Tax INFORM

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- Reassessment notice issued in name of dead person can be challenged by legal representative.
- CBDT directed to apply VsV Scheme to taxpayers where due date for filing of appeal has not expired.
- Surrender of rights in patent and trademark pursuant to co-marketing agreement is capital receipt.
- Revision u/s 263 unsustainable if CIT fails to show perceived tax liability to be prejudicial to Revenue.

Notifications/Circulars:

- Notification No. 6/2024: Specifying Forms prescribed in Appendix-II of the Income Tax Rules 1962, to be furnished electronically under sub-rule (1) and sub-rule (2) of Rule 131 of the Income-tax Rules, 1962.

INDIRECT TAX

Goods and Services Tax:

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- Flavoured milk would fall under Tariff Heading 0402 and cannot be treated to fall under 2202.
- Assessee cannot be deprived of amount of interest on account of inter se dispute between Central and State authorities.
- Telecommunication towers are movable items of essential equipment.
- For a project spread across two States, tax liability has to be discharged to the extent of work executed in both States.
- Taxpayer eligible for refund of IGST on ocean freight subsequent to striking down of Notification No.10/2017 SC in Mohit Minerals case.

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Notifications/Circulars:

- Notification No. 30/2024: Withdraw RIC on export of motor spirit.
- Notification No. 29/2024-GST: Withdraw SAED on production of Petroleum Crude and on export of Aviation Turbine Fuel, motor spirit.

A. Recent Case Laws

ITO Vs Vinal Comtrade Pvt. Ltd [Special Leave Petition (Civil) Diary No.26671/2024]

Reassessment proceedings involving tax liability below Rs. 50-lakh to be dropped.

In view of the judgement in the case of Union of India & Ors. Vs. Rajeev Bansal ("Rajeev Bansal Case"), the Supreme Court of India held that the reassessment proceedings against the Assessee must be dropped if the tax liability is less than INR. 50 Lakhs (Indian Rupees Fifty Lakhs Only).

In this case, the Assessee was issued reassessment notices under Section 148 of the Income Tax Act, 1961 ("IT Act"), and same were quashed by the High Court of Gujarat. Relying on the Rajeev Bansal Case, where the Supreme Court had explicitly held that "the reassessment notices issued under Section 148 of the new regime, which are in pursuance of the deemed notices, ought to be issued within the time limit surviving under the Income Tax Act read with TOLA. A reassessment notice issued beyond the surviving time limit will be time- barred."

In view of the above, the Supreme Court disposed of the Special Leave Petition (SLP) of the Revenue Authority given that the Assessee' s tax liability was less than INR. 50 Lakhs (Indian Rupees Fifty Lakhs Only).

Ghanyashyam Anil Dhanani Vs. The Income Tax Officer Ward 17(1)(1), Mumbai & Anr. [Petition(s) for Special Leave to Appeal (C) No(s). 28039/2023]

Reassessment notice issued in name of dead person can be challenged by legal representative.

If the proceedings are vitiated on account of initial notices being issued in name of a dead person (original Assessee), legal representative of the Assessee can challenge the same, and the subsequent participation of the legal representatives in the proceedings before the Assessing Officer (AO) will not consequently result in the initial defect being cured.

In this case, a Special Leave Petition (SLP) was filed by the legal representative of the deceased Assessee against the order of the Bombay High Court, challenging the initial notices issued under Section 148A(b) of the Income Tax Act, 1961 ("IT Act"), which were issued in the name of the deceased Assessee, leading to the entire proceedings being vitiated. The Supreme Court further noted that in response to the notices issued by the Assessing Officer (AO), the legal representative of the deceased Assessee informed the Assessing Officer (AO) of the passing away of the original Assessee. Thereafter, orders were passed under Section 148 A(d) of the IT Act in the name of the legal representatives of the deceased Assessee, which was challenged herein.

Hence, the appeal filed was allowed and the matter was remanded back to the Assessing Officer (AO) to consider all contentions raised by the legal representative of the deceased Assessee.

Naveen Kumar Aggarwal Vs Central Board of Direct Taxes [W.P.(C) 17014/2024 and CM APPLs. 72115-16/2024]

CBDT directed to apply VsV Scheme to taxpayers where due date for filing of appeal has not expired.

The Delhi High Court directed the Central Board of Direct Taxes (CBDT) to make applicable the Direct Tax Vivad Se Vishwas Scheme (the "Scheme"), 2024 to appeals for which the statutory timeline for filing the same has not expired, as stated in the circular issued by CBDT in respect of the Finance Act, 2020.

In this case, the Petitioner challenged the constitutional validity of Chapter IV of The Finance (No.2) Act, 2024 – Direct Tax Vivad Se Vishwas Scheme, 2024 (the "Act"), more particularly, Section 89(1)(a) of the said Act which limited the meaning of the appellant to a person in whose case an appeal or a Writ Petition or a Special Leave Petition has been filed by him or the Income Tax Authorities. It was further contended that the same does not consider a person who intends to file an appeal and where the time for filing the appeal has not expired.

Therefore, the Delhi High Court directed the CBDT to consider the anomaly raised by the Petitioner and make the Scheme applicable to taxpayers who are in process of filing an appeal and where timeline for filing the same has not expired.

The Commissioner of Income Tax III Hyderabad Vs. M/s. Satiofi Healthcare India Private Limited [Income Tax Tribunal Appeal No.138 Of 2007]

Surrender of rights in patent and trademark pursuant to co-marketing agreement is capital receipt.

The Telangana High Court ruled that the amount paid under an agreement for surrendering the Assessee's rights in a capital asset (patent and trademark in this case), which results in impairment of profit-making apparatus of the company is a capital receipt.

In this case, the Assessee had entered into a Co-marketing Agreement ("Agreement") with Pfizer Ltd. ("Pfizer"), whereby the Assessee agreed to manufacture vaccines in bulk quantities for Pfizer and supply the same to it. Further, the same vaccines were to be promoted, marketed and sold by Pfizer. Under this Agreement, the Assessee received a sum of INR 6 Crores, which was treated as revenue receipt by the Assessing Officer (AO).

Aggrieved by the same, the Assessee filed an appeal, where the Commissioner of Income Tax (Appeals) affirmed the order of assessment and dismissed the appeal. Thereafter, the assessee filed an appeal before the Income Tax Appellate Tribunal ("ITAT"), where it was ruled that the sum of money received by the Assessee was not only for transfer of capital assets

but also for “waiver of certain rights in enduring nature and for accepting certain restrictive covenants.” Hence, the assessee has received the aforesaid amount by way of a capital receipt. Aggrieved, the Revenue Authority preferred the present appeal, where the Telangana High Court agreed with the findings of ITAT.

The court held that the payment of the amount under the agreement has been made to the assessee as it has surrendered its rights in a capital asset, namely patent and trademark. The agreement in question is a restrictive covenant and the amount has been paid to the assessee in lieu of the rights which it has surrendered under the agreement. The surrender of the rights results in impairment of the profit-making apparatus of the company and therefore, is a capital receipt. The court further noted that it is well settled in law that the Court in exercise of powers under Section 260A of the Income Tax Act, 1961, cannot interfere with the finding of fact until and unless the same is demonstrated to be perverse.

Therefore, the appeal was dismissed by the Telangana High Court.

Commissioner Of Income Tax (International Taxation) Vs Genpact Consulting Singapore Pte Ltd [ITA 103/2023]

Revision u/s 263 unsustainable if CIT fails to show perceived tax liability to be prejudicial to Revenue.

Order-in-revision under Section 263 Income Tax Act, 1961 (“IT Act”) is unsustainable in the absence of any conclusion by the Commissioner of Income Tax (“CIT”) on the Assessing Officer (AO) having failed to undertake the requisite inquiry as contemplated.

In this case, the Assessing Officer’s accepted the view of the Respondent-Assessee in relation to the transfer of shares transaction (share transfer from the Respondent- Assessee to its wholly owned Indian subsidiary, Empower Research Knowledge Services Private Ltd.) to not be liable to be considered as a transfer for the purposes of computation of capital gains by way of exemption under Section 47 of the IT Act, since Empower Research Knowledge Services Private Ltd. (now known as Genpact India Pvt. Ltd.) was its wholly owned Indian subsidiary.

The CIT invoked its revisional power under Section 263 of the IT Act since in its opinion the view as taken by the Assessing Officer (AO) was wholly erroneous and that the tax-exempted share transfer transaction was used by Genpact India Pvt. Ltd. to evade and avoid the payment of Dividend Distribution Tax (DDT) under Section 115-O of the IT Act.

The High Court of Delhi held that CIT failed to show how a perceived tax liability in Genpact India could be relevant for the purposes of forming the opinion of the assessment of the Assessee being erroneous or prejudicial to the Revenue Authority. Hence, the appeal of the Revenue Authority was dismissed.

B. Notifications/Circulars

Notification No. 6/2024, dated Nov 19, 2024

Specifying Forms prescribed in Appendix-II of the Income Tax Rules 1962, to be furnished electronically under sub-rule (1) and sub-rule (2) of Rule 131 of the Income-tax Rules, 1962.

The following Forms that shall be furnished electronically and shall be verified in the manner prescribed under sub-rule (1) of Rule 131:

Form	Description
Form 42	Appeal against refusal to recognise or withdrawal of recognition from a provident fund
Form 43	Appeal against refusal to approve or withdrawal of approval from a superannuation fund
Form 44	Appeal against refusal to approve or withdrawal of approval from a gratuity fund

Click here to read the circular.

INDIRECT TAX

Goods & Services Tax

A. Recent Case Laws:

M/s. Sri Vijaya Visakha Milk Producers Company Ltd. Vs. Asst. Commissioner of Central Tax and Others [Writ Petition No: 254/2024]

Flavoured milk would fall under Tariff Heading 0402 and cannot be treated to fall under 2202.

In a case where sweetened milk is to be sold, after bottling the same, it would fall within the meaning of Milk containing added sugar or other sweetening matter, under Tariff Heading 0402 and not 2202.

In this case, while considering the returns filed by the Petitioner, the Respondent had rejected the classification placed by the petitioner and held that flavoured milk would fall under GST Tariff Heading No.2202 9930 (hereinafter referred to as 2202) and raised a demand for shortfall of tax along with a penalty under Section 122(2) (b) and Section 74 of the Central Goods and Services Tax Act, 2017 ("CGST Act") and corresponding Sections of Andhra Pradesh Goods and Services Tax Act and Integrated Goods and Services Tax Act.

Relying on the case of M/s Parle Agro Pvt. Limited Vs. Union of India (W.P. No. 16608 and 16613 of 2020) ("Parle Agro Case"), the Andhra Pradesh High Court held that flavoured milk would fall under heading 0402 and not under 2202. Also, the entry, in 0402, is the special entry and the entry, under 2202, is the general entry and would have to give way to entry 0402.

Therefore, the writ petition was allowed and the impugned order passed by the Respondent was set aside.

M/S TATA Aldesa (J.V.) Vs. State of UP and 4 others [Writ Tax No. - 1172 of 2024]

Assessee cannot be deprived of amount of interest on account of inter se dispute between Central and State authorities.

Assessee is entitled to payment of interest on delayed refunds under the provisions of Section 56 of the Central Goods and Services Tax Act, 2017 ("CGST Act") and the payment of interest to the Assessee would not be dependent on the resolution of dispute between the Central and State authorities.

In this case, the Petitioner had filed a writ petition seeking a direction to the Respondents to disburse the amount of refund of Rs.38,10,351/- sanctioned to the petitioner vide refund sanction order dated 12.02.2020 along with interest due to the delay in refund as provided under Section 56 of the CGST Act. The Allahabad High Court noted that the refund has been already sanctioned and credited to the bank account of Petitioner after the communication of Central Goods and Services Tax Authority to the State Goods and Services Tax Authority, however, both the authorities are disowning liability to pay the interest, while both authorities hold each other liable for the same.

Hence, the Allahabad High Court directed the State Authority to pay the interest to the Petitioner and the same will not be subject to the resolution of the dispute with the Central authorities.



M/S Bharti Airtel Limited Vs. Commissioner, CGST Appeals-1 Delhi [W.P.(C) 13211/2024]

Telecommunication towers are movable items of essential equipment.

Telecommunication towers would not fall within the ambit of Section 17(5)(d) of the Central Goods and Services Tax Act, 2017 (“CGST Act”) and input tax credit cannot be denied.

In this case, show cause notices were issued by the Respondent to the Assessee, denying input tax credit on inputs and input services utilized for setting up passive infrastructure on the ground that the same were used in the construction of telecommunication towers and therefore fell within the purview of clause (d) of Section 17(5) of the CGST Act.

While the Assessee contended that telecommunication towers are moveable items of essential equipment used in telecommunications which can be dismantled at site and thus is capable of being moved. The court reiterated that the Supreme Court had held in Vodafone Mobile Services as well as Bharti Airtel that telecommunication towers would clearly not qualify the five fundamental precepts which define an immoveable property and are liable to be treated as movable. Moreover, the specific exclusion of telecommunication towers from the scope of the phrase "plant and machinery" would not lead to the conclusion that the law contemplates or envisages telecommunication towers to be immovable property.

The denial of input tax credit, consequently, did not sustain and the Hon'ble the Delhi High Court set aside the impugned notice issued by the Respondent-Authority.

M/s. L and T PES JV Vs. Assistant Commissioner of State Tax and 5 others [Writ Petition Nos. 6271 and 6299 of 2020]

For a project spread across two States, tax liability has to be discharged to the extent of work executed in both States.

For works spread out and executed in two different States, deductions cannot be made for invoices raised for portions of works executed in a State if the Contractee is not registered as a deducting authority in that state under Section 24 of the Central Goods and Services Tax Act, 2017 ("CGST Act").

In this case, two entities, M/s. Larsen & Toubro Limited (L&T) and M/s. PES Private Limited (PES), were independent registered dealers in both States of Telangana and Maharashtra and were jointly executing a project spread out in both states through a joint venture ("JV"). One of the respondents deducted TDS @ 2% on the total value of the bills raised by the Petitioner pertaining to both States and remitted the entire tax to the State of Telangana. The High Court of Telangana explicitly stated that the Respondent ought to have made a deduction for the invoices raised by the supplier located in Telangana for the works executed in Telangana and should not have made deductions in respect of invoices raised for works executed in Maharashtra. The High Court explicitly noted that the Respondent should have remitted TDS @2% independently based on the bills submitted by the Petitioner for works done in both States and credited to the electronic cash ledger of the petitioner of the respective States.

However, due to the absence of any material on record in relation to the proportion of work executed in both the States by each partner of the JV, the High Court of Telangana held that it would be difficult to grant any relief to the Petitioner in relation to the issue and applicability of tax liability. Hence, the court observed that the Petitioner is at liberty to approach the Adjudicating Authority with relevant material, and the Adjudicating Authority shall consider the

same and pass appropriate orders for refund of the TDS amount in the event of the petitioner furnishing appropriate documents as proof of discharge of liability in the State of Maharashtra.

M/S H K Enterprise Vs. Union of India & Ors. [R/Special Civil Application No. 14119 of 2024]

Taxpayer eligible for refund of IGST on ocean freight after striking down of Notification No.10/2017 SC in Mohit Minerals case.

Refund application for the unutilized Goods and Services Tax ("GST") paid on Ocean Freight under Reverse Charge Mechanism cannot be held to be time barred as Petitioner could have filed the application for refund only after the Notification in question was struck down in the year 2022.

In this case, the Petitioner had filed an application for refund of Integrated Goods and Services Tax ("IGST") on Ocean Freight after the statutory two-year period from the relevant date and the same was rejected by the Respondent. However, the court noted that the Notification in question was struck down by the Supreme Court in the case of Union of India Vs. Mohit Mineral Private Limited (Civil Appeal No. 1390 of 2022), wherein, it was categorically held that when the Notification itself is struck down, the Respondent-Authorities cannot insist for levy of IGST on the amount of ocean freight. In pursuance of this judgement, a refund was sought by the Petitioner.

Therefore, the impugned order was set aside, and the Gujarat High Court held the levy of IGST to be unconstitutional noting that the refund application cannot be held to be time barred.

Central Excise

A. Notifications/Circulars

Notification No. 30/2024, dated Dec 2, 2024

Withdraw RIC on export of motor spirit.

The Central Government has withdrawn Road and Infrastructure Cess (RIC) on export of motor spirit, commonly known as petrol, and high-speed diesel oil and has rescinded the following notifications of the Government of India in the Ministry of Finance (Department of Revenue):

i) No.10/2022-Central Excise, dated the 30th of June 2022; and
ii) No.11/2022- Central Excise, dated the 30th of June 2022.

Click here to read the notification.

Notification No. 29/2024, dated Dec 2, 2024

Withdraw SAED on production of Petroleum Crude and on export of Aviation Turbine Fuel, motor spirit.

The Central Government has withdrawn Special Additional Excise Duty (SAED) on production of Petroleum Crude and on export of Aviation Turbine Fuel, motor spirit, commonly known as petrol, and high-speed diesel oil and has rescinded the following notifications of the Government of India in the Ministry of Finance (Department of Revenue):

i) No.03/2022-Central Excise dated the 30th of June 2022.
ii) No.04/2022-Central Excise dated the 30th of June 2022.
iii) No.05/2022- Central Excise dated the 30th of June 2022.
iv) No.06/2022- Central Excise dated the 30th of June 2022.
v) No.07/2022-Central Excise dated the 30th of June 2022; and
vi) No.09/2022- Central Excise dated the 30th of June 2022.

Click here to read the circular.

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