Tax INFORM

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- Circular No. 243/37/2024, dated December 31, 2024.

DIRECT TAX

A. Recent Case Laws

Principal Commissioner of Income Tax-4 & Anr. v. M/s. Jupiter Capital Pvt. Ltd. [SLP No. 63 of 2025]

Reduction in shares of Assessee in subsidiary company amounts to 'transfer' of capital asset, claim for capital loss allowable.

In this case, the Apex Court held that a reduction in the share capital of the subsidiary company and subsequent proportionate reduction in the shareholding of the Assessee would amount to a 'transfer' as defined under Section 2(47) of the Income Tax Act, 1961 (I-T Act).

This petition was filed by the Revenue challenging the decision of the Karnataka High Court, which affirmed the Income Tax Appellate Tribunal's (ITAT) order that the Assessee was entitled to claim long term capital loss as a consequence of a reduction in the share capital of its subsidiary company. The said reduction was carried out to set off the losses incurred by the company against the paid-up equity share capital.

The Revenue argued that although the number of shares was reduced by virtue of a reduction in the share capital of the company, the face value of each share as well as the shareholding pattern remained the same; it was maintained that since the reduction in shares did not result in 'transfer' as defined under Section 2(47) of the I-T Act, the Assessee's claim for capital loss could not be allowed.

The Revenue's argument was rejected by the Supreme Court, which emphasised that the reduction of share capital involved the purchase of its own shares by the company and hence was covered within the ambit of 'transfer'. Further, the said provision was said to contain an inclusive definition encompassing the relinquishment of an asset or extinguishment of any right therein. In the instant case, it was observed that the Assessee had extinguished its right of its shares in lieu of which the Assessee received a reduced number of shares (along with consideration).

Consequently, the petition filed by the Revenue was dismissed by the Supreme Court.

Rapiscan Systems Pvt. Limited v. ADIT (Int. Tax)-2 [WP Nos. 44891 & 44915 of 2022]

Limitation period prescribed under Section 144C(13) commences from the date the Dispute Resolution Panel's directions are uploaded.

In a case involving reference to the Dispute Resolution Panel (DRP), the Telangana High Court emphasised that once the Panel's directions are uploaded on the Income Tax Business

Application (ITBA) portal, the period of limitation envisaged under Section 144C (13) of the Income Tax Act, 1961 (I-T Act) starts from that date onwards.

The petitioner, a Singaporean company with operations in India, challenged the assessment orders for the assessment years 2018-19 and 2019-20, contending that the orders were issued beyond the statutory period. The petitioner argued that the DRP's directions were uploaded on the ITBA portal on June 30, 2022, making the last permissible date for assessment July 31, 2022, as per Section 144C (13) of the I-T Act; the said provision requires the assessing officer to complete the assessment within one month from the end of the month in which the DRP's directions are received. However, the final assessment orders were issued on August 30, 2022, and September 1, 2022, rendering them time-barred.

The Revenue countered that the DRP's order was received only on July 5, 2022 (through mail), which should be considered as the starting point for the limitation period. The Court rejected this argument and cited rulings to emphasise that under the E-Assessment Scheme, 2019, all communications were deemed to have been received by the assessment units concerned once received through the national e-assessment centre. Consequently, the period of limitation was held to begin from the day the e-assessment centre was in receipt of the DRP's directions.

Further, the abovementioned scheme specifies that the time and place of dispatch and receipt of electronic records will be determined as per Section 13 of the Information Technology Act, 2000. Accordingly, the Court explained that on the date and time the DRP's (originator) directions were uploaded on the portal, it lost control over it, and hence it had to be treated as a 'receipt' by the assessing officer (recipient) on the same day.

With this, the Court quashed the impugned assessment orders holding them to be time-barred.

Principal Commissioner of Income Tax v. M/s. Hespera Realty Pvt. Ltd. [ITA 468/2024]

Proviso to Section 10(38) cannot be read in reverse, LTCG from sale of shares exempt even if not included as book profits.

In this case, the Delhi High Court held that the proviso to Section 10(38) of the Income Tax Act, 1961 (I-T Act), could not be read in reverse to mean that if the Long-Term Capital Gains (LTCG) arising from the sale of shares are not included as book profits under Section 115JB, the same are liable to be included as income chargeable to tax under the normal provisions of the Act.

At the outset, the Court pointed out that the Revenue was conflating the two questions that arose in the matter:

1) Whether LTCG arising out of the sale of shares are liable to be excluded from the income chargeable to tax by virtue of Section 10(38);

2) Whether gains from the sale of shares are to be added to book profits for determining Minimum Alternate Tax (MAT) under Section 115JB.

The exemption of LTCG claimed under Section 10(38) was disallowed by the Assessing Officer (AO) on the ground that the gains were not included in the Assessee's profit and loss account and should thus be added to book profits for MAT purposes. On appeal, the Commissioner of Income Tax (Appeals) deleted the disallowance considering that the gains were exempted under Section 10(38) but did not interfere with the AO's decision regarding the second issue, which was also not involved in Revenue's further appeal before the Income Tax Appellate Tribunal (ITAT). Consequently, the said appeal and the present appeal were confined to the first issue.

Upon delving into the legislative history of the proviso to Section 10(38), which was introduced by the Finance Act, 2006, the Court concluded that the same was added to clarify that LTCG excluded from the total income under Section 10(38) would nonetheless be taken into account in computing book profits and income tax payable under Section 115JB. It followed that the proviso could not be read in reverse to mean that LTCG not included as book profits were liable to be included as income chargeable to tax under the normal provisions.

With this, the Court concurred with the ITAT's decision and rejected the Revenue's appeal.

Hindustan Zinc Ltd. v. Commissioner of Income Tax [D.B. ITA No. 1/2012, 13/2012, 88/2014]

Profits from captive power consumption eligible for deduction under Section 80-IA.

Answering a substantial question of law in favour of the Assessee, the Rajasthan High Court ruled that the Assessee was entitled to claim a deduction under Section 80-IA of the Income Tax Act, 1961 (I-T Act), for the profits derived from the power generated by its own captive power plant.

The claim made by the Assessee under Section 80-IA was earlier disallowed on the ground that under the said provision, the profits had to be derived only from the sale of its product or power generated to third parties and not from internal consumption.

However, the Court rejected the Revenue's argument that there was no real income from the captive power plant. Interpreting the expression 'derived' appearing in the provision, the Court held that the profits could be obtained by one's own consumption of the outcome of the undertaking or business. Consequently, the profits generated by the captive consumption of electricity were covered within the purview of eligible deductions under Section 80-IA of the I-T Act; the captive consumption of the power generated from the Assessee's own power plant would enable the Assessee to save on costs and these savings would be eligible for a deduction under the said provision.

B. Notifications/Circulars

Notification No. 9/2025, dated January 21, 2024

The Central Board of Direct Taxes (CBDT) has introduced Rule 6GB under the Income-tax Rules, 1962, specifying conditions for non-resident assessees engaged in the business of cruise ship operations under Section 44BBC of the Income-tax Act, 1961. The presumptive taxation regime under Section 44BBC was introduced vide the Finance (No.2) Act, 2024, to promote the cruise-shipping industry and enhance the participation of international cruise ship operators in India.

The conditions for availing of the special provisions under said Section include:

1. Operating passenger ships with a capacity of over 200 passengers or a length of at least 75 meters, providing leisure and recreational services with dining and cabin facilities.

2. Operating scheduled voyages or shore excursions that call at a minimum of two different Indian sea ports or the same port twice.

3. Ensuring the primary purpose of the ship is to carry passengers and not cargo.

4. Adhering to operational procedures and guidelines set by the Ministry of Tourism or Ministry of Shipping.

These provisions aim to facilitate tax compliance and regulatory clarity for non-resident entities operating cruise ships in India.

Click here to read the notification.

Circular No. 1/2025, dated January 21, 2025

The Central Board of Direct Taxes (CBDT) has issued guidance on the application of the Principal Purpose Test (PPT) introduced in India's Double Taxation Avoidance Agreements (DTAAs) through the Multilateral Instrument (MLI) and bilateral agreements. The PPT aims to prevent treaty abuse by denying benefits where obtaining tax advantages was one of the principal purposes of an arrangement unless it aligned with the treaty's object and purpose.

The circular clarifies that the PPT provision applies prospectively, with effective dates based on the DTAA amendment process—either through bilateral agreements or the MLI. Additionally, it confirms that grandfathering provisions under the India-Cyprus, India-Mauritius, and India-Singapore DTAAs will remain unaffected by the PPT. The tax authorities may refer to supplementary guidance from BEPS Action Plan 6 and the UN Model Tax Convention to ensure uniform implementation.

Click here to read the circular.

INDIRECT TAX

Goods & Services Tax

A. Recent Case Laws

M/s. Brunda Infra Pvt. Limited v. Additional Commissioner of Central Tax [WP No. 10733 of 2024]

Notifications extending limitation periods under Section 168A of the CGST Act must be based on prior GST Council recommendations and not on post-facto ratifications.

The Telangana High Court held that notifications extending limitation periods under Section 168A of the CGST Act, 2017, must comply with statutory requirements, including prior recommendations by the GST Council, and cannot rely on post-facto ratifications. The Court also emphasised that the Supreme Court's suo motu orders, which extended limitation periods across general and special laws during the COVID-19 pandemic, are applicable to GST-related proceedings, ensuring uniformity and adherence to procedural safeguards.

The petitioners challenged the validity of notifications Nos. 13/2022, 9/2023, and 56/2023, extending limitation periods for GST compliance and adjudication. They argued that the claimed force majeure (COVID-19) had ceased by the time of issuance, the notifications favoured the Revenue Department while excluding taxpayers, and some lacked prior GST Council recommendations, violating Section 168A. The respondents justified the extensions citing administrative difficulties caused by the pandemic, the non-obstante clause of Section 168A, and the broader applicability of the Supreme Court's suo motu orders.

Although the Court pointed out that 'ratification' done after issuance of notification 56/2023 without prior recommendation by the GST council did not provide life to a notification. Nevertheless, the Court upheld the validity of the notifications, acknowledging the need for administrative flexibility during the pandemic. The Court reiterated the universal applicability of the Supreme Court's suo motu orders to limitation periods. The Court stated that the COVID-19 pandemic created extraordinary difficulties which could not have been anticipated, measured and solved with mathematical precision. Thus, hair-splitting in many aspects had to be eschewed. To mitigate potential prejudice to taxpayers, it directed appellate authorities to consider appeals filed within 45 days of the judgment without rejecting them on limitation grounds.

Gujarat Chamber of Commerce and Industry & Ors. v. Union of India & Ors. [SCA No. 11345 of 2023 and others]

Assignment of leasehold rights of industrial plots is not subject to GST.

The Gujarat High Court held that the assignment of leasehold rights in industrial plots allotted by the Gujarat Industrial Development Corporation (GIDC) does not constitute a "supply of services" under the GST Act. Consequently, no GST is leviable on such transactions, which fall under the ambit of immovable property transactions.

The petitioners, including the Gujarat Chamber of Commerce and Industry, challenged the imposition of GST on the assignment of leasehold rights, arguing that such transactions amounted to the transfer of immovable property, which is specifically excluded under Schedule III of the GST Act. They contended that the charging of GST led to double taxation, as stamp duty was already being levied.

The respondents argued that the assignment of leasehold rights was akin to a service under Section 7 of the GST Act and was therefore taxable at 18%. However, the Court concluded that the transfer of leasehold rights should be treated as an assignment of immovable property and not as a service, thereby exempting it from GST. Further, clause 5(b) of Schedule II was not applicable to such transaction since the assignment of leasehold right was not by way of a sub-lease so as to earn rent.

The Court quashed the impugned show cause notices and held that the transaction of assignment of leasehold rights falls outside the scope of the GST regime.

Sterling and Wilson Private Limited v. Joint Commissioner and Others [WP No. 20096/2020]

Solar power plant installation held to be a composite supply and not a works contract under GST.

The Andhra Pradesh High Court ruled that the supply and installation of solar power generating systems should be treated as a "composite supply" under Section 2(30) of the GST Act, rather than a "works contract" under Section 2(119). Consequently, the applicable GST rate is 5% instead of 18%.

The petitioner, engaged in setting up solar power plants, sought a refund of excess input tax credit on the grounds that their output supplies attracted a lower GST rate of 5%. The Revenue rejected the refund claim and reassessed the petitioner's turnover at 18%, contending that the transactions were works contracts involving immovable property. The petitioner argued that their activities constituted a composite supply of goods and services, attracting a lower tax rate.

The Court observed that the determining factor in distinguishing between a composite supply and a works contract is whether the final product constitutes immovable property. Since the solar power system could be relocated and was not permanently affixed to the earth, it was classified as a composite supply subject to a lower tax rate.

The Court relied on the judgement by the Hon'ble Supreme Court in Commissioner of Central Excise, Ahmedabad v. Solid and Correct Engineering Works, that had set out the guidelines for deciding whether property would be moveable or immoveable. In the present case, the solar power plant is not trees or shrubs, which are rooted in earth or a structure embedded in the earth. In this case, the civil foundation is embedded in the earth. However, the solar modules and the Solar Power Generating System have not been attached to the civil structure for the purpose of better enjoyment or beneficial enjoyment of the civil foundation.

The Court set aside the tax demand and penalties imposed on the petitioner.

Nepra Resources Management Pvt. Ltd. & Anr. v. Union of India & Ors. [MCA No. 1267 of 2024]

Notified Area Authority not a 'local authority' under GST; exemption under Notification No. 12/2017 denied.

The Gujarat High Court reaffirmed that the Vapi Notified Area Authority does not qualify as a "local authority" under Section 2(69) of the GST Act, 2017. The Court held that for an entity to qualify as a local authority, it must be legally entrusted with the management of a "local fund." Entities like the Vapi Notified Area Authority, which lack such entrustment, are not eligible for GST exemptions under Notification No. 12/2017.

The petitioner filed a review petition challenging an earlier judgment that denied GST exemption to the Vapi Notified Area Authority. The petitioner argued that the authority performs administrative and developmental functions akin to a local authority and should fall within the statutory definition under Section 2(69) of the GST Act. The respondents contended that the earlier judgment correctly interpreted the law, as the authority does not manage a "local fund," a key criterion for being classified as a local authority under the Act.

The Court dismissed the review petition, stating that it could not recall its earlier judgment unless there was an error apparent on the face of the record. It emphasized that the petitioner was attempting to reargue the case under the guise of review, which is impermissible. Reaffirming its earlier judgment, the Court held that the Vapi Notified Area Authority is not a local authority under Section 2(69) of the GST Act and is ineligible for exemption under Notification No. 12/2017.

Nand Kishore Gupta vs. Additional Director General, Directorate General of GST Intelligence [WP (C) 16900/2024]

Seizure of Indian currency under GST Act held illegal.

The Delhi High Court held that cash currency cannot be considered "goods" under Section 2(52) of the CGST Act, 2017 and therefore cannot be seized under Section 67 of the Act. The seizure of Rs. 23,50,000 from the petitioner's premises was deemed illegal.

The petitioner, a trader in iron scrap, challenged the seizure of cash during a search operation conducted by the GST authorities in connection with an investigation into alleged fraudulent input tax credit claims by a third party. The petitioner argued that cash does not fall within the definition of "goods" under the CGST Act and, therefore, its seizure was beyond the scope of the authorities' powers. The respondents contended that the cash was linked to transactions involving tax evasion and thus could be seized as evidence under Section 67 of the CGST Act.

The Court ruled in favor of the petitioner, directing the release of the seized amount with applicable interest, stating that the seizure was without jurisdiction as cash is excluded from the definition of "goods" under the Act.

B. Notifications/Circulars

GST Circular No. 242/36/2024, dated December 31, 2024

The CBIC has issued guidelines to ensure correct declaration of the place of supply for online services provided to unregistered recipients under Section 12(2)(b) of the IGST Act. It was observed that some suppliers were incorrectly recording the place of supply as their own location instead of the recipient's location, leading to revenue allocation errors across states.

The circular clarifies that suppliers of online services, including through electronic commerce operators, must mandatorily record the recipient's state on the tax invoice, irrespective of the transaction value. This recorded state will be deemed the recipient's address on record for determining the place of supply under GST provisions. The clarification applies to services such as OTT subscriptions, cloud services, online gaming and other digital services.

Non-compliance with these requirements may result in penal action under Section 122(3)(e) of the CGST Act. Suppliers must establish mechanisms to collect the recipient's state details before completing the transaction to ensure compliance.

Click here to read the circular.

GST Circular No. 243/37/2024, dated December 31, 2024

The CBIC vide its Circular has addressed ambiguities surrounding the GST treatment of voucher transactions. This clarification ensures uniformity in the application of GST provisions across field formations.

Key Highlights:

1. Classification of Vouchers:
    - RBI-Recognized Prepaid Instruments: Vouchers classified as prepaid instruments by RBI are treated as "money" under Section 2(75) of the CGST Act and are excluded from GST.
    - Other Vouchers: Vouchers not recognized by RBI are treated as "actionable claims" and are similarly excluded from GST under Schedule III, except for specified actionable claims (e.g., gambling, betting).
2. Trading of Vouchers:
    - Principal-to-Principal Model: Voucher trading between distributors and sub-distributors on a principal-to-principal basis is not taxable as it is neither a supply of goods nor services.
    - Commission-Based Model: When vouchers are distributed through agents on a commission or fee basis, GST is applicable on the commission or fee earned by the agent.
3. Additional Services: Services such as advertisement, co-branding, or customer support provided to the voucher issuer are taxable under GST at the applicable rates.
4. Unredeemed Vouchers (Breakage): Amounts attributable to unredeemed vouchers are not considered consideration for any supply and are therefore not subject to GST.

The circular provides much-needed clarity on the GST treatment of vouchers, addressing longstanding industry concerns and eliminating inconsistencies in practice.

Click here to read the circular.

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