Legal Decisions

Income Tax

LD/69/80, [Karnataka High Court: ITA. No. 544/2013], The Commissioner of Income Tax Vs. NTT Data Global Advisory Services Pvt. Ltd., 12/11/2020

Assessee engaged in the business of providing human resource services through a computerised electronic database of qualified personnel is eligible for deduction under Section 10A. High Court noted that CBDT notification dated 26/09/2000 clarifies the scope of ITeS service for Section 10A eligibility and stated the notification has been issued with an object to outsourcing service industry in India as it generates employment and helps in earning foreign exchange. High Court held that irrespective of the nature of training expenses, assessee's business of transmitting data of qualified personnel, electronically, from its database would fall under 'human resource services' as per CBDT notification making assessee eligible for deduction under Section 10A.

LD/69/81, [ITAT Delhi: 4695/DEL/2012] Havells India Limited Vs. The Asst. Commissioner of Income Tax 10/11/2020

Gain due to foreign exchange difference on redemption of shares at par held to be a non-taxable capital receipt. Assessee received / paid foreign exchange on purchase and redemption of shares at par in foreign subsidiary. ITAT held that for the purpose of computation of capital gains, profits are to be computed in foreign currency and subsequently converted to INR. ITAT held that the exchange difference is only due to currency exchange from Euro to INR and it cannot be construed to be part of consideration received on redemption of shares, and thus Section 45 is not applicable. Separately, ITAT held that notional losses of previous years cannot be set-off against the current year's profit for computing deduction under Section 80IC as losses of previous AYs from eligible units are already set-off against non-eligible units in the respective years.

LD/69/82, [ITAT Mumbai: 7055/Mum/2017], Smit Singapore Pte Ltd. Vs. Dy. Commissioner of Income Tax, 09/11/2020

Consideration from time charter of vessel and crew received by assessee is held to be not 'royalty' under India Singapore DTAA. Agreement entered into between assessee and Indian entity for time chartering of vessel and crew for exploration/ extraction of mineral oil doesn't satisfy the condition of 'use' or 'right to use' of equipment under DTAA. Though, time charter receipts are royalty as per Explanation 5 to Section 9(1)(vi) under "use / right to use", but the same is not taxable due to overriding effect of DTAA over the domestic law.

LD/69/83, [ITAT Mumbai: 3909/M/2018] Dr. Vithal Kamat Vs. Jt. Commissioner of Income Tax, 06/11/2020

Amount received by assessee being a partner, on his retirement from partnership firm, is not a transfer and thus is non-taxable being a capital receipt. Assessee received the impugned amount as a retirement benefit from the firm, pursuant to settlement in a civil suit. Amount received by the retiring partner from the firm doesn't amount to capital gain since there is no element of 'transfer' of interest in the partnership assets by the retired partner to the continuing partners.

LD/69/84, ITAT Mumbai: 633/M/2019 Vishwaroop Infotech P. Ltd Vs. The Asst. Commissioner of Income Tax, 06/11/2020

ITAT ruled in assessee's favour on the issue of non-taxability of unrealised rent from a commercial building where the licensee had deducted TDS on the unrealised rent portion. Licensee paid TDS on unrealised rent reflected in the ITS data but did not pay rent to the assessee and there was no certainty of receipt of such unrealised rent. ITAT held that TDS compliance by licensee has no bearing on taxability of unrealised rent in assessee's hands.

Contributed by CA. Sahil Garud, GST & Indirect Taxes Committee (CA. Mandar Telang), Disciplinary Directorate and ICAI's Editorial Board Sectionretariat. For details please visit Editorial Page webpage at https://www.icai.org/post/editorial-board. Readers are invited to send their comments on the selection of cases and their utility at eboard@icai.in. For full judgement write to eboard@icai.in.

LD/69/85, Delhi High Court: ITA 106/2005 Skyland Builders P. Ltd Vs. The Income Tax Officer 03/11/2020

Mesne profits and interest received on it in lieu of rent, held to be a revenue receipt and not capital receipt, by the High Court. Mesne profits and interest on it received as per the decree of Civil Court held to be chargeable to tax under income from house property. Section 25B is a clarificatory provision and hence is to be applied retrospectively.

LD/69/86, ITAT Ahmedabad: ITA No. 186/Ahd/2015], Rich Paints Ltd Vs.The Income Tax Officer 29/10/2020

Assessee had manipulated its books of account by certain fictitious entries to qualify for an IPO which was detected by SEBI as regulatory violation. Revenue invoked Section. 68 to make additions of unexplained credits as assessee failed to establish the identity and creditworthiness of creditors and genuineness of transactions. ITAT held that that Section. 68 contains a legal fiction that is applicable to real transaction and not on the fictitious ones. In such case it would be impossible for the assessee to discharge onus under Section 68 where no actual cash inflow happened.

LD/69/87, ITAT Bangalore: ITA No.668/Bang/2017] Sunita Bathija Vs. The Addl. Commissioner of Income Tax, 28/08/2020

Transfer of shares resulting in transfer of commercial shops held to be not a colourable device. Assessee had purchased the rights in the shops under a scheme which barred assessee from selling the shops. Revenue had computed capital gains by adopting DVO's report despite rejecting applicability of Section 50C to the transaction. ITAT noted that assessee was entitled to enjoy the portion of property proportionate to the shares held under the scheme launched by a company (shares of which were transferred) that barred assessee from selling the allotted units. Merely because the assessee was able to avoid payment of tax/ pay reduced tax, it cannot be said to be a colourable device or a sham transaction or an unreal transaction.

Transfer Pricing

LD/69/88, [Madras High Court: Tax Appeal Nos.725 & 726 of 2017], Socomec Innovative Power Solutions Pvt. Ltd. Vs. The Dy. Commissioner of Income Tax, 23/11/2020

High Court held that the ITAT had passed a cryptic order which was thus liable to be set-aside. As per High Court, while dealing with complex issue of TP and the method to be adopted in determining the ALP, the final fact finding Body is expected to give its own reasons for the method to be adopted for ALP and if the Transfer Pricing given by the assessee is not acceptable to the Revenue authorities, cogent reasons have to be clearly spelt in the order. High Court remitted the matter back to the ITAT directing it to give its reasons for rejecting the CPM method adopted by the assessee or for adopting any other method.

GST

LD/69/89, [2020-TIOL-1694-CESTAT-MUM], M/S Man Infraprojects Ltd Vs. Commissioner Of CGST, Mumbai West, 09/12/2020

A duplex can be regarded as one residential unit in determining the limit of 12 residential units for the purpose of availing exemption under service tax. The Hon'ble Tribunal noted that the architect certificate, the floor plan, and the full occupancy certificate issued by the Executive Engineer (building proposal) of the Municipal Corporation of Greater Mumbai clearly would clearly indicate that the complex comprised of 9 residential units, taking each duplex to be counted as one unit. As regards unjust enrichment, the Tribunal noted that the Commissioner (Appeals) has noted that customers were not charged Service Tax. In these facts and circumstances of the cases, the Tribunal allowed the appeal.

Service Tax

LD/69/90, Sourav Ganguly Vs. Commissioner of Service Tax [Kolkata 2020-TIOL-1687-CESTAT-KOL, 14/12/2020

The activities of the appellant namely acting as a 'brand ambassador' for various brands is not liable to service tax under the category of "business auxiliary services" as the "brand promotion services" under Section 65 (105)(zzzzq)of the Finance Act, was brought to tax w.e.f. July 1, 2010. In the absence of any mention or discussion in the show cause notice, service tax demand on amounts received for anchoring TV shows and for writing sports articles for magazines would not sustain. The composite fees paid for activities comprising taxable as well as non-taxable services cannot be brought to tax in the absence of a mechanism to segregate taxable portion and non-taxable portion.

Legal Update

LD/69/91, [Bangalore Service Tax- I 2020-TIOL-1655-CESTAT-BANG], Skol Breweries Ltd Vs. Commissioner of Central Excise and CST,10/11/2020

In order to decide whether the transaction involves the permanent transfer of intellectual property rights, the dominant intention of the contract and not to each and every word of the agreement is relevant. Department cannot pick a part of the agreement to suit their purpose. Tribunal held that the assignment of trademark and the IPR in the present case amounts to a permanent transfer and no service tax is applicable on permanent transfer of IP Rights.

LD/69/92, [Dehradun 2020-TIOL-1676-CESTAT-DEL], M/S Rohan Motors Ltd V/S Commissioner of Central Excise, 05/10/2020

Incentive charges received by a vehicle dealer from the manufacturer of the vehicle in terms of dealership agreement are in the nature of discounts and hence would not attract service tax. Penal charges recovered from the customers for delay in payment/cancellation of orders are penal in nature and not a consideration for any services. Therefore such charges would not attract service tax.

Excise

LD/69/93, [CESTAT Mumbai: Excise Appeal No. 86238 of 2015], Shreyas Intermediates Limited Vs. CCE Kolhapur, 11/09/2020

Assesse had filed a Rectification of Mistake (RoM) application, which has been dismissed by CESTAT Mumbai for absence of apparent mistake on record; CESTAT stated that Tribunal cannot take up exercise on re-appreciating the evidences and to embark on an act of reviewing the decision under the guise of rectification of mistake; An error apparent on the face of the record should be so manifest and clear that no court would permit it to remain on record, as per the CESTAT; Regarding non-consideration of a ruling filed by the assessee, CESTAT stated that had this decision been so relevant then the learned counsel would have placed it on record at the time of first available opportunity itself.

Disciplinary Case

Failure to file an exception report to RBI in contravention of NBFC Auditor's Report (Reserve Bank) Direction, 2008 for pre-closing/ redeeming subordinate debts before maturity. Held, Respondent is guilty of professional misconduct falling withing the meaning of clause (6) & Clause (7) of Part I of the Sectionond Schedule to the Chartered Accountants Act, 1949.

Held:

In the instant case, the Respondent was a Statutory Auditor of NBFC. The instant Company had pre-closed/ redeemed subordinate debts before maturity without the consent of RBI which was in violation of Para 2(1)(xxvi) of the instructions contained in the Circular DNBR, (PD). CC. No. 044/03.10.119/2015-16 dated July 01, 2015 and item (xvii) of Para3 in Chapter II of Master Direction on acceptance of PD Directions 2016 dated 25th August 2016 issued by RBI. Respondent in his submission stated that the percentage of subordinate debts which were redeemed were only 11.25% of the total subordinate debts and hence not material so as to affect the financial position of the Company. Further the Respondent stated that as per practice being followed in Industry, none of his clients NBFC had taken consent to redeem subordinate debts and the RBI had not objected to the same.

Committee viewed that being an auditor of NBFC, an auditor was expected to adhere to various NBFC directions applicable to the Company instead of being guided by the principle of past practice.

In conclusion, the Committee is of the opinion that the Respondent had failed to exercise due diligence in performance of his duties and is guilty of professional misconduct withing the meaning of Clause (6) & (7) of Part I of the Sectionond Schedule to the Chartered Accountant Act 1949.