in Mineral Area Development Authority & Anr. vs. M/s Steel Authority of India & Anr., (2024 INSC 554) (Miner Area Case) which overruled the judgement rendered in India Cement Ltd. and Ors. vs. State of Tamil Nadu and Ors. (19901) 1 SCC 12 (India Cement Ltd. Case).

In this case, the Petitioner had filed the petition for a grant of relief to the effect that no Goods and Services Tax (GST) can be levied on royalty paid by a mineral concession holder for any mining concession granted by the State and the same is illegal and unconstitutional. While citing the Mineral Area Case that overruled the Indian Cement Ltd. Case, the Himachal Pradesh High Court held that the Respondent are well within their right to levy GST on royalty paid by the mineral concession holder for any mining concession granted by the State.

Accordingly, the notices and summons by the Respondent were upheld and the writ petition was dismissed by the High Court of Himachal Pradesh.

Jay Polypack Pvt. Ltd. Vs. The Commissioner CGST And Central Excise (Appeals) & Ors. [R/Special Civil Application No. 14292 of 2023]

Petitioner to claim refund by making application before authority in respect of tax paid by IRP.

An assessee can claim a refund in respect of the amount of tax paid by Interim Resolution Professional (IRP) by making an appropriate application before the appropriate authority.

In this case, the Petitioner was subjected to the insolvency proceedings under the provisions of the Insolvency Bankruptcy Code (IBC) and an IRP was appointed to manage the company that failed to obtain the registration of the petitioner as per the Notification No. 11/2020 dated 21.03.2020 issued by the Central Board of Indirect Taxes and Customs (CBIC). Despite subsequently obtaining fresh Goods and Services Tax (GST) registration for the Petitioner, a notice was issued for non-filing of GSTR-3B for the duration in which the IRP failed to obtain registration for the Petitioner.

The Petitioner contended that no opportunity of hearing was given by issuing any show-cause notice to the petitioner for levy of penalty as required under Section 126(3) of the Central Goods and Services Tax Act, 2017 (CGST Act). Later, the NCLT passed an order and handed over the management and control of the Board of Directors of the Petitioner. After regaining control of the company, the Petitioner filed the required return in Form GSTR-3B and preferred an appeal before the Commissioner, GST & Central Excise, Appeals, Vadodara-II, challenging the order for levy of tax, interest, and penalty. The Petitioner also prayed to refund the tax paid by IRP, which was rejected and disposed of by the Respondent.

The Gujarat High Court held that the Petitioner may seek refund by making an appropriate application to the relevant authority in respect of the tax paid by IRP since the GST registration had been obtained in the name of the Petitioner only, which has now been suspended.

Further, since the Petitioner was not served with any show-cause notice providing an opportunity of hearing, the impugned order was quashed, and the matter was remanded back to the Adjudicating Authority.

Yasho Industries vs. UOI & Anr. [R/Special Civil Application No. 10504 of 2023]

Payment of pre-deposit can be made by utilizing the Electronic Credit Ledger.

The amount available in the Electronic Credit Ledger may be utilised to pay the 10% of tax in dispute as prescribed under Section 107(6) of the Central Goods and Services Act, 2017 ("CGST Act").

In this case, a show-cause notice was issued to the Assessee demanding the refunded Integrated Goods and Services Tax (IGST) along with interest and penalty. On appeal before the Commissioner (Appeals), the Assessee was required to make a pre-deposit of Rs. 3 crores under Section 107(6) of the CGST Act and the same was paid using the balance available in the Electronic Credit Ledger. However, the Assessee was directed to pay pre-deposit through Electronic Cash Ledger.

Relying on the case of Oasis Realty v Union of India (Writ Petition (ST) No. 23507 OF 2022), the Gujarat High Court held that as the amount's payable are towards output tax, the Assessee-Petitioner may utilise the amount available in the Electronic Credit Ledger to pay the 10% of tax in dispute. The impugned order directing the Assessee-Petitioner to pay the pre-deposit amount through Electronic Cash Ledger was therefore quashed and set aside.

B. Notifications/Circulars

Circular No. 238/32/2024-GST, dated Oct 15, 2024

Clarification of various doubts related to Section 128A of the CGST Act, 2017.

The procedure to be followed by the taxpayers and the tax officers to avail and implement the benefit provided under Section 128A of the Central Goods and Services Tax Act, 2017 ('the Act') was clarified in relation to filing of the application, payment of tax, processing of the application and issuance of the order, and appeal against the orders issued under Rule 164 of the Central Goods and Services Tax Rules.

Further, the issues with respect to availing the benefit of waiver of interest or penalty or both provided under Section 128A of the Act were also clarified, mainly on the application of the benefit provided under the section to taxpayers. Especially regarding those who have paid the tax component in full before the date on which the said section has come into effect, or regarding the amount recovered as tax due from any other person on behalf of the taxpayer, and such other matters.

Click here to read the circular.

Circular No. 237/31/2024-GST, dated Oct 15, 2024

Clarification regarding implementation of provisions of sub-section (5) and sub-section (6) in section 16 of CGST Act,2017.

The Central Board of Indirect Taxes and Customs (CBIC) has issued a circular clarifying various issues pertaining to availment of benefit of the amendments in Section 16 of the CGST Act brought in vide Section 118 of the Finance (No. 2) Act, 2024, whereby the time limit to avail input tax credit under provisions of sub-section (4) of Section 16 of the CGST Act has been retrospectively extended in certain specified cases.

Especially pertaining to the taxpayers against whom demands have been issued alleging wrong availment of input tax credit (ITC) who are now entitled to claim ITC on account of retrospectively inserted provisions of sub-section (5) or sub-section (6) of section 16 of the Act.

The circular clarifies the scenarios where no demand notice has been issued, where notice has been issued but an order has not been issued, or where an appeal has been filed or revisional authorities have initiated proceedings.

Click here to read the circular.

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