Legal Decisions

Income Tax

LD/69/41, [ITAT Jaipur: ITA No.595/JP/2019], The Income Tax Officer, TDS Vs. Ajmer Vidhyut Vitran Nigam Ltd. , 14/08/2020

CIT(A) had deleted levy of late fees under section 234E for AY 2016-17 and 2017-18 and Revenue's appeal against such deletion was dismissed by Jaipur ITAT, ITAT held that the matter was not covered by any of the exceptions as listed under the CBDT Circular No. 3/2018 regarding appeal filing monetary limit, Rejects Revenue's claim that the current levy under section 234E is based on information and processing of TDS statement by Central Processing Centre (CPC), which is an external agency and hence, the case falls under Clause (e) of para 10 of the Circular providing for an exception in cases where addition is based on information received from external sources in the nature of law enforcement agencies, ITAT held that where the TDS statement has been processed by the CPC and while processing the same, fee under section 234E has been levied having tax effect less than the prescribed limit, it will continue to be governed by low tax effect circular issued by the CBDT which is binding on the Revenue, ITAT also held that CIT(A) had not exceeded his jurisdiction while deleting the late fees levied.

The assessee had filed (online) his TDS return in form 24Q for the 3rd Quarter of FY 2016-17 on 11.03.2017. While processing the return, an intimation for default was communicated to the assessee under section 200A(1)(c) where late fee under section 234E of Rs. 7800/- was levied on the assessee-deductor. The assessee filed appeal before the CIT (A) who allowed the appeal and deleted the fee of Rs.7,800/- levied by the DCIT, CPC-TDS holding concurrent jurisdiction with the AO (TDS)-3, Jaipur over the case, as per the provisions of Section 120 read with 124 of the Income Tax Act, 1961. Aggrieved, the Revenue filed an appeal before Jaipur ITAT.

Revenue argued that provisions of Section 234E were mandatory in nature levied on processing of the late filing of e-TDS statements under section 200A1(c) of the Act after amendment w.e.f. 01.06.2015 by the Finance Act, 2015, and admittedly the return was filed by the assessee with a delay.

ITAT observed that the quantum of fee levied under section 234E was Rs 7800/- which was below the prescribed threshold for filing appeals by the Revenue. Against this the Revenue argued that its case was covered by the exception 10 (a) of the Board Circular No. 3/2018 dated 11.07.2018 of the said circular as amended vide CBDT communication dated 20th August, 2018.

ITAT analysed provisions of Section exception 10 (e) which had been referred by the Revenue, which relates to cases where addition was based on information received from external sources in the nature of law enforcement agencies such as CBI/ ED/ DRI/ SFIO/ Directorate General of GST Intelligence (DGGI). ITAT noted that in the instant case, the assessee had filed his TDS statement on TRACES which was an IT platform managed and run by the Tax Department and thereafter, the said statement had been processed centrally by Central Processing Centre which was again manned by the personnel of the Tax department and finally, intimation under section 200A (1) (C) of the said processing had been issued duly signed by DCIT, CPCTDS Ghaziabad.

ITAT found that as per the Revenue's own submission, DCIT, CPC-TDS Ghaziabad holds concurrent jurisdiction with the AO (TDS)-3, Jaipur over the case, as per the provisions of Section 120 read with 124 of the Income Tax Act, 1961. Therefore, ITAT held that "even though CPC had its separate and identifiable functions relating to TDS returns, the officers hold concurrent jurisdiction over such TDS matters with that of the AO, there cannot be any dispute that both administratively and functionally, the CPC of the Department was

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part of Income Tax Department and was therefore clearly not an external law enforcement agency quaIncome Tax department and that too, as specified in the aforesaid exception."

ITAT thus held that where the TDS statement had been processed by the CPC and while processing the same, fee under section 234E had been levied having tax effect less than the prescribed limit, it will continue to be governed by low tax effect circular issued by the CBDT which was binding on the Revenue.

Further, from the order of CIT(A), ITAT observed that CIT(A) had nowhere acceded to the contention of the assessee that provisions of Section 234E were not constitutionally valid. Thus, CIT (A) had not breached his authority and jurisdiction in this regard while passing the impugned order.

Thus, ITAT dismissed the present appeal filed by the Revenue on account of low tax effect given that the matter was not covered by any of the exceptions so specified and the contentions advanced by the Revenue on merits of the case were left open and not adjudicated upon.

LD/69/42, [ITAT Mumbai: ITA No.2297/Mum/2017], Network Construction Company Vs. The Asst. Commissioner of Income Tax , 11/08/2020

Section 50C held to be not applicable to transfer by way of contribution of 'development rights' to an AOP, Such transfer held to be covered under section 45(3) which provides for both charge and computation in cases of contribution of a capital asset by a partner, Assessee entered into a joint venture agreement with an AOP and agreed to contribute development rights as 'capital contribution' at an agreed consideration of Rs. 5 crores, AO treated the same as 'capital asset' and computed the sale consideration value under section 50C as per Stamp Valuation authority at Rs.10 crores and taxed capital gains accordingly.

The assessee purchased development rights in respect of 7 buildings from one Jayraj Devidas and others. Subsequently, assessee entered into a Joint Venture agreement and agreed to contribute the said development right as 'capital contribution' at an agreed consideration of Rs. 5 crores to Benchmark Properties, which was an AOP. The assessee filed its return of income for AY 2012-13 and disclosed the amount of Rs. 5 crores as 'capital contribution'. Assessee had invoked provisions of Section 43(5) while filing the return whereas the AO treated transfer of the development right in the three buildings under section 50C. Since the stamp value of the property was 10.10 Cr, an addition of 5.10 Cr was made by AO, which was also confirmed by the CIT(A).

Before ITAT, assessee argued that there is no transfer of land and building, but merely transfer of development rights and assessee was never the owner of the land and building and had only acquired simple development rights. ITAT noted that the AO treated the capital contribution as 'transfer' and assessed the same under section 50C of the Act by treating the consideration received as per circle rates and assessed the amount of Rs.5.10 crores as a long term capital gain under section 50C of the Act instead of amount declared by assessee as long term capital gain amounting to Rs.1.28 lakhs under section 45 (3) of the Act in its return of income.

ITAT found that the assessee had stated that the introduction of development rights by way of capital contribution under section 45(3) of the Act by the assessee was even though a transfer but it was not a sale because there neither any receipt nor any accrual of any consideration. ITAT noted that assessee had relied in coordinate bench ruling in in the case of Voltas Ltd Vs. ITO, wherein it was held that the provisions of Section 50C of the Act could not be applied to sale development rights of land owned by the assessee.

ITAT observed that the provision of Section 45 (3) of the Act was a charging provision having two limbs joined by conjunction "AND". The first limb was a charging provision which levies capital gain tax on gains arising from contribution of capital asset in the AOP by a member and Section limb was an essential deeming fiction for determining the value of consideration without which the charging provision would fail. Further, ITAT noted that the provisions of Section 50C of the Act also deeming fiction which deems only the value of consideration for the purpose of calculating capital gains in the transfer of capital asset from one person to another.

ITAT, therefore, held that the provisions of Section 50C of the Act were not applicable in the instant case and provision of Section 45 (3) of the Act will be applied. ITAT thus ruled in favour of assessee.

LD/69/43, [ITAT Delhi: ITA No. 5128/Del/2018], AWP Assistance India P. Ltd. Vs. The Dy. Commissioner of Income Tax, 07/08/2020

ITAT held that TDS credit denial vide Section 143(1) intimation without assigning reasons, suffered legal irregularity and cannot be sustained, for AY 2016-17, ITAT set aside the impugned orders and remanded the issue to the AO for disposal by way of speaking order, With respect to the advances received, assessee had recognized only such portion of income which pertains to a particular year along with corresponding TDS and had carried forward TDS of 1.56 Crores of AY 2015-16 since it pertained to AY 2016-17, Assessee filed the present appeal against Section. 143(1) intimation whereby the corresponding TDS brought forward from earlier AY to the income of subject AY was rejected, ITAT noted that intimation under section 143(1) is only a matter of information generated in a pro forma by the Centralized Processing Centre, Bangalore and it does not appear to be the result of any due examination of the issue by the learned AO.

The assessee had received certain payments in advance for the total service period of a work. Only such portion of income which pertains to a particular year was recognized along with corresponding TDS by the assessee and balance amount was shown as deferred revenue on the liability side of the balance sheet, and TDS of 1.56 Crores which pertained to income corresponding to work done in subsequent years was also carried forward by the assessee in AY 2015-16. Vide intimation under section 143(1), the corresponding TDS brought forward from the AY 2015-16 to the income of AY 2016-17 was not allowed against which assessee filed an appeal before CIT(A), which appeal was dismissed. Aggrieved assessee filled appeal before Delhi ITAT.

Aggrieved assessee filled appeal before Delhi ITAT.

At the outset, ITAT condoned the delay in filing of appeal. As the grievance of the assessee, based on the fact that no reasons were assigned for a disallowance of the TDS was concerned, having gone through the intimation under section 143(1) of the Act, ITAT found that such an intimation does not contain any reasons for disallowing the credit of TDS. As per ITAT, such intimation was only a matter of information generated in a pro forma by the Centralized Processing Centre, Bangalore and that it the result of any due examination of the issue by the AO.

ITAT remarked that "For want of reasons by way of speaking order, not only the assessee does not know the reason for disallowance, but at the same time we are also unable to appreciate the legality otherwise of such an act of disallowance." ITAT held that the impugned action of disallowance of the credit of TDS was unsustainable, in the manner it was presently manifested in the impugned order. ITAT found that the impugned disallowance of credit of TDS under intimation under section 143(1) of the Act suffered legal irregularity and cannot be sustained. Thus, ITAT set aside the impugned orders and remand the issue to the file of the AO for disposal after affording opportunity of hearing to the assessee.

LD/69/44, [Delhi High Court: ITA No. 822/2005], The Commissioner of Income Tax, Delhi Vs. M/s Nalwa Investment Limited, 07/08/2020

Delhi High Court held that receipt of shares of amalgamating company in lieu of shares of amalgamated company amounts to 'transfer' under section 2(47) in the hands of the assessee-shareholder and that the amount would be taxable under section 28 in the event the shares are held as 'stock-in-trade', Assessee, the promoter company of the Jindal group of companies transferred its shareholding in JFAL under a scheme of amalgamation in lieu of receipt of shares of JSL and claimed the same as exempt from capital gain tax under section 47(vii) and the AO noted that the shares were held as 'stock-in-trade' and so ought to be taxed as 'business income', If the shares are exchanged, it can be said the assessee has made realisation of the value of the shares and the difference in the price of the shares would have to

be treated as profit of the assessee for the taxation purpose, Matter remanded to check whether shares were held as stock or as capital asset.

The assessee is a promoter company of Jindal Group of Companies. It was holding shares of Jindal Ferro Alloy Ltd. (JFAL). Vide amalgamation scheme sanctioned under the Companies Act, 1956, JFAL got amalgamated with Jindal Strips Ltd (JSL). Consequently, the assessee company transferred its shareholding in JFAL in lieu of receipt of shares of JSL and claimed that the transaction was exempt from capital gain tax under section 47 (vii) of the Act. The AO adopted the value of shares of JSL at the rate of Rs. 218 per share and calculated the profit on receipts of shares of JSL under the scheme of amalgamation at Rs. 5.31 Cr, and taxed the same as 'business income'. As per Revenue since the assessee was holding JFAL shares as stock-in-trade and not as capital asset, it was not entitled to exemption under section 47(vii) of the Act. CIT (A) upheld the action of the AO.

ITAT observed that no profit accrued unless the shares held by assessee were either sold or transferred otherwise for consideration irrespective of the nature of holding. ITAT, without recording a categorical finding as to whether the shares qualified as 'capital asset' or 'stock- in-trade', allowed the appeals in favour of the assessee and held that no profit accrues when shares of the amalgamated company were received in lieu of shares of amalgamating company. Aggrieved, Revenue filed an appeal before the High Court.

High Court noted that transfers which were enumerated in sub clauses (i) to (xix) in Section 47 were exempted from the applicability of Section 45. It also manifested that transfers exempted from applicability of Section 45, nevertheless qualify to be 'transfer'. This was evident from the opening words of Section 47 which stipulate that Section 45 shall not apply to "following transfers". Thus, if the assessee were to contend that the shares in question were held as capital asset, the receipt of the shares of the amalgamated company in lieu of the shares held in amalgamating company would have to be regarded as a 'transfer'.

High Court held that the observation of ITAT that there is no transfer in the scheme of amalgamation is flawed and unsustainable in so far as capital asset is concerned. Subsequently, High Court proceeded to delve into the question as to whether in the scheme of amalgamation, shares of amalgamated company received in lieu of amalgamating company which were held as stock-in-trade, would result in income chargeable to tax under the head "Profits and gain of business or profession".

High Court referred to judgment of the Supreme Court in Orient Trading Co. Ltd. [(1997) 224 ITR 371 (SC)] which dealt with a case where shares held in stock-in-trade and were transferred for consideration in kind (exchange or barter). In Orient Trading, the Court formulated the question whether the surrendering of shares in the first company in exchange of the shares in the Section company by the assessee can be regarded as realisation of the Sectionurity on the date of such surrender and exchange. In such a case, difference between the book value of the shares of the first company and the market value of the shares of the Section company as on the date of such realisation will have to be treated as profit earned by the assessee in that transaction.

High Court observed that if the shares are exchanged, it can be said the assessee has made realisation of the value of the shares and the difference in the price of the shares would have to be treated as profit of the assessee for the taxation purpose. Also, one cannot ignore the fact that the shares that were with the assessee which have undergone the amalgamation process whereby they were replaced with new shares which would be valued entirely on different fundamentals. Thus, subsequent to amalgamation it was not the same stock in the inventory of the assessee.

Further, High Court considered the scenario of dissenting shareholders and stated that under the Companies Act, the shareholders who dissent to the scheme of the amalgamation were given the option of receiving cash or equivalent kind as the price for the shares on the basis of exchange ratio. The dissenting shareholders receive the value of their shareholding while the approving shareholders receive the same value in the form of shares of the amalgamated company. High Court observed that the process of amalgamation in its legal effect

from the taxation viewpoint would apply equally, irrespective of the status of the shareholder.

High Court held that finding of ITAT was incorrect, and thus ruled in favour of Revenue for statistical purposes and remanded the matter back to confirm whether the shares were held as capital asset or stock-in-trade.

LD/69/45, [ITAT Delhi: ITA No.4199/Del/2016], Peartree Enterprises Pvt. Ltd. Vs. The Dy. Commissioner of Income Tax, 05/08/2020

Amount paid by assessee co to its JV partner represented the diversion of income by overriding title, Delhi ITAT ruled in favour of assessee, Rejects AO's stand that the amount represented procurement commission subject to Section.40(a)(ia) disallowance on failure to deduct TDS during AY 2011-12, Assessee had entered into a JV with HCIL for the construction of road in Bihar and in terms of the MoU, on receipt of payment from client, JV account will pay 3% to HCIL and balance 97% to assessee.

The assessee is engaged in the business of Civil Construction Contracts. Assessee filed its return of income for AY 2011-12 declaring total income of Rs. 'Nil'. During assessment proceedings, the AO made an addition of Rs.92.80 lakhs. Assessee filed appeal before CIT (A) who granted partial relief to the assessee. As per AO, commission by assessee to HCIL for procurement of projects from RCD Bihar without deducting TDS was disallowable under section 40 (a) (ia).

ITAT observed that the assessee had entered into a JV with HCIL for the construction of road in Bihar. From the copy of MOU entered into by both the JV partners which was placed on record, assessee had demonstrated that both the parties were individually responsible for their respective share of services to the client and they individually assumed the risks. From the MOU, assessee had also demonstrated that the respective parties were not entitled to the profit or loss arising from the services performed by the other party.

ITAT held that the amount paid to HCIL represented the diversion of income by overriding title and thus AO was not justified in disallowing the expenses by invoking the provisions of Section 40 (a) (ia) of the Act. Thus ITAT ruled in favour of assessee on this ground.

On another ground of claim of assessee about expenses on repairs being Revenue in nature, ITAT observed that repairs were for preserving and maintaining an already existing asset and thus were to be allowed fully. ITAT thus ruled in favour of assessee.

Transfer Pricing

LD/69/46, [ITAT Bangalore: ITA No.2984/Bang/2018], The Asst. Commissioner of Income Tax Vs. EYGBS India Pvt. Ltd., 31/08/ 2020

Additional income offered to tax on account of voluntary TP-adjustment pursuant to APA by assessee in respect of Gurgaon SEZ unit is eligible for Section 10AA deduction for AY 2014-15, Section 92C(4) specifically denies claim of Section. 10AA deduction on any adjustment made by TPO under section 92CA, however, increased income on account of voluntary TP-adjustment pursuant to APA made by the assessee would be eligible for Section.10AA deduction. ITAT referred to ruling in IBM India [(59 CCH 260)] which had held that deduction under section 10AA of the Act has to be allowed on incremental income pursuant to APA as per modified return filed under section 92CD as the same is not hit by proviso to Section 92C(4).

The assessee is a wholly owned subsidiary of EYGI BV Netherlands, engaged in providing back office support services in the nature of ITeS to its AEs. Assessee filed its return of income declaring income of Rs.17.15 crores after claiming deduction under Chapter VI-A of Rs. 3.17 lakhs and deduction under Section10AA of Rs.2.83 crores out of gross total income of Rs. 20.02 crores. Assessee had declared voluntary TP adjustment of Rs. 7.15 crores. The assessee entered into an APA with the CBDT on 16/03/2016 as per Section 92CD(1) and thereafter it modified its return of income on 29/06/2016. In the APA signed with the CBDT, assessee had agreed to recover profit margin at 17.5% for services rendered to its AEs. In the modified return filed, assessee declared a taxable income of Rs.20.36 crores after claiming deduction of Rs. 3.95 crores under Section10AA

on the income from Gurgaon SEZ Unit. The total ALP adjustment done by assessee pursuant to APA in the modified return was Rs. 11.47 crores. The TPO vide his order, accepted the international transaction entered by the assessee, as at ALP. However, the AO denied the revised claim of deduction under section 10AA. CIT(A) ruled in favour of assessee, aggrieved by which the Revenue filed an appeal before the ITAT.

ITAT observed that the ALP adjustment made by assessee pursuant to APA was a voluntary TP-adjustment and was therefore eligible for deduction under Section10AA. ITAT referred to Section.10AA(1) which provides for deduction of such profits and gains as are derived by a unit from exports. ITAT noted that Section.10AA(7) provides that for the purpose of Section.10AA(1), "profits derived from export of articles or things or services (including computer software) shall be the amount which bears to the "profits of the business of the undertaking being the unit", the same proportion as the export turnover bears to the total turnover of the business carried on by the undertaking." ITAT stated that "Section 10AA specifically provides a formula for computation of 'profits derived from export of articles or things or computer software' and Section 10AA (7) of the Act, uses the expression "profits of the business of the undertaking, being the unit" which is unlike the deductions specified in Section 801, 80IA, 80IB. etc which do not provide for a specific formula to arrive at the qualifying profits i.e. 'profits and gains derived by/from an undertaking." The term "profits of the business of the undertaking" is far wider in its scope than 'profits and gains derived by/from an undertaking', and therefore ITAT held that ALP adjustment made pursuant to APA would fall within ambit of scope of deduction

ITAT noted that taxpayer is not eligible to claim the deduction under section l0AA of the Act on the enhanced income on account of TP adjustment made by the TPO as per Section 92C(4), however, increased income on account of voluntary transfer pricing adjustment or ALP adjustment pursuant to APA, made by the assessee would be eligible for claiming deduction under section 10AA. ITAT also relied on coordinate bench ruling in IBM India Pvt. Ltd [(59 CCH 260)] wherein it was held that deduction under section 10AA had to be allowed on incremental income arisen pursuant to APA as per modified return filed under Section92CD as same was not hit by proviso to Section 92C(4).

ITAT thus ruled in favour of assessee.

LD/69/47, [Madras High Court: W.P. No. 34618/2019], Costal Energy Pvt. Ltd. Vs. Addl. Commissioner of Income Tax, 27/08/2020

High Court set aside the order passed by TPO under section 92CA(3) on the ground of violation of principles of natural justice for AY 2010-11, TPO had passed an order within a day of receiving assessee's reply dated 31.10.2019 to Revenue's show cause notice dated 29.10.2019, High Court directed the TPO to initiate proceedings de novo and complete the proceedings within eight weeks of date of first hearing with assessee, Assessee's third application filed during pendency of the reassessment proceedings with the settlement commission was rejected and thereafter an assessment order was passed on 26.02.2020 incorporating the aforesaid order under section 92CA(3), High Court directed that by virtue of setting aside of TPO order, the portion relating to the ALP-adjustment from the assessment order will stand substituted by the order to be passed by the TPO now and an order incorporating the same shall be passed by the AO.

Assessee filed Writ Petitions challenging orders of TPO dated 01/11/2019 for AY 2010-11 to AY 2017-18. During pendency of re-assessment proceedings the assessee had approached the Settlement Commission thrice and the third application was rejected by order passed under section 245D(1) dated 25/04/2019 pursuant to which a show cause notice dated 20.11.2019 was issued reviving the proceedings for assessment in terms of Section 245HA of the Act.

High Court observed that TPO's first notice was dated 26.08.2019, in response to which details were submitted on 12.09.2019. A show cause notice was issued thereafter on 29.10.2019 and reply thereto on was given 31.10.2019 and TPO passed the order within a day of the reply having been filed. High Court thus stated that there has been no effective

opportunity extended to the petitioner to respond to the show cause notice and neither has there been any time for the TPO to have applied his mind to the response of the petitioner. After assessee submitted its reply to TPO on 12.09.2019, the next show cause notice was issued to assessee only on 29.10.2019 i.e. after nearly six weeks.

High Court set aside the impugned orders on the ground of violation of principles of natural justice and directed to initiate the proceedings de novo within a period of four weeks from date of uploading of a copy of this order. High Court remarked that assessee shall be heard either over video conference or by way of physical hearing, as may be mutually convenient to the parties and proceedings shall be completed within eight weeks of date of first hearing.

Further, High Court found that pursuant to the third rejection by the Settlement Commission and the revival of proceedings for assessment, the Assessing Authority passed an order of assessment dated 26/02/2020 incorporating the impugned order passed by the TPO dated 01/11/2019. High Court stated that by virtue of setting aside of the impugned order and de novo proceedings as directed, only the portion relating to the adjustment to ALP from order dated 26.02.2020 will stand substituted by the order to be passed by the TPO now and an order (consolidated order of assessment) incorporating the same shall be passed by AO upon receipt thereof from the TPO and communicated to the assessee.

LD/69/48, [Gujarat High Court: W.P. No. 34618/2019],The Principal Commissioner of Income Tax Vs. Gulbrandsen Chemicals Pvt. Ltd., 03/02/2020

In respect of sales to AE of chemicals by the assessee a chemical manufacturer, assessee's internal TNMM method was accepted by the High Court as the most appropriate method, against TPO's internal CUP method, As per High Court, a difference of opinion as to the appropriateness of one or the other method cannot be gone into in the appeal under section 260A, ITAT had noted that CUP method ceases to be workable in assessee's case as accurate adjustments could not be made to nullify the impact of the fundamental differences in economic circumstances and contractual terms between the intra-AE transactions and non-AE transactions, Gujarat High Court thus confirmed ITAT's order.

Assessee was engaged in manufacturing of chemicals and entered into an international transaction of sale of chemical products to AEs. The TPO made an adjustment by rejecting assessee's internal-TNMM and applying internal CUP as the Most Appropriate Method (MAM). The CIT(A) ruled in favour of AO and the assessee preferred appeal before the ITAT.

ITAT observed that as long as it is reasonably possible to apply direct method of ascertaining ALP, such a direct method will have an edge over application of an indirect method. ITAT referred to co-ordinate bench ruling in case of Dishman Pharmaceuticals & Chemicals Ltd [45 SOT 37 (2011)] wherein it was held that CUP method cannot be applied in each and every case. ITAT noted that the transactions were so fundamentally different in character in economic circumstances and contractual terms, that these could not be compared with the independent transactions entered into by the assessee. The assessee had applied TNMM by comparing the profits on transactions with AEs and the non AEs and no specific defects were pointed out in the allocation of costs in the segmental accounts which were duly reconciled with entity level consolidated accounts. ITAT also observed that no specific adjustments were suggested by TPO to the allocations made in the segmental accounts and the discussions were confined to generalities. Thus ITAT confirmed TNMM as the MAM, aggrieved by which Revenue preferred an appeal before the High Court.

High Court observed that co-ordinate bench in case of MakeMy Trip India Pvt. Ltd [2017) 399 ITR 297 (Delhi)] had held that difference of opinion as to the appropriateness of one or the other method cannot be gone into in the appeal under section 260A. High Court noted that ITAT had considered the voluminous documentary evidence on record for the purpose of selection of MAM and hence the

order could not be termed as perverse or contrary to the evidence on record. High Court thus ruled in favour of assessee.

GST

LD/69/49, [2020-TIOL-1280-HC-KERALA-GST], Devices Distributors Vs. Assistant State Tax Officer, and Ors., 23/07/2020

The reasoning that the invoices accompanying the goods are not serially number and hence there is a reason to doubt that some goods may have escaped the tax reporting cannot be the ground for detaining goods which are backed by such invoices.

The petitioner, who is a distributor of home appliances of various brands, has approached this Court aggrieved by detention notice under the GST Act that was served on him while goods were being transported from Kottayam to Thiruvananthapuram at his instance. Detention notice indicated that the objection of the respondent was essentially with regard to the invoices that accompanied the transportation of the goods. It was found that the tax invoices furnished, although carried serial numbers, were not numbered consecutively for the three invoices. The detaining authority, therefore, suspected that the invoices carrying the missing serial numbers might have been used for transportation of other goods that were not brought to the notice of the Department.

Held:

The Hon'ble court held that, entertainment of a doubt that the invoices carrying the missing serial numbers were possibly not reported to the authorities cannot be a justification for detaining the goods in question, especially when they were admittedly accompanied by tax invoices as also e-way bills that clearly indicated the particulars that were required by Rule 46 of the GST Rules. The Court also pointed out that in any case the doubt pertained to goods other than those that were actually detained and consequently, the detention cannot be justified under section 129 of the GST Act.

Service Tax

LD/69/50, [Gauhati High Court: W.P. No. 2264/2020], M/s Urban Systems Vs. The Union of India, 28/08/2020

There was an inadvertent mistake by assessee stating the duty payable under a wrong clause in the SVLDRS [Sabka Vishwas (Legacy Dispute Resolution) Scheme, 2019] application due to which the application was rejected by the Revenue, High Court dismissed such rejection of application, High Court stated that the assessee may make an application to the authorities to consider its claim of benefit under SVLDRS by allowing it to make necessary correction in the information provided as regards the disclosure of the dues from them and upon such application being made, the authorities would pass a reasoned speaking order thereon, High Court explained the distinction between an incurable mistake and inadvertent mistake.

For the period of 2013-2017, assessee had provided taxable services to its customers but failed to file returns in respect thereof & also the required amount of service tax was not paid by them. As per the assessee, it was eligible to apply under the SVLDRS [Sabka Vishwas (Legacy Dispute Resolution) Scheme, 2019] Scheme. High Court observed that the Assessee while submitting the Form SVLDRS – 1 made an inadvertent mistake by stating the duty payable by them in Clause 9.1 instead of Clause 9.4, because of which, the Revenue had rejected the claim of the Assessee under Scheme 2019 on the ground that no notice/ demand was issued to the it.

High Court remarked that a mistake that was deliberately made to claim an undue benefit which the party was otherwise not entitled, would definitely have to be construed to be an incurable mistake but at the same time an inadvertent mistake which may creep in due to an oversight or because of a callous attitude of the person making the claim but the ultimate result of such mistake would not accrue a benefit which he otherwise would not have been entitled can be accepted to be a curable mistake. High Court stated that in the instant case the mistake made by the Assessee was that it had stated in clause 9.1 about the undisclosed dues instead of stating it in clause 9.4. and it cannot be

said that by making the mistake, the Assessee had claimed an undue benefit which they are otherwise are not entitled under the law.

High Court noted that it was an agreed position of the parties that the petitioner may make an application to the appropriate respondent authorities to consider the claim of benefit under the SVLDRS by allowing the petitioner to make necessary correction in the information provided as regards the earlier penalty imposed on them and it was further agreed that upon such application being made, the authorities would pass an appropriate order thereof as per their discretion. Therefore in view of such agreement between the parties, High Court disposed of the Petition by requiring the Assessee to submit an application before the Revenue or the correction to be made in the information provided in the Form SVLDRS-1 as regards the disclosure of the dues from them and upon such application being made, the respondent authorities would pass a reasoned speaking order thereon.

High Court clarified that the earlier observation in this order as regards the benefit under section 124(1) (e) shall not limit the claim of the Assessee to a benefit under that provision alone and if the Assessee is entitled to any other benefit, it is at liberty to make such claim.

LD/69/51, [2020-TIOL-143-SC-ST-LB], Commissioner of Service Tax, Ahemdabad vs Adani Gas Ltd., 28/08/2020

The "connection charges" collected from the customers at the time of providing new connection towards the use of pipelines, measuring equipment in the provision of "transportation of goods through pipeline services" will attract service tax as it would amount to "supply of tangible goods service"

Facts:

The respondent is in the business of distributing natural gas CNG, PNG to industrial, commercial, and domestic consumers. Among other purposes, industrial consumers use PNG for manufacturing operations. In order to facilitate the distribution of PNG to industrial, commercial, and domestic consumers through pipes, the respondent installs equipment described as 'SKID' at their customers' sites. The SKID equipment consists of isolation valves, filters, regulators, and electronic meters. The respondent enters into an agreement - the Gas Sales Agreement with consumers to whom gas is supplied by it. The respondent is also engaged in providing the taxable service falling under the category of "transport of goods through the pipeline", as defined in Section 65(105)(zzz) of the Finance Act, 1994. During the course of an audit by the department, noticed that the respondent had received income under the head of "gas connection charges" while providing new gas connections to customers. From the GSA and the invoices, it was found that charges were collected for the "supply of pipes, measuring equipment, etc." while providing new gas connections to customers. The ownership of the equipment is not with the customer but is retained by the respondent. The customer does not have control or any legal rights over the equipment. Value Added Tax was also not paid on these charges collected from the customers. A Show Cause cum demand notice was served stating that the 'gas connection charges' collected were liable to service tax under the heading 'supply of tangible goods services'.

The Adjudicating Authority held that the respondent and the customer equally need the instrument for the said service. Thus irrespective of the fact that the ownership of the instrument rests with the respondent, it cannot be said that the customer does not use the instrument as he is in as much need of instrument as the respondent. The Adjudicating Authority held that the respondent is not only a seller engaged in the sale of gas to the customer but also a service provider who supplies, installs, and maintains measurement equipment at the customers' premises. Allowing relief by way of permitting the value to be inclusive of tax, the demand in the Show Cause Notice was confirmed. Subsequently the respondent filed an appeal at the Tribunal wherein the Tribunal held that the instruments installed are for the respondent, as it helps them in determining the billing and the instruments are not for their customers' usage. Therefore this appeal was filed before the Hon'ble Supreme Court by the revenue.

Held:

The Hon'ble Supreme Court held that 'the Adjudicating Authority was correct in concluding that the buyer of gas is as interested as the seller in ensuring and verifying the correct quantity of the gas supplied through the instrumentality of

the measurement equipment and the pipelines. Additionally, the role of regulating pressure and ensuring the safety of the supply of gas performed by the measurement equipment is an essential aspect of the 'use' of the consumer. The SKID equipment fulfils the description in Section 65(105)(zzzzj) of a taxable service i.e. service in relation "tangible goods" where the recipient of the service has use (without possession or effective control) of the goods. Accordingly, the judgment of the Tribunal was set aside and the order of the Adjudicating Authority was restored.

LD/69/52, [2020-TIOL-1444-HC-KAR-ST], M/s Jagdish Advertising Vs. Designated Committee, 19/08/2020

High Court held that the designated committee while processing an application under Sabka Vishwas Scheme of 2019, cannot adjudicate upon any of the contentious issues which existed between the Revenue and the Assessee before the Scheme was enacted, in the guise of verifying the accuracy of the declaration. Hence, if assessee has claimed payment by CENVAT Credit, which is otherwise disputed by the Revenue in the show cause proceedings, even then deduction in respect of payment of CENVAT Credit shall be allowed in respect of deciding application against SCN raised for disputed tax demand.

The Petitioner received a show-cause notice (SCN) from DGCEI demanding service tax. After the SCN, the petitioner filed service tax returns and claimed CENVAT Credit. Consequently, the petitioner was served with another SCN disallowing its claim for CENVAT Credit as per ST-3 Returns. As regards the first SCN, the appellant made an application under the Sabka Vishwas Scheme. In SVLDRS-2 , the Department did not allow a deduction in respect of the CENVAT Credit for which the second SCN was issued. Accordingly, after giving the opportunity of hearing to the Petitioner, the SVLDRS-3 was issued for a higher amount than what was computed by the applicant. Aggrieved by the same the Petitioner filed a writ before the High Court

Held:

Hon'ble High Court noted that in the second SCN issued to the Petitioner the revenue does not dispute the entitlement of CENVAT Credit to the Petitioner, but the only reason for denying CENVAT credit is that since the returns were not filed within the prescribed time and since the entitlement to avail of the input credit had lapsed, the petitioner could not be permitted to take advantage of the Cenvat credit. The High Court referred to Para 10 (c) of the Circular dtd.27.08.2019 and held that the Designated Committee cannot embark upon an exercise of adjudication and state that it was not permissible for the declarant to claim that he had paid the tax through input credit. Thus, even if there was a dispute regarding the tax paid through input credit, the Circular mandated that the Designated Committee should adjust the tax already paid through input credit. The Court further held that a plain reading of the provisions would mean that the Designated Committee would be required only to examine the accuracy of the statement made in the declaration with reference to the records available with it and this would basically mean that the Designated Committee can only satisfy itself as to whether the Tax liability admitted by the declarant was accurate or not. The Committee, in the guise of verifying the accuracy of the declaration, cannot adjudicate upon any of the contentious issues which existed between the Revenue and the Assessee before the Scheme was enacted. The entire process of "verifying the correctness" would necessarily be in relation to the correctness of the declaration and not in relation to the entitlement of the declarant. Thus, the power conferred to "verify the correctness" cannot be used to determine or adjudicate upon a contentious issue, which existed earlier to the enactment of the scheme between the Revenue and Declarant.

Customs

LD/69/53, [Madras High Court: W.P. No. 26324/2019], Vigneswara Exims Vs. The Asst. Commissioner of Income Tax, 28/08/2020

Assessee had claimed title of goods was transferred to assessee by Ghana exporter to it during the course of transit by way of high sea-sales, High Court noted that certain documents have been enclosed in typed set of papers however no payment has been made to foreign exporter or importer, High Court upheld the import assessment order releasing goods to original importer and rejected assessee's title claim on those goods, Further High Court stated that Revenue to retain the goods when the original documents are only with the actual importer of goods who have complied with all formalities and that keeping such goods (perishable in nature) in the custody of Revenue will only make the items lose their value.

One Krisenter Impex Pvt. Ltd imported goods from a Ghana Based company and during the course of transit of such goods the said Ghana exporter had transferred the title in favour of the assessee. In the typed set of papers, the assessee has enclosed a draft copy of the bill of lading. The goods have since arrived in India, the original importer had presented the necessary papers for clearing the goods. The assessee lodged their contentions and contended that the goods should not be released to the original importer, which request was rejected by Revenue.

High Court observed that assessee had not made payment either to the original importer or the foreign the exporter. High Court rejected the submissions of the assessee that on the high seas, the title has been made over favour of the assessee and that the assessee had entered into transactions based on the commitment made by the foreign exporter .High Court further noted that all the original documents are only with the original importer and that as per Section 49 of the Customs Act 1962, Customs authority cannot retain the goods beyond a period of 60 days.

High Court observed that it is quite possible that the assessee has been misled by the foreign exporter. But then, that cannot be a ground for directing the Revenue to retain the goods. The Revenue cannot retain the goods, till the issue is decided by the civil Court. The assessee cannot have any claim against the respondents. It is seen that there was transaction only between the assessee and the foreign exporter. The foreign exporter is not before this Court.

Further the goods were perishable commodities and keeping them in the custody of the Revenue will only make the items lose their value. High Court therefore affirmed the import assessment order and ruled against the assessee.

Disciplinary Case

Complaint against Chartered Accountant for issuance of false Utilization Certificate -- Plea of Respondent that the amount in the Certificate of Utilisation was supported by the Valuer's report and books of accounts -- Held, Chartered Accountant is not expected to be expert in assessing the valuation of cost of construction and for the same he is expected to rely upon the work of report of valuers / engineers -- Held, Respondent Not Guilty of professional misconduct under Clause (7) of the Part I of Second Schedule to the Chartered Accountants Act, 1949.

Held:

In the instant case, the firm while availing the term loan for construction of the project, has filed a certificate issued by the Respondent. As per the Complainant, utilization certificate submitted by the firm was false. The Committee noted that the valuation report brought on record by the Complainant is dated 05.09.2013 and there was nothing on record from the Complainant to establish as to how the said valuation report which is issued after 4 years is relevant to the present matter. Further, the Complainant did not bring on record copy of bank statement to show that the payment for expenses was not made through the bank account. There was nothing on record to show that the Complainant had ever challenged the genuineness of the parties to whom payments were made. It is also observed that the Complainant did not provide the copy of valuation report. The Committee also observed that a Chartered Accountant is not expected to be expert in assessing the valuation of cost of construction and for the same he is expected to rely upon the work of report of valuers / engineers. In the present case, the Respondent brought on record copy of valuer report pertaining to the period of expenses, to show that amount as mentioned in the Certificate of Utilisation was supported by the valuer report and books of accounts. Hence, in view of above facts and submissions, the Committee decided to extend the benefit to the Respondent and accordingly, decided to hold the Respondent Not Guilty of professional misconduct falling within the meaning of Clause (7) of Part I of the Second Schedule to the Chartered Accountants Act, 1949.