Tax INFORM

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DIRECT TAX

A. Recent Case Laws

M/s. Shriram Investments vs The Commissioner of Income Tax III Chennai Metaliks Ltd. Vs. Union of India [Civil Appeal No. 6274/2013]

Assessing Officer lacks authority to consider a time barred revised return of income.

Upholding the ruling of the Madras High Court, the Supreme Court of India confirmed that an Assessing Officer (AO) has no jurisdiction to consider a claim made in the revised return filed after the expiry of the time prescribed for filing a revised return under Section 139(5) of the Income Tax Act, 1961 (the "IT Act").

In this case, the appellant-assessee filed a revised return of income after expiry of the prescribed time. The Income Tax Appellate Tribunal ("ITAT") remanded the case back to the AO for consideration of the claim. In response, the respondent tax authority had filed an appeal before the Madras High Court. The Supreme Court found that the Tribunal had not exercised its power under Section 254 of the IT Act to consider the claim of the appellant and had instead directed the assessing officer to consider the claim of the appellant.

While addressing the reliance placed by the appellant on the decision in the case of Wipro Finance Limited vs. Commissioner of Income Tax (the "Wipro Finance Case"), the Supreme Court clarified that the judgement in the Wipro Finance Case specifically pertained to the appellate power of ITAT. Further, the Supreme Court referred to the case of Goetze (India) Ltd. vs. Commissioner of Income Tax (the "Goetze India Case") and reiterated that the claims of the assessee have to be determined by the assessing officer in accordance with the Act only.

Manoj Jain (Hindu Undivided Family) Vs ITO & Ors. [ITAT/39/2024]

Claim for long-term capital gains disallowed as investment was in a penny stock company.

In the instant case, the Hon'ble Supreme Court dismissed an appeal pertaining to a bogus claim of long-term capital gains (LTCG) made by a Hindu Undivided Family (HUF) under Section 10(38) of the Income Tax Act, 1961 (the "IT Act"). The LTCG was from the sale of equity shares of Sulabh Engineers & Services Limited that was identified as a penny stock company by the lower authorities. The case was dismissed considering there were no substantial questions of law, and the Supreme Court could not be converted into an appellate tribunal to examine the factual issue, which was never placed by the assessee before the Assessing Officer, before the CIT(A) or before the Tribunal.

The Assessing Officer (AO) had refused the LTCG claim of the assessee since he had dealt with a penny stock company, the financial statement of which reflected that the increase in the price of equity shares was not commensurate to the business activities being carried out.

Thus, the LTCG claimed was not eligible for exemption and the alleged receipt of sale consideration was liable to be added as an unexplained cash credit under Section 68 of the Act.

The assessee had also failed to get any relief from the CIT (Appeals). The Income Tax Department had carried out a search/survey upon different entities, which unearthed that certain companies and professionals were providing such a claim in the shape of accommodation by manipulating the stocks of certain shell companies. The Hon'ble Calcutta High Court had made a detailed analysis of the material found during the course of search and survey on the premises of third entities and set aside the orders of the ITAT in a group of appeals by holding that such a claim by the assessees for long-term capital gain was a bogus claim.

Bank of Rajasthan Ltd Vs Commissioner of Income Tax. [Civil Appeal Nos. 3291-3294 of 2009]

A deduction will only be allowed if Held to Maturity (HTM) securities are held as a trading asset, as the benefit of broken period interest will not be available if they are held as an investment.

The appellant is a scheduled bank that had engaged in the purchase and sale of government securities. The securities were treated as stock-in-trade in the hands of the appellant. The amount received by the appellant on the sale of the securities was considered for computing its business income. The appellant consistently followed the method of setting off and netting the amount of interest paid by it on the purchase of securities (i.e., interest for the broken period) against the interest recovered by it on the sale of securities and offering the net interest income to tax. The result is that if the entire purchase price of the security, including the interest for the broken period is allowed as a deduction, then the entire sale price of the security is taken into consideration for computing the appellant's income. According to the appellant's case, the assessing officer allowed this settled practice while passing regular assessment orders.

However, the Commissioner of Income Tax ("CIT") exercising jurisdiction under Section 263, interfered with the assessment orders and held that the appellant was not entitled to the deduction of the interest paid by it for the broken period placing reliance on Vijaya Bank Ltd. v. Additional Commissioner of Income Tax [(1991) Supp (2) SCC 147].

Subsequently, the Income Tax Appellate Tribunal ("ITAT") had held that as the bank was holding the securities as stock-in-trade, the entire amount paid by the appellant for the purchase of such securities, including the interest for the broken period, was deductible. In various previous decisions, the Supreme Court and Privy Council have consistently held that securities acquired as part of their banking business are classified as stock-in-trade and not investments.

The Supreme Court explicitly distinguished the case of Vijaya Bank, stating that in that case the income of the bank was assessed under the erstwhile Section 18 of the Income Tax Act, 1961 (the "IT Act"), and not under Section 28 of the IT Act. As the securities were treated as

stock-in-trade, the interest on the broken period cannot be considered as capital expenditure and will have to be treated as revenue expenditure, which can be allowed as a deduction.

Hence, the bank's appeal was granted and the Revenue's appeals against the High Court's rulings were dismissed, subject to clarification regarding securities of the HTM category.

Felix Generics Private Limited Vs DCIT and Ors. [W.P.(C) 14129/2024]

Re-assessment proceedings time barred under the older regime quashed.

A notice issued under Section 148 of the Income Tax Act, 1961 (the "IT Act") of the new regime for assessment year (AY) 2021-2022 and earlier can only be issued if the time limit for issuance of such notice continues to remain valid under Section 149(1)(b) of the IT Act of the older regime.

Relying on the case of Manju Somani Vs ITO [2024:DHC:5411-DB] and Union of India vs. Rajeev Bansal [2024 SCC OnLine SC 2693], in this case, the Delhi High Court set aside the reassessment notice issued under Section 148 of the IT Act, notice under Section 148A(b) of the IT Act and order passed under Section 148A(d) of the IT Act prior to the issuance of the reassessment notice under Section 148 of the Act, on the grounds that it was barred by limitation under Section 149(1)(b) of the IT Act under the old tax regime.

It was further observed that the new limit of ten years prescribed under Section 149(1)(b) of the IT Act under the new regime applies prospectively; therefore, for the assessment year (AY) 2018-2019, the previous prescribed period of six years expired on 31st March 2024 and hence, the notice issued after the said date is barred by limitation.



Aslam Checkar Vs Income Tax Officer [WP (L) No. 2442 of 2024]

Employees not liable for deposit of TDS on failure of employer.

The obligation to deposit tax under Section 205 of the Income Tax Act, 1961 (the "IT Act") rests with the employer, and any default by the employer does not shift the liability to the employee.

In this case, the tax authority had issued demand notices to the assessee-employee for the payment of income tax along with interest on account of non-deposit of Tax Deducted at Source (TDS) by their employer.

The Bombay High Court explicitly held that Section 205 imposes the obligation to deposit tax on the employer and not the employee, who is the beneficiary of the payment to be received from the employer. If the employer has defaulted, the liability to pay such tax cannot be shifted so as to be foisted on the employee.

Bahar Infocons Pvt. Ltd Vs Principal Commissioner of Income Tax, Mumbai-2 & Ors. [WP (C) No. 14354/2022]

Correction of bona fide mistakes permitted under Section 264 of the Income Tax Act, 1961.

To remedy a bona fide mistake and make corrections in an inadvertent situation, a revision application can be made under Section 264 of the Income Tax Act, 1961 (the "IT Act").

In this case, the assessee-petitioner filed a writ petition against the order of the Commissioner rejecting the revision application filed by the petitioner, merely on the ground that the petitioner had not filed a revised return within the prescribed time limit.

The court further observed that the provisions of Section 264 of the IT Act itself provide that there may occur bona fide human mistakes, which if otherwise not allowed to be corrected, would result in injustice and breach of the law.

Relying on the case of Ena Chaudhuri vs. Assistant Commissioner of Income-tax [(2023) 148 taxmann.com 100 (Calcutta)], the court noted that the law prescribes a time limit for filing a revised return under Section 139(5) of the IT Act. However, if the assessee is entitled to relief otherwise, there is no embargo on the Commissioner to exercise his power and grant relief under Section 264 of the IT Act. Hence, the impugned orders of the Commissioner were set aside by the Bombay High Court.

B. Notifications/Circulars

Circular No. 10/2024 dated Sept 29, 2024

Extension of timelines for filing of various reports of audit for the Assessment Year 2024-25.

Considering the difficulties faced by the taxpayers and other stakeholders in electronic filing of various reports of audit under the provisions of the IT Act, the Central Board of Direct Taxes (CBDT) extended the specified date of furnishing of report of audit for the Previous Year 2023-24, which was 30th September, 2024 in the case of assessees referred in clause (a) of Explanation 2 to sub-section (1) of section 139 of the Act, to October 7, 2024.

Click here to read the circular.

Circular No. 11/2024 dated October 1, 2024

Order authorizing Income-tax authorities to admit an application or claim for refund and carry forward of loss and set off thereof under section 119(2)(b) of the Income-tax Act, 1961.

This Circular was issued to deal with the applications for condonation of delay in filing returns, claiming refund and returns, claiming carry forward of loss and set off thereof under section 119(2)(b) of the IT Act, and includes comprehensive guidelines on the conditions for condonation and the procedures to be followed for deciding such matters.

Mainly, as per the Circular, no condonation application for claim of refund/loss shall be entertained beyond five years from the end of the assessment year for which such application/claim is made. The time limit for filing of such an application within five years from the end of assessment year will be applicable for applications filed on or after 01.10.2024.

This limit of five years shall be applicable to all authorities having powers to condone the delay as per the above prescribed monetary limits. A condonation application should be disposed of, as far as possible, within six months from the end of the month in which the condonation application is received by the competent authority.

Click here to read the circular.

INDIRECT TAX

Goods & Services Tax

A. Recent Case Laws:

S.R. Traders (Proprietor Ali K.) vs. Directorate General of GST Intelligence [WP(C) No. 19121/2024]

Provisional attachment of properties not permitted beyond a period of one year.

The Kerala High Court ruled that provisional attachments cannot be extended beyond a period of one year from the date of issuance of such notice of attachment as stipulated under Section 83(2) of the Central Goods and Services Tax Act, 2017 ("CGST Act")/State Goods and Services Tax Act ("SGST Act").

In this case, the authorities had provisionally attached certain properties belonging to the petitioners who were scrap dealers involved in fraudulent transactions, leading to the evasion of GST on a massive scale. On the expiry of the period prescribed under Section 83(2) of the CGST Act/SGST Act, the petitioners communicated to the authority and prayed for the lifting of the orders of provisional attachment. However, the authority instead proceeded to issue another series of orders again, thereby provisionally attaching the properties belonging to the petitioners that were already subjected to orders of attachment. The same was challenged before the Kerala High Court.

The court observed that that the provisions of Section 83(2) read with the provisions of Rule 159 of the CGST Rules, 2017 indicate beyond doubt that a provisional attachment cannot extend beyond a period of one year from the date on which it was first made. To accept the contention of the Revenue in this case would be to do violence to the language of the statute and permit the Revenue to keep on issuing repeated orders of provisional attachment which would mean that the provisional attachment can continue for as long as the Revenue decides that it must continue. Hence, the court quashed the series of orders issued that provisionally attached the properties again.

New Jai Hind Transport Services vs. UOI & Ors. [WP (M/S) No. 646/2023]

Fuel cost borne by service recipient not to be included in the transaction value of GTA services for GST.

The value of the fuel cannot be subjected to charge of Goods and Services Tax ("GST") by adding the value of free diesel in the transaction value of providing services of Goods Transport Agency (GTA) for GST purposes under Section 15(1) and Section 15(2)(b) of the

Central Goods and Services Tax Act, 2017 ("CGST Act"), if the fuel cost was borne by the service recipient.

In this case, the GST Advance Ruling Authority in Uttarakhand had ruled that the value of fuel provided by the service recipient on FOC basis, as per the agreement, will be included in the transaction value for GTA service and will be subject to charge of GST, and the same was upheld by Appellate Authority for Advance Ruling Uttarakhand (AAAR).

The Uttarakhand High Court set aside the ruling of AAAR and held that freight consideration does not include free supply of fuel as the fuel cost was borne by the service recipient.



Apco Arasavalli Expressway Pvt. Ltd. Vs. Assistant Commissioner St and Ors. [WP No. 17225/2023]

Referring Circular No. 221/15/2024, time of supply for annuity payments held to be earlier of the invoice issuance date or payment receipt date.

Citing Circular No. 221/15/2024, the Andhra Pradesh High Court held that time of supply for annuity payments under the Hybrid Annuity Model (HAM) is the date of issuance of invoice or date of receipt of payments of annuity, whichever is earlier.

In this case, a dispute arose in relation to payment of Goods and Services Tax ("GST") on the annuity being received by the petitioner. The assessee completed the construction of highways under the 'Hybrid Annuity' basis, and had thereby, entered into a concession agreement, dated 18.01.2018, with the National Highway Authority of India. After receipt of the consideration due, the assessee discharged its GST obligations.

However, the authorities had taken the view that the date of supply of services should be treated as the date on which the concession period had commenced as the annuity relates to maintenance and management of the road with the responsibility commencing from the date of the concession period. The court set aside the previous orders and directed the respondent authorities to collect tax in accordance with the circular issued.

Chief Commissioner of Central Goods and Service Tax Vs M/S Safari Retreats Private Limited. [Civil Appeal No. 2948/2023]

Constitutional validity of clauses (c) and (d) of Section 17(5) of CGST Act upheld.

Upholding the constitutional validity of clauses (c) and (d) of Section 17(5) of Central Goods and Services Tax, 2017 ("CGST Act") , the Supreme Court held that the plain interpretation of the foregoing provisions does not lead to any ambiguity, and hence, the provision does not attract arbitrariness, and that that expression "plant or machinery" included in Section 17(5)(d) of CGST Act should not be interpreted the same as the expression "plant and machinery" defined in the explanation to Section 17 of the CGST Act.

In this case, the respondent was engaged in the construction of a shopping mall meant for leasing out premises in the malls to different tenants. The court had examined availing input tax credit ("ITC") on the supplies used for construction of immovable property, particularly commercial properties like shopping malls meant for leasing or renting. The respondent had claimed and accumulated input credit of Goods and Services Tax ("GST") from goods and services used in the construction of the shopping mall. Further, the respondent had rented out units in the mall and the same attracted CGST based on the rent received, which amounts to supply of service under the CGST Act. The respondent was disallowed to claim ITC on rental income by the authority and directed the respondent to deposit GST rent without deducting ITC due to the exception provided under Section 17(5)(d) of the CGST Act.

The Apex Court concluded that the question of whether a mall, warehouse or any building, other than a hotel or a cinema theatre, can be classified as a 'plant' under Section 17(5)(d) of CGST must be determined while considering the business of the registered person and the role the building plays in the business. A functionality test will have to be applied to decide if a building falls within the meaning of 'plant' for the purpose of Section 17(5)(d) of the CGST Act. If the building qualifies for the definition of plant, ITC can be allowed on goods and services used in setting up the immovable property, which is a plant.

The writ petitions were remanded to the High Court of Orissa for the purposes of deciding whether, based on the facts of the case, the shopping mall is a "plant" under Section 17(5)(d) of the CGST Act.

B. Notifications/Circulars

Circular No. 234/28/2024-GST dated Oct 11, 2024

Clarifications regarding applicability of GST on certain services.

The following are a few important issues that have been clarified:

a. Affiliation services provided by universities to their constituent colleges are not covered within the ambit of exemptions provided to educational institutions in the notification No. 12/2017-CT(R) dated 28.06.2017 and GST at the rate of 18% is applicable on the affiliation services provided by the universities.

b. Services of affiliation, provided to schools by Central or State educational boards or councils, or other similar bodies, by whatever name called, are taxable. Further, as recommended by the Council, the payment of GST on the services of affiliation provided by Central and State educational boards or Councils, or other similar bodies, to all schools is regularized on 'as is where is' basis for the period from 01.07.2017 to 17.06.2021.

c. Ancillary or incidental services provided by Goods Transport Agency in the course of transportation of goods by road, such as loading/unloading, packing/unpacking, transshipment, temporary warehousing etc. will be treated as composite supply of transport of goods. The method of invoicing used by GTAs will not generally alter the nature of the composite supply of service. However, if such services are not provided in the course of transportation of goods and are invoiced separately, then these services will not be treated as composite supply of transport of goods.

Click here to read the circular.

Circular No. 235/29/2024-GST dated October 11, 2024

Clarification regarding GST rates & classification (goods) based on the recommendations of the GST Council in its 54th meeting held on 9th September 2024 at New Delhi.

The following are a few important issues that have been clarified:

a. The GST rate of 5% continues for un-fried or un-cooked snack pellets, by whatever name called, manufactured through process of extrusion. Further, the reduced GST rate of 12% on extruded or expanded products, savoury or salted (other than un-fried or un-cooked snack pellets, by whatever name called, manufactured through process of extrusion) falling under HS 1905 90 30 shall apply prospectively from the date of effect of the said notification. For the past period, 18% GST shall be payable.

b. To bring parity with seats of motorcycles (classified under HS 8714) which already attract a GST rate of 28%, based on the recommendation of the Council, with effect from Oct 10, 2024, vide S. No. 210A of Schedule IV of notification No. 1/2017-Central Tax (Rate) dated June 28, 2017 (as amended), car seats classifiable under HS 9401 attract GST at the rate of 28%. It is clarified that the 28% rate on car seats classifiable under HS 9401 is applicable prospectively, that is, from the date of effect of the said notification.

Click here to read the circular.

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