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India tax konnect

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Contents

Direct Tax

Decisions

Write-off of investment in loss making overseas subsidiaries, allowed as business loss

The ITAT (Mumbai Bench)[1] held that the write-off of investment in loss making overseas subsidiaries is allowed as a business loss since the investments were made out of commercial expediency and in furtherance of the taxpayer's business. The investments had a direct nexus with the taxpayer's business and any loss arising therefrom is allowable as deduction.

The ITAT also held that the write-off of advance made to an Indian entity is eligible for business deduction since these advances were lost during the course of business. The advances were given in the normal course of business out of commercial expediency which would have improved the profit-making apparatus without disturbing the capital set-up of the taxpayer. Hence, it was allowed as a business deduction.

Loan or advance received by a shareholder from a company is not treated as deemed dividend as the company derived benefit from the shareholder

The Karnataka High court[2] held that the loan or advance received by a shareholder from a company to purchase the apartment was not to be treated as deemed dividend as the company had derived benefit from the shareholder. The shareholder's apartment was offered as a collateral security to avail credit facility for the company from banks. The gratuitous loan or advance given by the company to the classes of shareholders would fall within the purview of Section 2(22)(e) but not to the cases where the loan or advance is given in return for an advantage conferred upon the company by such shareholder.

Product development expenditure are treated as intangible assets which are eligible for depreciation

The ITAT (Bangalore Bench)[3] dealt with the issue of treatment of expenditure incurred against technical services and assistance provided by its group company as cost of the personnel and other costs linked to product development projects. The ITAT held that the product development expenditure was to be considered as 'intangible asset' since the benefit of R&D is not for running business, but for securing an advantage in the capital field. It was incurred for securing enduring benefit which is for a longer period and not pertaining to a single year when it was incurred. Accordingly, ITAT held that the expenditure is in the capital field and not allowed as a business expenditure. The taxpayer was eligible for depreciation on such intangible asset.

[1] DCIT v. Maneesh Pharmaceuticals Ltd. (ITA No. 4024/Mum/2019) – Taxsutra.com

[2] Sri N.S. Narendra v. CIT, DCIT (ITA No. 92 of 2015) – Taxsutra.com

[3] Sogefi Engine Systems India Pvt Ltd v. ACIT (ITA No. 1696,1697,1698/2019/2089Bang) – Taxsutra.com

Notifications /Circulars/Press Release

The government of India approves Cyprus as a notified jurisdiction to grant privileged FPI Category I license

The Ministry of Finance has issued an Order[4] amending the SEBI (Foreign Portfolio Investors) Regulations, 2019. It is notified that the specified funds from the Republic of Cyprus are eligible for Category I Foreign Portfolio Investor (FPI) registration. Such funds would benefit from certain tax and regulatory relaxations available to Category I FPIs in general.

CBDT issues guidelines on the applicability of TDS provisions under Section 194Q on purchase of goods

The Finance Act, 2021 introduced a new set of TDS provisions on purchase of goods [Section 194Q] with effect from 1 July 2021. On 30 June 2021, CBDT issued guidelines[5] to provide clarity on the applicability of such TDS provisions on purchase of goods. These guidelines provide clarification on certain implementation issues like calculation of threshold, applicability of provisions to payment gateways and exchanges, adjustment for GST, purchase returns, applicability to a non-resident, etc. Further, these guidelines seek to remove difficulties in implementing the TDS provisions on e-commerce operators under Section 194-O and TCS provisions under Section 206C(1H).

CBDT introduces functionality to ascertain specified persons for the applicability of higher rates of TDS/TCS for non-filing of tax returns

The Finance Act 2021 introduced Section 206AB and Section 206CCA to provide for higher tax deduction/collection in the case where the payment is made to /received from a 'specified person'. The 'specified person' is person who has not filed his tax returns for last two years and total amount of TDS/TCS deducted/collected from such person in a previous year exceeds INR 50,000.

Recently, CBDT has issued a Circular[6] announcing a functionality namely 'Compliance Check for Section 206AB and 206CCA' which is accessible on the income tax website[7] (give link to this functionality in the footnote). This functionality enables a status check as to whether a deductee/collectee is a specified person for the purpose of Section 206AB/206CCA. A search can be conducted on the functionality with the help of the Permanent Account Number (PAN) of the deductee/collectee, either in the form of a single search or a bulk PAN search (in case of large number of deductees/collectees).

CBDT further extends due date of filing Forms 15CA/15CB

Presently, taxpayers upload Form 15CA, along with the Chartered Accountant Certificate in Form 15CB, wherever applicable, on the e-filing portal, before submitting the copy to the authorised dealer for any foreign remittance. In view of difficulties reported by taxpayers in electronic filing of Forms 15CA/15CB on the portal[8], CBDT vide press releases has extended the time limit to submit said Forms in manual format to the authorised dealers until 15 August 2021.

[4] Ministry of Finance order, dated 14 June 2021
[5] CBDT Circular No. 13 of 2021, dated 30 June 2021
[6] CBDT Circular No. 11 of 2021, dated 21 June 2021
[7] https://report.insight.gov.in/reporting-webapp/portal/homePage
[8] www.incometax.gov.in

MLI/BEPS

On 21 July 2021, the Egyptian Tax Authority has published9 synthesized texts of the Egypt-India tax treaty displaying the modifications made to the treaty by the MLI. Egypt and India deposited their instrument of ratification of the MLI on, 30 September 2020 and 25 June 2019 respectively. The MLI shall have effect in Egypt and India as follows:

- With respect to taxes withheld at source on amounts paid or credited to non-residents, where the event giving rise to such taxes occurs on or after 1 January 2021; and

- With respect to all other taxes levied by each contracting state, for taxes levied with respect to taxable periods beginning on or after 1 July 2021

Indirect Tax

Decisions

Charitable trust selling medicines at subsidized rate fall under GST ambit[10]

'Petitioner' is a registered charitable trust with an objective of undertaking eye and research activities and prevention of blindness. It is also running a medical store for selling medicines at subsidized rates. It had sought an advance ruling on whether registration is required for medical stores and whether providing medicines at lower rate amount to supply. Gujarat AAR and the AAAR held that 'Petitioner' will be required to obtain GST registration and sale of medicines at lower rate amount to supply of goods. Aggrieved by the orders, 'Petitioner' filed a writ petition before the Hon'ble High Court of Gujarat.

'Petitioner' contended that AAR and AAAR failed to appreciate that the activities carried out by it is neither a trade nor commerce. There is no pecuniary benefit and thus it is not carrying out any 'business' in terms of section 2(17) of the GST Act.

The Hon'ble High Court dismissed the appeal. It stated that there is no doubt that every 'supplier' who falls under section 22(1) of the GST Act will be liable to obtain registration. 'Petitioner', though selling medicines at a lower rate, is selling medicines for consideration in the course of business. To constitute 'business' under GST law, it is immaterial whether a trade or commerce or such activity is for pecuniary benefit or not.

[9] Source: IBFD Website

[10] Nagri Eye Research Foundation v. Union of India [2021-VIL-534-GUJ]

Mere placement of medical instruments in the premises of hospital / labs constitutes supply of service[11]

'Applicant' has executed an agreement with unrelated hospitals / labs wherein it places medical instruments at the premises of hospitals / labs for them to use without any consideration and for a specified period. The ownership, rights, title and interest in the instruments are vested and owned by the 'Applicant' during the period of use. In turn, the hospitals / labs are required to purchase specified quantities of regents, calibrators, disposables, etc. at the price specified in the agreement and in case they fail to place the required quantity, 'Applicant' is entitled to recover the deficit amount. These products are supplied by 'Applicant' to their 'Distributor' who in-turn supply to the concerned hospitals / labs. Applicable GST is paid by 'Applicant' and 'Distributor' on their respective supply.

'Applicant' contended that placement of instruments at the premises of the hospitals / labs without consideration does not constitute supply. In its support, it placed reliance on section 7 of the CGST Act which states that supply made without consideration (except section 7(1)(c)) is not a supply. The purported transaction does not fulfil the criteria of the definition of the term 'consideration' as there is no act or forbearance in respect of placement of instruments. The obligation to purchase minimum quantity of products is not a 'consideration' for the purpose of CGST Act as there should be economic value and independent identity for something to qualify as 'consideration'. Further, there is no nexus between the placement of instruments by 'Applicant' and the consideration paid or obligation undertaken by the hospitals / labs.

Kerala Authority for Advance Ruling held that the instruments placed at the premises of the hospitals / labs by the 'Applicant' fall within the definition of 'Goods' under GST law and the right granted by the 'Applicant' to the hospitals / labs to use the instruments for a specified period falls within the scope of the term 'transfer' mentioned in scope of supply under section 7 of the CGST Act. The clause in the agreement with hospitals / labs for an obligation to pay the deficit amount in case the purchase in a month falls short of the minimum agreed value constitutes a valid 'consideration'.

Interest does not arise in case where reversal done of wrongful claim of ITC[12]

'Petitioner' received intimation for wrongful claim of input tax credit (ITC). It accepted the error in claim and reversed ITC through voluntary payment of tax in Form GST DRC-03. However, authorities issued notice for interest. 'Petitioner' filed a writ petition before the Madras High Court against an order to levy interest under section 50 of the GST Act on cash remittance as well as remittance by way of adjustment of electronic credit register.

'Petitioner' stated that section 42 of the GST Act provides for a notice to be issued by the Department in the case of mismatch of particulars at the end of the assessee, in relation to the details furnished in the returns of the selling/purchasing dealer. The said section is not relevant for reversal of credit which was availed wrongfully.

Madras High Court held that in light of decision in the case of Maansarovar Motors[13], interest would be on net cash tax liability. It further held that where a claim of ITC by assessee is erroneous, then the question of section 42 does not arise since it is not a case of mismatch but a case of wrongful claim of ITC.

[11] Abbott Healthcare Pvt Ltd [2021-VIL-242-AAR]

[12] F1 Auto Components P Ltd v. The State Tax Officer Survey Cell-1 Intelligence - II, Chennai [2021-VIL-543-MAD]

[13] Maansarovar Motors Private Limited v. The Assistant Commissioner, Poonamallee Division, Chennai [2020-VIL-524-MAD]

Notifications/Circulars/ Trade Notice

Invitation for suggestions for new FTP[14]

The validity of current Foreign Trade Policy (FTP) 2015-2020 has been extended till 30 September 2021. DGFT has now invited various stakeholder to provide suggestions and inputs for the new FTP 2021-2026.

Extension of limitation period prescribed by SC is not applicable to every action or proceedings under GST[15]

Supreme Court has issued series of orders for extension of period of limitation. In this regard, CBIC has provided clarification on the applicability of the Supreme Court order. Gist of clarification is as follows:

- SC Order would apply to :-
  - Appeals required to be filed by taxpayer / tax authorities before Joint / Additional Commissioner (Appeals), Commissioner (Appeals), Appellate Authority for Advance Ruling, Tribunal and various courts.
  - It would apply against any quasi-judicial order or where a proceeding for revision or rectification of any order is required to be undertaken and is not applicable to any other proceedings under GST law.
- SC Order would not apply to :-
  - Proceedings that need to be initiated or compliances that need to be done by the taxpayers. The timelines / extensions under statute will continue to apply.
- Proceedings by tax authorities :-
  - Quasi-judicial proceedings can be heard and disposed off.
  - This may inter alia include disposal of application for refund, application for revocation of cancellation of registration, adjudication proceedings of demand notices, etc.
  - Appeals which are filed and pending can be continued to be heard and disposed off. The timeline / extension will be governed by statutes or notifications, if any.

[14] Ministry of Commerce & Industry (DGFT) Trade Notice No. 09/2021-22 dated 16 July 2021

[15] CBIC Circular No. 157/13/2021-GST dated 20 July 2021

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