Legal Decisions

Income Tax

LD/68/81, [ITAT Delhi: ITA No.3741/Delhi/2019], Agson Global Pvt. Ltd Vs. The Assistant Commissioner of Income Tax, 31/10/2019

An addition on account of cash deposits during demonetisation period was made. ITAT analysed the standard operating procedures mentioned in the CBDT instruction on 'Operation Clean Money' as per which it was important to check whether the case of the assessee falls into statistical analysis, which suggests that there is a booking of non-existent sales whereby unaccounted money of the assessee in old currency notes (SBN) have been pumped into as unaccounted money. ITAT observed that there was no substantial increase in sales, post demonetisation, compared to earlier year. Further, there was no difference between cash sales to cash deposit ratio and there was no substantial downfall or increase in the gross profit and net profit compared to earlier years. ITAT also deleted addition on account of share premium received after noting that the identity, creditworthiness and genuineness of the transaction was explained by the assessee.

LD/68/82, [ITAT Delhi: ITA No.5155/Delhi/2018], Ashok Kumar Shahi Vs. The Assistant Commissioner of Income Tax, 30/10/2019

The assessee had claimed interest on loan, which was taken to purchase a house property in cost of acquisition, as a deduction while computing capital gains on sale of that property. As per the AO, only a deduction under section 24(b) was available for such interest and the same could not be claimed as deduction under section 48 and that allowing assessee's claim would lead to allowing a double deduction. ITAT held that Section 24(b) and Section 48 are covered under different heads and neither of the sections exclude operation of the other and thus ruled in favour of the assessee.

LD/68/83, [Delhi High Court: ITA 917/2019], M/s Siddharth Export Vs. The Assistant Commissioner of Income Tax, 24/10/2019

The assessing officer made addition on account of unsecured loan received by the assessee from a UK citizen, which stood unexplained by the assessee, under section 68. The High Court noted that the assessee had failed to discharge the onus of proving the credit worthiness of the lender and the genuineness of the transaction. The High Court noted that assessee's approach has been completely casual and despite multiple opportunities, assessee had failed to discharge his onus. The High Court denied remanding of matter to AO to permit the assessee to produce the relevant documents. The High Court observed that the assessee had not produced the income tax return of the lender or any confirmation and submitting only PAN and bank statements of lender was not enough. The High Court thus ruled in favour of the Revenue.

LD/68/84,[ITAT Mumbai: ITA No. 3205/Mum/2019], Dy. Commissioner of Income Tax Vs. M/s Empower India Limited 23/10/2019

The Revenue had disallowed ROC fees and stamp duty paid in connection with the increase of authorised share capital and also had disallowed deduction of expenses connected with the issue of bonus shares. ITAT observed that expenses incurred for the issue of bonus shares being capitalisation of reserves merely resulted in reallocation of companies funds and there was no inflow of fresh funds or increase in capital employed. ITAT noted that issue of bonus shares would not result in expansion of capital base of the assessee company and expenses attributable thereto were allowable. Deduction of expenses connected with the increase in authorised capital were denied relying on Supreme Court ruling in Brooke Bond India Limited. ITAT thus gave partial relief to the assessee.

LD/68/85, [ITAT Guwahati: ITA No. 30/Gau/2015], Tripura State Electricity Corporation Limited Vs. Deputy. Commissioner of Income Tax, 18/10/2019

Disallowance under section 40(a)(ia) regarding non-deduction of TDS on consulting charges upheld by ITAT for AY 2007-08. Though disallowance has been restricted to 30% of amount of expenses from Finance Act, 2014 w.e.f. 01.04.2015, ITAT rules that the same is retrospective and is applicable to instant case of AY 2007-08. Also, amendment under section 40(a)(ia) restricting disallowance to 30% from previous 100% of expense, stated to be curative one having retrospective effect.

Contributed by CA. Sahil Garud, CA. Mandar Telang, GST & Indirect Taxes Committee, Disciplinary Directorate and ICAI's Editorial Board Secretariat.
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Legal Update

LD/68/86, [Delhi High Court: ITA No. 904/2019], Principal Commissioner of Income Vs. M/s Punjab and Sind Bank, 16/10/2019

The Revenue had made an addition under section 14A w.r.t. dividend earned by assessee-bank on shares held as stock. ITAT had ruled in favour of the assessee against which revenue had preferred appeal to High Court. While upholding ITAT's judgement, the High Court relied on Supreme Court's ruling in *Maxopp Investment Ltd.*, wherein the Supreme Court made a distinction between the dividend earned in respect of the shares which were acquired to obtain and retain the controlling interest in a company, and the shares that were purchased for the purpose of selling them when share price goes up, to earn profits. The Supreme Court had ruled that 14A disallowance was not necessary when shares were held during business activity of the assessee and earning dividend was only by a quirk of fate. The Revenue's argument that Section14A disallowance is attracted irrespective of whether the shares were held as stock, was rejected.

LD/68/87, [ITAT Mumbai: ITA No. 1703/Mum/2019], M/s Keva Industries Pvt. Ltd. Vs. The Income Tax Officer, Mumbai, 16/10/2019

Assessee had bought certain shares of a Singaporean company as per Discounted Cash Flow (DCF) valuation, however, Revenue adopted Net Asset Value (NAV) method as per Rule 11UA of Income Tax Rules and calculated a higher price, thereby making an addition of ₹ 107 crores. ITAT observed that AO had wrongly applied Rule 11UA which comes into play in case of issue of shares under section 56(2)(viib) and that this section cannot be applied to a foreign company as the relevant Rule 11U which defines 'balance sheet' was not applicable to a foreign company. Method prescribing valuation of shares of a foreign company was introduced w.e.f. 01.04.2019 under Rule 11U(b)(ii) and the same was applicable prospectively. ITAT also rejected Revenue's argument of remanding the matter to CIT(A) for fresh adjudication. ITAT thus ruled in favour of the assessee.

LD/68/88, [Karnataka High Court: ITA No. 100098/ 2015], Principal Commissioner of Income Tax Vs. Nirani Sugars Limited,15/10/2019

Revenue had disallowed depreciation claimed by the assessee by applying rates specified in Appendix 1A as a percentage of actual cost, as against assessee's claim of depreciation based on WDV of asset in the belated return filed. ITAT held that the second proviso to Rule 5(1A) of the Income Tax Rules as per which an option was provided to claim depreciation on WDV of asset instead of on actual cost if such option is exercised before the due date specified under section 139(1)], as invalid. ITAT had held that since Section 32 does not provide any specific provision for exercising the option within the time limit, condition imposed in the second proviso of Rule 5(1A) was invalid. Karnataka High Court held that Tribunal is bound by the provisions of the Act and the Rules has no power to declare any provisions, of either the Act or Rules, to be invalid or ultra vires.

Transfer Pricing

LD/68/89, [Karnataka High Court: ITA No. 11618/ 2016], Devas Multimedia Private Limited Vs. Principal Commissioner of Income Tax, 27/09/2019

The Commissioner of Income Tax had invoked provisions of Section 263 on the final assessment order passed by the Assessing Officer pursuant to directions of DRP. The assessee contended that the Revenue has no power to invoke Section 263 in such case since that would amount to CIT examining the decision of the DRP which consists of three commissioners. Karnataka High Court ruled against the assessee and remarked that while interpreting statutory provisions, court cannot 'add any words or sentence' and even if there is any ambiguity, at the best the court can read down or strike down such statutory provision. The High Court observed that a writ court can interfere in respect of AO's notice only if there is any violation of statutory provision, and that there is no bar for the CIT to invoke Section 263 to examine the Final Assessment Order passed by the AO pursuant to the DRP. The High Court noted that unless and until Section 263 specifically prohibits examination of final assessment order pursuant to the DRP decision, "One cannot go beyond the statutory provision and so also 'read' or 'add' words while making interpretations."

LD/68/90, [Bombay High Court: ITA No. 726/2017], Principal Commissioner of Income Tax Vs. M/s Merck Limited, 16/09/2019

The assessee had transactions of import of products

manufactured its German Plant which had a superior quality compared to similar products manufactured in India. ITAT had ruled in favour of the assessee and had deleted the Transfer Pricing adjustment by granting a quality adjustment of 10% under Comparable Uncontrolled Price method while benchmarking imports. The High Court remarked that though two products are identical, yet there could be difference of their prices in the open market on account of perception. This factor needed to be considered while calculating the Arm's Length Price. The High Court upheld the order of ITAT and noted that quality adjustment was allowed as per terms of Rule 10B(1)(a)(ii).

GST

LD/68/91, [2019-TIOL-380-AAR-GST (Bengaluru)] M/s Ascendas Services India Pvt Ltd., 30/09/2019

When the applicant facilitated transportation services to commuters of business park (operated and maintained by the applicant) by issuing bus passes, but the transport agency raised one consolidated invoice on applicant instead of raising bills on individual passengers for transportation services, AAR held that applicant cannot be regarded as 'intermediary' and the value of bus passes distributed by the applicant shall be included in the value of services provided by the applicant.

LD/68/92, [2019-TIOL-365-AAR-GST (Bengaluru)], M/s Aquarelle India Private Limited, 30/09/2019

At the time of vacating leased premises, when applicant handed over fixtures fastened by them to such premises, without charging consideration to the lessor, AAR held that such transfer of a business asset by the applicant would be chargeable to GST in terms of entry no. 4(a) of Schedule II to CGST Act, 2017. Further, AAR held that value of such supply shall be determined in terms of Rule 27, 30 or 31 of CGST Rules, 2017.

Note: It appeared that in this matter, the provisions of Section 7(1A) [as amended retrospectively] were not taken into consideration by the Ld. AAR. The section provides that, where certain activities or transactions, constitute a supply in accordance with the provisions of sub-section (1), they shall be treated either as supply of goods or supply of services as referred to in Schedule II. Hence, Schedule II has applicability only in cases where a transaction is regarded as "supply" within provisions of Section 7(1). In the present case, the supply is without consideration and is also not covered under any of the entries mentioned in Schedule I. Hence, this Ruling may need reconsideration.

LD/68/93, [2019-TIOL-346-AAR-GST (Bengaluru)] M/s Humble Mobile Solutions Pvt Ltd., 19/09/2019

When applicant operated e-commerce platform wherein individual drivers were connected to customers and such drivers provided services of driving in vehicles of customers, i.e., service recipients, AAR held applicant e-commerce operator would not be liable to pay tax for supply of services by drivers under section 9(5) of CGST Act, 2017 read with Notification No. 17/2017-CTR.

LD/68/94, [2019-TIOL-323-AAR-GST (Bengaluru)] Carnation Hotels Pvt Ltd., 16/09/2019

Supply of accommodation services supplied to SEZ units for authorised operations is inter-state supply under section 7(5)(b) of IGST Act, 2017 and the same can be treated as zero-rated supplies.

AAR noted that in light of Section 16(1)(b) of IGST Act, 2017 and Rule 46 of CGST Rules, 2017, the supplies of goods or services or both towards authorised operations only shall be treated as supplies to SEZ developer/SEZ unit. Also, AAR noted that in terms of *Circular No. 48/22/2018-GST dated 14.06.2018* it is clarified that services of short-term accommodation, conferencing, banqueting, etc. provided to SEZ developers or SEZ units shall be treated as inter-state supply. Also, AAR noted that as regards whether such supply of services to SEZ units would be treated as zero-rated supply, said circular clarified that subject to provisions of Section 17(5) of CGST Act, 2017, if event management services, hotel, accommodation services, consumables, etc. are received by SEZ developer or SEZ unit for authorised operations, as endorsed by specified officer of the Zone, the benefit of zero-rated supply shall be available in such cases to SEZ supplier. Therefore, in light of said clarifications, AAR held that supply of accommodation services by the applicant to SEZ units would be interstate supply as per Section 7(5)(b) of CGST Act, 2017 and can be treated as 'zero-rated supplies' and invoice can be raised without charging GST after executing LUT.

Legal Update

LD/68/95, [2019-TIOL-318-AAR-GST (Bengaluru)] M/s Elior India Catering LLP, 12/09/2019

When applicant prepared food at the premises of its customer and sold food to employees of the customer by charging consideration to employees, AAR held that such services won't be regarded as 'outdoor catering services' in terms of entry no. 7(v) of *Notification No. 11/2017-CTR*. Such services would be classifiable under entry no. 7(i) as 'supply of food by canteen' and chargeable to 5% GST subject to conditions stipulated in the proviso to the said entry.

Excise

LD/68/96, Uttarakhand High Court: Special Appeal No. 893 of 2019, Pegasus Farmaco India Private Limited Vs. The Union of India & Ors, 25/09/2019

The assesee had appealed before the High Court on the issue of waiving the condition of depositing the 7.5% of disputed duty for entertaining an appeal under section 35F of Central Excise Act. The assessee's reliance on Delhi High Court judgement in Shubh Impex was rejected by the High Court. The High Court analysed Section 35F and observed that by the words 'shall not entertain any appeal', legislative intent was clear as to the obligation to deposit 7.5% of the disputed duty being imperative and that no authority under the Central Excise Act has discretion to waive such a requirement. The High Court observed that the statutory provision prohibits the Tribunal from entertaining an appeal without pre-deposit of 7.5% of disputed duty and that it would not be appropriate to waive such requirement under proceedings of Article 226 of the Constitution of India.

LD/68/97, [Gauhati High Court: C. Ex. App. 1/2019], The Commissioner of Central Goods and Service Tax Vs. SRD Nutrients Private Limited, 06/09/2019

The assessee had utilised Cenvat credit available with it for the mandatory pre-deposit payment of filing of appeal, as per 35F of Central Excise Act, 1944. CESTAT ruled in favour of the assessee against which the Revenue had preferred appeal before the Gauhati High Court. Gauhati High Court referred to Jharkhand High Court ruling in Akshay Steel Works and Gujarat High Court ruling in Cadila Health Care Pvt. Ltd., which had ruled in favour of the assessee. The High Court held that Rule 3(4) which stipulates that Cenvat credit may be utilised for payment in certain cases, was not exhaustive and it did not impose any prohibition on the assessee to avail such credit for the purpose of pre-deposit. The High Court thus ruled in favour of the assessee thereby permitting such utilisation.

Disciplinary Case

Company carrying out the business of Non-Banking Finance Company without obtaining Certificate of Registration from RBI — Failure of Respondent-Auditor to report the matter of undertaking of NBFC business by the Company to RBI amounts to Professional misconduct.

Held:

The Committee observed that the main charge against the Respondent was that he being an auditor of the Company for the relevant period, failed to report that the Company had carried the business of Non-Banking Finance Company without obtaining the certificate of registration from the RBI. The Committee has condemned the Respondent's failure to not to report the carrying out of business of Non-Banking Finance Company to RBI. It is observed that the Respondent had admitted that such non-reporting is a lapse on his part and apologised for not reporting the matter of undertaking NBFC business to the RBI. The Committee found that it was a lapse on the Respondent's part as he failed to carry out the due diligence which he was required to do. Accordingly, the Committee held that the Respondent is guilty of professional misconduct falling within the meaning of Clause (7) of Part I of the Second to Chartered Accountants Act, 1949.