MOHINDER PURI & CO.
CHARTERED ACCOUNTANTS

Corporate Update

August | 2023

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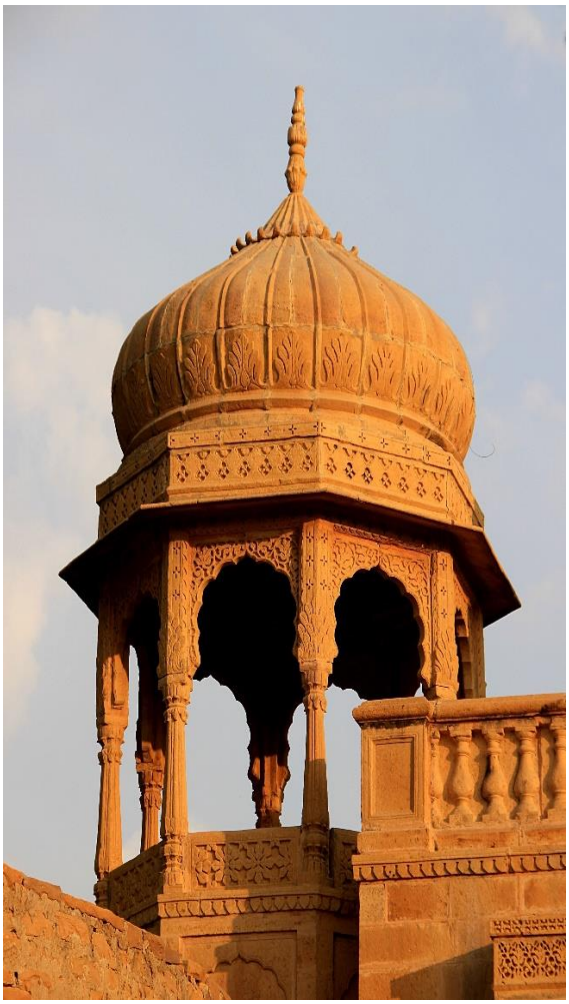

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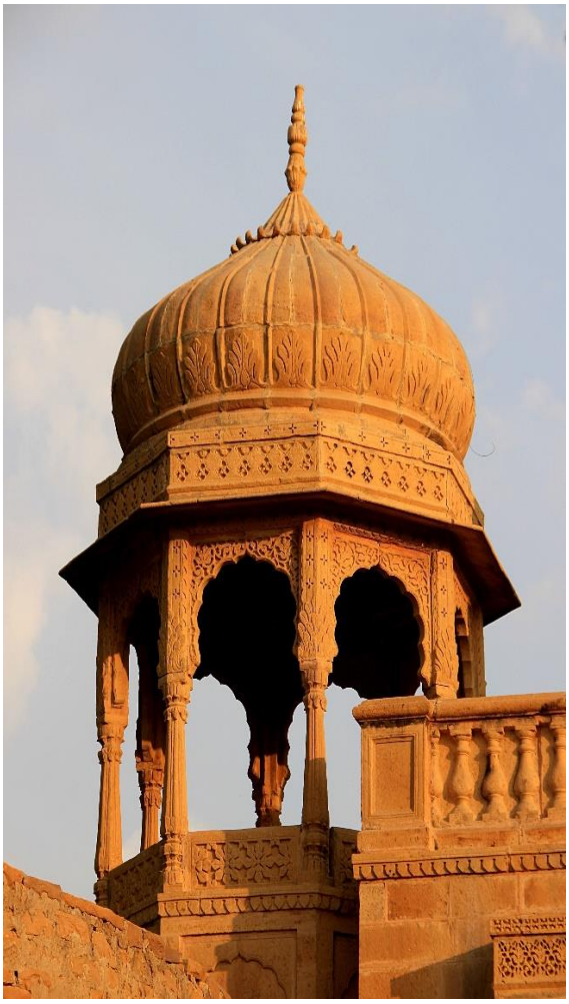

FOREWORD

Dear Reader,

This month India successfully hosted G20 meeting where several heads of state of various countries participated.

The New Delhi Leader's consensus declaration committed to policies that enable trade and investment to serve as an engine of growth and promote private enterprise, startups and MSME's.

The Indian economy continues to do well and GDP growth expected to be around 6.5% in the current financial year.

In this update we focus on important notifications, circulars under various regulations and analysis of important case laws.

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DIRECT TAXES

INTERNATIONAL TAXATION

CASE LAWS

Payment of royalty for use of technology can be clubbed under manufacturing segment

Cummins India Limited v/s ACIT [TS-489-HC-2023(BOM)-TP]

In a recent decision the Hon'ble Bombay High Court reversed the decision of ITAT and held that aggregation of Royalty paid for technical assistance/know-how under the manufacturing segment is permissible.

On the facts of the case, the assessee is engaged in the business of manufacture and sale of Internal Combustion Engines, Spares, Components, service of Engines & Gensets and Allied Equipment etc. The assessee had entered into various international transactions with its Associated Enterprise(s) (AE's) including the payment of royalty to its AE for providing technical know-how and knowledge. The assessee had aggregated royalty paid to AE under the manufacturing segment for benchmarking using TNMM (Transactional Net Margin Method), being closely linked to such segment.

The Transfer Pricing Officer (TPO), however, rejected the aggregation approach stating that transactions can be aggregated under a segment if their value form a substantial part of the transactions being analyzed under the segment and transactions is said to be closely related when decision of price of one product or service depends upon the price of another product or service. Since royalty transactions do not in any manner impact/influence the pricing of the sale price or other transactions in the manufacturing segment, the transaction of royalty was independently benchmarked by TPO. The TPO used Comparable Uncontrolled price (CUP) method and used internal comparable rate of 1% paid for domestic sales, to the higher rate of 8% rate of royalty paid for exports. The assessee also submitted that the aggregation of royalty was accepted by the ITAT in earlier years assessment. However, TPO rejected this claim by stating that in earlier orders aggregation of royalty with other transactions was not discussed and the agreement under which the royalty is paid in the years under consideration is different from the years for which orders were passed earlier.

The assessee filed objection with Dispute Resolution Panel (DRP), who upheld the order of AO/TPO. Subsequently, the assessee filed an appeal before ITAT. The Hon'ble ITAT relying on the decision of **Magneti Marelli Powertrain India (P.) Ltd. Vs. DCIT [(2016) 389 ITR 8 469 (Delhi)]** upheld the decision of the authorities.

Aggrieved, the assessee filed an appeal before High Court of Bombay. The assessee contented that the aggregation of royalty has been accepted by the Hon'ble ITAT in the earlier AY's being inextricably linked with the manufacturing activity and there is no material change in the facts of the case vis-à-vis such earlier AY's. The assessee also contended that the case law relied upon by the Hon'ble ITAT is not applicable on facts of the said case as in such case the taxpayer paid its AE for technical assistance in addition to the royalty and was unable to justify the payment for technical assistance. However, in the case of the assessee the TPO itself has accepted that the assessee has paid royalty for the technology received from its AE.

The revenue contented that in the earlier AY's the issue of aggregation of transactions was not discussed. Further, since the

technology used for manufacturing of products for domestic and export sales is same, the higher rate of royalty paid for export sales is not justified. The revenue also placed reliance on the decision of **Magneti Marelli Powertrain India (P.) Ltd.** against aggregation of royalty under manufacturing segment**.**

The Hon'ble High Court accepted the contention of the assessee and held that the decision of **Magneti Marelli Powertrain India (P.) Ltd.** is not applicable on the facts of the case as in the said case the assesee had failed to substantiate the need for payment of technical assistance fees. However, in this case the TPO has accepted that assessee has received technology from its AE. The High Court further held that the TPO cannot subject royalty payment to an entirely different CUP method when it has accepted the TNMM method as the most appropriate method to benchmark assessee's international transactions under manufacturing activity in earlier years. The Hon'ble High Court held that it is not open to the TPO to subject only one element i.e. payment of royalty to an entirely different CUP method. The adoption of a method as the most appropriate assures the applicability of one standard or criteria to judge an international transaction. Each method is a package in itself, as it were, containing the necessary elements that are to be used as filters to judge the soundness of the international transaction in an ALP fixing exercise. If this were to be disturbed, the end result would be distorted and within one ALP determination for a year, two or even five methods can be adopted. This would spell chaos and be detrimental to the interests of both Assessee and the revenue. The Hon'ble High Court also noted that in the absence of any changes in the material facts, department is bound to follow the earlier decision, relying on the case **Radhasaomi Satsang vs CIT [(1992) 193 ITR 321 (SC)].**

In view of the above, the appeal of the assessee was allowed.

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Deferred Shares issued by UK Company to the assessee are to be treated as ordinary shares as upheld by ITAT Delhi

FabIndia Overseas Pvt. Ltd. v/s JCIT [TS-473-ITAT-2023(DEL)-TP]

In a recent decision Hon'ble ITAT, Delhi bench held that, deferred shares convertible into ordinary shares should be benchmarked as ordinary shares and confirmed TP adjustment made on redemption of 'Deferred Shares' held in AE.

The facts of the case are as under:

The assessee has undertaken transaction of redemption of deferred shares which was justified using "Other Method" in the Form 3CEB filed by the assessee. During the transfer pricing proceedings, the assessee submitted that the deferred shares were redeemed at par value.

The assessee submitted before TPO that it invested in 25.1% shareholding of its AE, viz East Limited, in United Kingdom. It also acquired deferred shares in East Limited, which did not allow any voting rights or participation in profits. The deferred shares were purchased to safeguard against dilution of 25.1% of shareholding of assessee, i.e in the event of assessee shareholding falling below 25.1%, the deferred shares would be converted into ordinary shares. The

assessee submitted that since the shares were acquired only for safeguarding its shareholding, they had no market value and were accordingly, redeemed at par value.

The TPO, however, asked the assessee to submit the valuation report for the deferred shares and in the absence of the same, based on the valuation report submitted by the assessee in respect of ordinary shares made upward adjustment to the value of the deferred shares.

The assesee filed appeal before CIT(A) wherein the order of TPO was upheld.

The assessee filed further appeal before ITAT wherein it was held that main contention of the assessee was the deferred shares are non-marketable, do not have voting rights and do not receive dividends but these deferred shares can be converted into ordinary shares when the holdings of the assessee in East Ltd. falls below 25 .1%. Keeping in view the fact that the deferred shares can be converted into ordinary shares without any encumbrances, the Hon'ble ITAT rejected the appeal of the assessee and upheld the order of CIT(A).

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CIRCULAR / INFORMATION

Safe Harbour Rules for AY 2024-25 notified

CBDT vide notification no. 58/2023 dated August 09, 2023 notified Safe Harbour Rules for AY 2024-25. As per the notification, the rates applicable from AY 2017-18 to 2023-24 as per the Safe Harbour Rule will continue to apply for AY 2024-25.

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CBDT releases Fifth Annual Report on APA programme for FY 22-23

CBDT has released Fifth Annual Report on APA (Advance Pricing Agreement) programme for financial year 2022-23. As per the said report 95 APA's which include 63 unilateral APA's and 32 Bilateral APA's have been entered in the FY 2022-23. The maximum APA's have been entered by the service sector of the Indian economy. A total number of 267 transactions have been covered in Unilateral APA and 179 transactions in Bilateral APA. The major transaction covered by APA's includes 'Reimbursement/Recovery of expenses' and 'Provision of IT enabled services'. For majority of transactions TNMM has been used to benchmark the international transactions. It is estimated that the 516 signed APA's have resulted in bringing finality in taxation to income of about Rs. 19,000 crores. This translates into a payment of tax of about Rs. 7,000 Crore.

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DOMESTIC TAXATION

CASE LAWS

Compensation paid on termination of agreement and depreciation on non-compete fee are allowable deduction

Pr. CIT v. Music Broadcast Private Limited [TS-466-HC-2023(Bom HC)]

Recently, the Bombay High Court has held that compensation paid on termination of an agreement is allowable as Revenue expenditure. Further, the Court allowed claim of depreciation on non-compete fee as it is classifiable as an 'intangible asset' under Section 32(1) of Income-tax Act, 1961 (Act).

In the facts of the case, the assessee (i.e., Music Broadcast Private Limited) was earning advertising income from relaying advertisements in programs broadcasted by radio station 'Radio City.' The assessee had entered into an agreement with Star India Pvt. Ltd. (SIPL) for procuring advertisements from various clients for which it paid certain fees to SIPL. Pursuant to a dispute, the assessee terminated the said agreement, and it made payment of termination compensation as well as a non-compete fee (which restricted SIPL in competing in business similar to the assessee for another 2.5 years) to SIPL. The assessee claimed both the amounts as revenue expenditure in the tax return of Assessment Year (AY) 2008-09.

The case of the assessee for AY 2008-09 was selected for scrutiny proceedings in which the tax officer treated expenditure towards termination compensation and non-compete fee as 'capital' in nature. The Commissioner (Appeals) reversed the findings of the tax officer and held termination compensation as revenue expenditure while, non-compete fee was held to be capital expenditure eligible for depreciation under Section 32(1) of the Act. On further appeal, the Tax Tribunal accepted the views expressed by the Commissioner (Appeals).

Thereafter, the matter travelled to the Bombay High Court which held as under:

- **Termination Compensation** - Payment of termination compensation did not create any asset/ advantage which gave rise to enduring benefit for business. Such termination resulted in saving of expenses which would have been incurred by the assessee in future if such an agreement continued. The payment was for business consideration and as a matter of commercial expediency. Accordingly, the assessee could claim deduction of compensation paid on termination of agreement as revenue expenditure [reliance placed on **CIT v. Ashok Leyland Ltd. (1972) 86 ITR 549 (SC)**].

- **Non-compete fee** – Non-compete fee paid by assessee not only gave it enduring benefit but also protected its business against competition. Such fee falls within the ambit of expression 'or any other business or commercial rights of a similar nature' as envisaged under Explanation 3(b) to Section 32(1) of the Act. Thus, assessee is entitled to claim depreciation under Section 32(1) on such non-compete fee [reliance placed on **CIT v. Piramal Glass Ltd. (ITA No. 556 of 2017) (Bom HC)**].

In view of the aforesaid, the Bombay High Court upheld the decision of the Tax Tribunal and allowed the assessee to claim termination compensation as revenue expenditure and depreciation on non-compete fee.

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Change in shareholding pattern within the same beneficial owners does not invoke Section 79

Recently, Mumbai ITAT in the case of Hiranandani Healthcare Private Limited (assessee) held that the provisions of Section 79 will be invoked only if the shares of the company carrying not less than 51% of the voting power were not beneficially held by the "very same group of persons" in the year in which loss was incurred and the year in which the carried forward loss is to be set off.

On facts of the case, the assessee was engaged in providing health care services and was having carried forward losses, which were set off by it while filing the return of income. The assessee had two shareholders on the first day of the financial year holding shares in the ratio of 40:60. During the year, assessee issued equity shares to one of the shareholders pursuant to which the shareholding pattern got changed to 85:15.

AO rejected the set off of carried forward losses invoking the provisions of section 79 on the premise that the carry forward and set off of losses is not allowed if there is a change in the shareholding pattern as mentioned therein. The Ld. CIT(A) upheld the AO's order.

The assessee filed an appeal before Hon'ble Mumbai ITAT. The assessee contended that Section 79 bars setting off of carried forward losses only if the shares of the company carrying not less than 51% of the voting power were not beneficially held by the very same group of persons in the years in which the losses were incurred and the years in which the said loss was sought to be set off.

The Hon'ble ITAT noted that there were only two shareholders in the assessee company, beneficially holding 51% of the voting power, as a group, in both the years, i.e., the year in which the losses were incurred and the year in which the losses were sought to be set off, hence there is no change in the shareholding pattern of the group of persons holding the shares.

It was further noted by the Hon'ble ITAT that since one of the shareholders was holding 81.34% of the shares in the other shareholder company, the change in the ownership of shares intra group does not affect beneficial ownership. Accordingly, the Hon'ble ITAT concluded that there is no change in the beneficial voting power in the assessee and the provisions of Section 79 would not be applicable.

In view of the above, ITAT set aside the orders of CIT(A) and allowed set off of carried forward losses.

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CIRCULAR / INFORMATION

CBDT notifies Form 71 for claiming TDS credit under Sec.155(20)

Hitherto, a taxpayer could claim credit of tax withheld in the relevant year as well as in the earlier year in its return of income, if income pertaining to such TDS is shown in the relevant year. There was no provision to

claim the credit of tax deducted in the subsequent years on income reported in the earlier years.

In order to remove such difficulty, an amendment was made in section 155 of the Act by the Finance Act 2023 by the insertion of subsection 20 to provide that if the income is reported in the tax return of any assessment year and corresponding tax is deducted in any subsequent year, an application for claiming the TDS can be made in the form to be prescribed within two years from the end of the financial year in which the tax was deducted at source.

Accordingly, the Central Board of Direct Taxes (CBDT) has now notified a new rule, Rule 134, along with Form No. 71, to claim TDS credit in such cases through Notification No. 73/2023 dated August 30, 2023.

New Form 71 for application under the section 155(20) requires the general details with respect to income and income tax return to be submitted. Form 71 is required to be furnished to the Principal Director General of Income-tax (Systems) or the Director General of Income-tax (Systems) or any person authorised by them. The said officer shall forward the Form 71 to the Assessing Officer. Some of the key details to be provided in the Form are:

1. Relevant Assessment year in which income has been offered, separate forms have to be filed for different financial years.
2. Subsequent financial year in which TDS has been deducted.
3. Total income/loss of the assessee returned in the relevant assessment year.
4. Amount and nature of Specified Income along with rate at which it has been taxed.

   Specified income means any income referred to in sub-section (20) of section 155 which has been included in the return of income of relevant assessment year and TDS on such income is deducted and paid in a subsequent financial year.
5. TDS deducted on specified income, date and rate of deduction of TDS.
6. Name of deductor and TAN and PAN of the deductor and date of payment of TDS.

Under the provisions of section 155(20), the assessing officer shall amend the order of assessment or any intimation allowing credit of such tax deducted at source.

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CBDT revises Rule 3 to the Income-tax Rules, to lower the Valuation of Rent-Free Accommodation and introduces an inflation linked cap

- Vide notification no. 65/2023 dated August 18, 2023, Central Board of Direct Taxes (CBDT) has made certain changes in Rule 3, by providing revised method for valuation of rent-free unfurnished accommodation which is treated as perquisite in the hands of an employee. The changes are as follows:

➢ **Where the accommodation is owned by the employer (according to population census 2011):**

Population exceeding 40 lakhs	10% of the Salary (reduced from 15%)
Population exceeding 25 lakhs but not exceeding 40 lakhs	7.5% of the Salary (reduced from 15%)
Population exceeding 15 lakhs but not exceeding 25 lakhs	7.5% of the Salary (reduced from 10%)
Population exceeding 10 lakhs but not exceeding 15 lakhs	5 % of the Salary (reduced from 10%)
Population below 10 lakhs	5 % of the Salary (reduced from 7.5%)

- **Where the accommodation is taken on lease or rent by the employer:**

  The amount of perquisite shall be lower of the actual amount of lease rent or 10% of the salary (reduced from 15%).

- **Where the accommodation is provided for more than one year:**

  Where the accommodation is owned or taken on lease or rent by the employer and is continued to be provided to the same employee for more than one year, the valuation in subsequent years will not exceed the first year's valuation adjusted by the Cost Inflation Index.

  Thus, the perquisite value of rent-free accommodation in the subsequent year shall be lower of the following:

  a) Perquisite value computed as per the above rules; or

  b) First year's perquisite value as adjusted by the Cost Inflation Index (CII).

  The adjusted first year's perquisite value shall be computed as per the following formula:

  Adjusted first year's perquisite value = First year's perquisite value * CII of the subsequent year/ CII of the first year

Above changes in Rule 3 shall be effective from September 01, 2023, and the valuation for the period before September 01, 2023 shall continue to be made as per existing rules.

"first year" means the financial year 2023-2024 or the financial year in which the accommodation was provided to the employee, whichever is later.

Cost Inflation Index means the index notified by the Central Government under clause (v) of Explanation to section 48.

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Mechanism for computing income on maturity of life insurance policies having high premium

Rule 11UACA and Circular No. 15 of 2023 dated August 16, 2023 issued by CBDT

Section 10(10D) of the Act provides for income-tax exemption on the sum received under a life insurance policy, including bonus on such policy, if the premium payable on such policy does not exceed 10% of the capital sum assured. In order to prevent misuse of the exemption by high-net-worth individuals to earn exempt income through investment in life insurance policies having large premium contributions, the Finance

Act, 2023 had introduced Section 56(2)(xiii) as well as sixth and seventh Proviso to Section 10(10D) to tax income from insurance policies (other than ULIP for which provisions already exist issued) issued on or after April 1, 2023, having premium or aggregate of premium above Rs. 5,00,000 in a year.

As per section 56(2)(xiii), the sum received on such insurance policies is taxable under the head "income from other sources". Deduction for premium paid is allowed if such premium has not been claimed as deduction earlier. The mechanism for computation of such income was to be prescribed.

The Central Board of Direct Taxes ('CBDT'), vide its Notification No. 61/2023 dated August 16, 2023, has inserted a new Rule 11UACA to provide the manner of computing the income chargeable to tax under Section 56(2)(xiii) of the Act.

In terms of Rule 11UACA, where any sum is received under the life insurance policy during a particular year, the sum so received shall be chargeable to tax after deduction of aggregate of premiums paid by the taxpayer till the date of receipt of such sum. However, the new rule prohibits the deduction of those premium payments which have already been claimed as deduction under any provision of the Act.

In case of any subsequent receipt under the aforesaid life insurance policy, deduction shall be allowed of the aggregate of premiums paid (which have not been claimed as deduction under any other provision of the Act) by the taxpayer till the date of receipt of such sum as reduced by the premiums earlier claimed as deduction under section 56(2)(xiii).

The rule further specifies the cases where Rule 11UACA would not be applicable:-

- where sum received under the life insurance policy is exempt under Section 10(10D) of the Act
- where sum is received under a unit linked insurance policy; and
- where sum is received under a Keyman insurance policy and same is chargeable to tax under Section 56(2)(iv) of the Act

CBDT has also issued a circular no. 15/2023 ('the circular') mitigating the difficulties being faced by the taxpayers while interpreting the sixth and seventh proviso to Section 10(10D) of the Act.

The Circular provides guidelines for taxability of consideration received under a life insurance policy issued on or after April 01, 2023 ('eligible life insurance policy'), by way of various examples. These examples have been broadly categorized into two situations, firstly, where no exemption has been claimed in respect of any eligible life insurance policy in the past and secondly, where taxpayer has claimed exemption in respect of any eligible life insurance policy in earlier year(s). Assuming that other conditions of Section 10(10D) are fulfilled, taxability in both the situations can be understood as under -

Situation 1: In these cases, consideration received under an eligible life insurance policy shall be exempt if annual premium of such policy does not exceed Rs. 5,00,000/- during the life term of such policy. Where taxpayer has multiple eligible life insurance policy, consideration received under those eligible life insurance policy shall be exempt, where aggregate of premiums under such policies does not exceed Rs 5,00,000/- during their term.

Situation 2: Taxability of consideration received under a single or multiple eligible life insurance policy is same as in Situation 1, except that while computing the threshold

of annual premium of Rs. 5,00,000/-, annual premium of those policies would also be taken into consideration for which exemption under this Section has already been claimed by the taxpayer in the past years.

CBDT has further clarified that the Goods and Service tax ('GST') component in the annual premium of eligible life insurance policy shall be ignored while computing the threshold of Rs. 5,00,000/- in both the above situations.

Furthermore, it has been clarified that the Term Life insurance policies (where no sum is payable if the insured person survives the policy tenure and the sum is only paid to the nominee in case of death of the person insured) are outside the purview of these provisions and any sum received under term life insurance policy would continue to be exempt under Section 10(10D) of the Act.

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INDIRECT TAXES

GOODS AND SERVICES TAX

CASE LAW

ITC not allowed to buyer if Supplier has not paid GST liability to the Government

[Patna High Court in M/s Aastha Enterprises vs. State of Bihar, 2023(8) TMI 1038- Patna High Court dated August 18, 2023]

Facts of the Case

M/s. Aastha Enterprises (the petitioner) purchased goods from their supplier, received a tax invoice and paid the consideration along with tax to the supplier. The Petitioner claimed ITC of the tax paid to the supplier.

However, the Department passed an assessment order dated May 25, 2022 denying ITC to the petitioner on the ground that the supplier has not paid the tax so collected from the petitioner to the state, and therefore the ITC availed is in contravention of section 16 of the BGST Act.

Judgment

The Patna HC made the following observations while dismissing the writ petition and denying ITC to the purchasing dealer for default of payment of tax by the supplying dealer:

- Section 16(1) of the GST Act deals with the eligibility of a dealer to avail ITC and clause (a), (b), (c) & (d) of Section 16(2) of the GST Act deal with the conditions for enabling such benefits.

- Clause (a), (b), (c) & (d) of Section 16(2) of the GST Act should be read and satisfied together and not separately to avail the benefit of ITC.

- Clause (c) of Section 16(2) of the GST Act clearly states that ITC will be available to the purchasing dealer only if the supplier has paid the tax to the Government.

- Relied upon the Hon'ble Supreme Court's decision in the case of The State of Karnataka v. M/s Ecom Gill Coffee Trading Private Limited; Civil Appeal No. 230 of 2023 wherein it was held that the dealer who claims Input Tax Credit has to prove beyond doubt, the actual transaction by furnishing the name and address of the selling dealer, details of the vehicle delivering the goods, payment of freight charges, acknowledgment of taking delivery of goods, tax invoices and payment particulars etc and that mere production of tax invoices would not be sufficient to claim ITC.

- ITC is in the nature of benefit or concession as held in the case of ALD. Automotive Pvt. Ltd., and therefore if the conditions prescribed in the statute are not complied with no benefit flows to the claimant.

- The Input Tax Credit claim raised by the petitioner cannot be sustained when the supplying/selling dealer has not paid up the amounts to the Government and Accordingly, the writ petition was dismissed.

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CIRCULAR / INFORMATION

CIRCULAR, NOTIFICATION & OTHER CHANGES

A. New Provisions in Section 16 of the IGST Act, 2017 have been notified (which shall come into effect from October 01, 2023) (Notified Vide N.N 27/2023 dated July 31, 2023)

- Earlier, all supplies to SEZ or SEZ developers were considered as Zero-Rated supplies. Now, only those supplies to SEZ or SEZ developers will be considered as Zero-rated supplies which are "**for Authorized Operations**".

- Until now, there was no provision for realisation of sale proceeds in case of export of goods. Now, if sale proceeds in case of export of goods are not realised within the time prescribed under FEMA Act, refund received earlier would be required to be returned along with applicable interest.

- Earlier, refund in case of Zero-Rated supplies (Export) with payment of IGST was allowed on supplies of all goods and/or services. Now, the government has notified certain goods which cannot be exported on payment of IGST and refund cannot be claimed of the tax so paid. In other words, the said goods can only be exported under bond or LUT. Few examples of such goods are Pan-masala, Unmanufactured tobacco (with/without lime tube) bearing brand name, chewing tobacco (with/without lime), Preparations containing chewing tobacco, Cut tobacco, Essentials oils other than those of citrus fruit, namely: of peppermint (Mentha piperita) and of other mints, etc.

B. Following provisions of the CGST Act, 2017 have also been notified (which shall come into force on October 01, 2023) (Notified Vide N.N 28/2023 dated July 31, 2023)

Matters to be heard by	Circumstances
Principal Bench	Where any one of the issues involved relates to Place of supply.
Single Member	Where tax/ input tax credit involved, or amount of fine/ fee/ penalty determined in the order appealed against does not exceed INR 50 lakhs; and The matter does not involve any question of law.
One Judicial Member and One Technical Member	All other cases

Please see *'Annexure'*

C. Provisions relating to GST Appellate Tribunal have been notified (which shall come into force on August 01, 2023) (Notified Vide N.N 28/2023 dated July 31, 2023).

The provisions relating to the setting up of GST Appellate Tribunal and Benches have been entirely substituted by the Finance Act, 2023. The government shall establish the Appellate Tribunal for hearing appeals against the orders passed by the Appellate Authority or the Revisional Authority. The government shall constitute a Principal Bench of the Appellate Tribunal at New Delhi which shall consist of the President, a Judicial Member, a Technical Member (Centre) and a Technical Member (state). State Benches will be established based on the request of the state as well as the recommendation of the GST Council.

Hearing of cases in different circumstances:

D. Amendment to CGST Act, 2017

CGST Act, 2017 has been amended by the Central Government through the CGST (Amendment) Act 2023. The amendment act inserted some new definition in Section 2 of the Act, namely:

Section 2(80A) – **Online gambling**- The expression 'online gambling' is defined as offering of a game on the internet or an electronic network and includes online money gaming.

Section 2(80B) - **Online Money gambling**- The expression 'online money gambling' is defined as online gaming in which players pay or deposit money or money's worth, including virtual digital assets.

Section 2(102A) - **Specified actionable claim**- The expression 'specified actionable claim' as the actionable claim involved in or by way of:

- betting;
- casinos;
- gambling;
- horse racing;
- lottery; or
- online money gambling.

Amendment to Section 2(105) - Meaning of Supplier: - A proviso has been inserted to the definition of 'Supplier'.

The newly inserted proviso provides that a person who organizes or arranges, directly or indirectly, supply of specified actionable claims, including a person who

owns, operates or manages digital or electronic platform for such supply, shall be deemed to be a supplier of such actionable claims, whether such actionable claims are supplied by him or through him and whether consideration in money or money's worth, including virtual digital assets, for supply of such actionable claims.

Amendment to Section 24 - Person liable to register compulsory

A new sub clause (xia) has been inserted in Section 24. According to the newly inserted clause, every person supplying online money gaming from a place outside India to a person in India is required to be registered compulsorily.

Amendments to IGST, 2017

Amendment to Section 2(17) - online information and database access or retrieval services- Section 2(17)(vii) has been substituted to provide that 'online information and database access or retrieval services' means services whose delivery is mediated by information technology over the internet or an electronic network and the nature of which renders their supply impossible to ensure in the absence of information technology and includes electronic services such as 'online gambling'.

Amendment to Section 10- place of supply of goods other than supply of goods imported into, or exported from India.

The Amendment Act has inserted a new **clause (ca) to Section 10(1)** which provides that where the supply of goods is made to a person other than a registered person, the place of supply shall, notwithstanding anything contrary contained in clause (a) or clause (c), be the location as per the address of the said person recorded in the invoice issued in respect of the said supply and the location of the supplier where the address of the said person is not recorded in the invoice.

Insertion of new Section 14A- Special provision for specified actionable claims supplied by a person located outside taxable territory.

Section 14A (1) - Supplier of online money gaming not located in the taxable territory, shall in respect of the supply of online money gaming by him to a person in the taxable territory, be liable to pay integrated tax on such supply.

Section 14A (2) - Supplier of online money gaming shall obtain a single registration under the Simplified Registration Scheme referred to in sub-section (2) of section 14 of this Act. Any person located in the taxable territory representing such supplier shall get registered and pay the integrated tax on behalf of the supplier. If such supplier does not have a physical presence or does not have a representative for any purpose in the taxable territory, he shall appoint a person in the taxable territory for the purpose of paying integrated tax and such person shall be liable for payment of such tax.

Section 14A (3) - Provides that in case of failure to comply with provisions of sub-section (1) or sub-section (2) by the supplier of the online money gaming or a person appointed by such supplier or both, any information generated, transmitted, received, or hosted in any computer resource used for supply of online money gaming by such supplier shall be liable to be blocked for access by the public in such manner as specified in the said Act.

Please note that the above-mentioned amendments shall be effective post issuance of appropriate notifications.

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Annexure

Relevant section under CGST Act, 2017	Particulars
Section 10: Composition Levy	Composite dealers have now been allowed to supply goods through e-commerce operators ("ECO"). However, the said dealers would still not be allowed to supply of service through ECOs .
Section 17: Apportionment of credit and blocked credits	Explanation to Section 17(3) of CGST Act, 2017 has been substituted to provide for inclusion of value of "Supply of warehoused goods to any person before clearance for home consumption" in value of "Exempt Supply" for the purpose of reversal of ITC under Rule 42/43 of CGST Rules, 2017. Further, a new Clause (fa) in Section 17(5) of CGST Act, 2017 has been inserted to provide that Input Tax Credit shall not be available in respect of goods or services or both received by a taxable person, which are used or intended to be used for activities relating to his obligations under corporate social responsibility referred to in section 135 of the Companies Act, 2013.
Sections 37, 39, 44 and 52: Furnishing details of returns	A Registered person shall not be allowed to file the following returns after a maximum period of 3 years from the due date of filing of the said returns: • GSTR-1 • GSTR-3B • GSTR-9 (Annual return) • GSTR-8 (GST return by E-commerce operator)
Section 122: Penalty for certain ofsfences	An ECO shall be liable to pay a penalty of INR. 10,000/- or amount of tax evaded whichever is higher if it breaches any of the following conditions: • Allows an unregistered person to supply goods or services other than a person exempted from registration, • Allows an interstate supply of goods or services by a person who are not eligible and • Fails to furnish correct details of supply of goods affected through it by a person exempted from obtaining registration in its return.

Section 132: Punishment for certain offences	The monetary threshold for launching prosecution for all offences mentioned in Section 132, CGST Act has been enhanced to INR 2 Cr from the present limit of INR 1 Cr (except for the offence of issuance of invoices without supply of goods or services or both, i.e., fake invoices). Further, following offences have now been decriminalized- • Obstruction or preventing any officer from discharging his duties, • Tempering of material evidence or documents, and • Failure to supply the information required under law or supplying false information.
Section 138: Compounding of offences	The compounding amount range has been reduced as follows: • Minimum from 50% to 25% of tax involved. • Maximum from 150% to 100% of tax involved.
Schedule III of the CGST Act: **Activities or transactions which shall be treated neither as a supply of goods nor a supply of services**	Following activities/transactions shall be treated neither as supply of goods nor as supply of services (with retrospective effect from July 01, 2017): • Supply of goods from a place outside India to another place outside India without such goods entering into India (i.e., Merchant trade). • Supply of warehoused goods to any person before clearance for home consumption. • Supply of goods by the consignee to any other person, by endorsement of documents of title to the goods, after the goods have been dispatched from the port of origin located outside India but before clearance for home consumption (i.e., High-seas sales). However, no refund of tax shall be made of the tax which has been collected.

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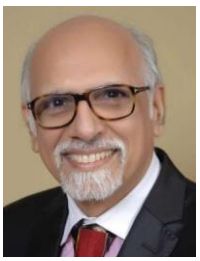

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