



India tax konnect

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Direct Tax

Decision - International Tax

Interest on income-tax refund received by a Dutch company is not taxable in India in view of the MFN clause under the India-Netherlands tax treaty: ITAT Kolkata¹

A Dutch entity received interest on a tax refund from the tax department after the deduction of tax at source. The Kolkata ITAT held that interest on tax refund was not taxable in India due to the

¹ Koninklijke Philips N.V. v. DCIT (ITA Nos. 437 to 441/Kol/2021) (Kolkata)

² Touchstone Holdings Private Limited v. ITO (WPC 13102/2022) (Delhi)

MFN clause under the India-Netherlands tax treaty which enables to apply a beneficial treatment given in the subsequent tax treaty with Italy. Under the India-Italy tax treaty, interest earned by a resident of Italy from India is not taxable in India. By invoking the MFN clause, the benefit of such non-taxation was extended to the India-Netherlands tax treaty.

Decisions - Domestic Tax

Reassessment proceedings for AY 2013-14 were not time-barred as the original reassessment notice was issued under the extended period of limitation: Delhi High Court²

Taxpayer filed a writ petition challenging the reassessment proceedings. The taxpayer contended that no notice for reassessment could be issued for AY 2013-14, beyond 30 March 2020. Since the notice was issued on 29 June 2021, it was time-barred. The tax department contended that the reassessment notice was issued under the extended period of limitation of 10 years under the new reassessment regime. The Delhi High Court dismissed the writ petition and observed that the time period for issuance of reassessment notice for AY 2013-14 was extended till 30 June 2021 by the Taxation and Other Laws (Relaxation and Amendment of Certain Provisions) Act, 2020 and subsequent notifications. By virtue of the Supreme Court's decision³, the reassessment notices issued between 1 April 2021 to 30 June 2021 will be deemed to have been issued under the new reassessment regime. Accordingly, the notice dated 29 June 2021 was not time-barred.

An Indian entity is not liable to deduct tax at source on fare disbursed to drivers: Chandigarh ITAT⁴

An Indian company made payment to the cab drivers for the carriage of passengers. The AO held that the Indian company was liable to deduct tax on such payments as it had provided transportation services. The Chandigarh ITAT observed that the Indian company was just

³ UOI v. Ashish Agarwal [2022] 286 Taxman 183 (SC)

⁴ ANI Technologies Private Limited v. DCIT (ITA No. 160/Chd/2020) (Chandigarh)

managing and operating the app to facilitate the transport services by the driver to the rider. The Indian company merely facilitated the payment collection through an e-wallet on behalf of the driver. Thus, it was the driver who had provided transportation service to the rider and not the Indian company. The driver and the Indian company were independent contractors and had a principal-to-principal relationship. The Indian company was the intermediary and the person responsible for paying was the rider. Thus, the Indian company was not liable to deduct tax at source.

The benefit of Section 10AA is available on the sale of vaccines to UNICEF for its projects in India: Pune ITAT⁵

Taxpayer entered into a contract with UNICEF (United Nation Agency) and supplied vaccines manufactured in its Special Economic Zone (SEZ). It had supplied some of the vaccines in India as per delivery instructions given by UNICEF. The taxpayer had received consideration in convertible foreign exchange. The AO observed that the taxpayer was not eligible for the benefit of Section 10AA on the profits derived from the sale of some goods in India since such goods were not exported out of India. The Pune ITAT observed that Section 10AA benefit could not be denied merely on the ground that the Indian entity had not exported the goods outside India despite the fact that the consideration was received in convertible foreign exchange in India. Further, it was observed that under the SEZ Act, 2005 for the purpose of computing net foreign exchange earnings, the supply made to the project funded by United Nation Agencies is considered as an 'export'.

Notifications /Circulars

CBDT releases additional guidelines to remove difficulties for deduction of tax under Section 194R

The Finance Act, 2022 introduced Section 194R requiring tax withholding at the rate of 10 per cent

⁵ DCIT v. Serum Institute of India Ltd (ITA No.323/PUN/2021) (Pune)

⁶ CBDT Circular 18 of 2022, dated 13 September 2022

on the value of benefits or perquisites arising from business or exercise of a profession in excess of INR 20,000. This Section came into effect from 1 July 2022. On 16 June 2022, the CBDT had issued guidelines in a question-and-answer format. Subsequently, some more clarifications have been requested by the stakeholders on various issues. Consequently, CBDT has issued additional guidelines⁶ to provide clarity and certain exceptions from the requirement of deduction of tax at source in some of the cases like loan settlement/waiver by a bank, issuance of bonus share/right share, benefit/perquisite provided by Embassy/High Commissions, etc. Further, it was clarified that these guidelines are only for removing difficulties in the implementation of provisions of Section 194R and it does not impact the taxability of income in the hands of the recipient, which will be governed by the relevant provisions of the Act.

CBDT notifies ITR-A for filing modified return pursuant to business reorganisation

The Finance Act, 2022 introduced Section 170A⁷ to provide that the entities going through a business reorganisation, may furnish a modified return of income within six months from the end of the month in which the order of reorganisation was issued. Recently, the CBDT notified⁸ rules and form prescribing the norms for filing of returns while giving the effect of the order of business reorganisation by successor companies. The Rules provide that the modified return of income shall be furnished electronically, by a successor entity, in Form ITR-A. Subsequently, the CBDT extended the time limit for filing a modified return i.e. ITR-A to 31 March 2023 in cases where business reorganisation is ordered between 1 April 2022 and 30 September 2022.

⁷ Section 170A introduced by the Finance Act, 2022 (With effect from 1 April 2022) - Effect of order of tribunal or court in respect of business reorganisation.

⁸ Notification No. 110/2022, dated 19 September 2022

Foreign Exchange Management Act, 1999

Master Direction on Acquisition or Transfer of Immovable Property in India updated by Reserve Bank of India in line with new Overseas Investment regime

The Central Government and RBI vide its Foreign Exchange Management (Overseas Investment) Rules, 2022 ('OI Rules') and Foreign Exchange Management (Overseas Investment) Directions, 2022 have enacted the new Overseas Investment regime.

The OI Rules subsumed the Foreign Exchange Management (Acquisition and Transfer of Immovable Property Outside India) Regulations 2015 ['FEMA 7(R)'] which regulates the Acquisition or Transfer of Immovable Property outside India by a person resident in India.

The corresponding effects of the aforesaid amendment have now been incorporated by the RBI in the Master Direction on Acquisition or Transfer of Immovable Property on 1 September 2022.

Directorate General of Foreign Trade amends Foreign Trade Policy to permit settlement of International Trade in INR in sync with RBI's recent circular issued on 11 July 2022

The Directorate General of Foreign Trade ('DGFT') vide Notification No. 33/2015-2020 dated 16 September 2022 made a change in the Foreign Trade Policy ('FTP') to permit invoicing, payment and settlement of international trade (exports and imports) in Indian Rupees in sync with the Reserve Bank of India's (RBI) A.P.(DIR Series) Circular No. 10 dated 11 July 2022.

The RBI circular requires the AD Bank in India to obtain an approval from RBI with details of the arrangement once they are approached by overseas bank of the eligible partner country for opening of the INR special rupee Vostro account.

⁹ Union of India & Others Vs Bharat Forge Ltd. & Another [2022-VIL-52-SC]

Indirect Tax

Supreme Court Decision

Opening of GST common portal to file or revise Form TRAN-1 and TRAN-2 extended by four weeks⁹

Supreme Court had vide its judgement dated 22 July 2022 directed Goods and Service Tax Network (GSTN) to open GST common portal for filing Form GST TRAN-1 and TRAN-2 for availing transitional credit for two months, i.e. 1 September 2022 to 31 October 2022. As per the judgement, any aggrieved registered assessee can file the relevant forms or revise the already filed forms. Department filed a miscellaneous application before the Supreme Court seeking an extension of the above-referred timelines.

In view of this miscellaneous application, Supreme Court has extended the time for opening the GST common portal for a further period of four weeks from 2 September 2022. Accordingly, Form GST TRAN-1 and TRAN-2 can be filed between the period 1 October 2022 to 30 November 2022.

In compliance to the direction of the Supreme Court, CBIC has issued a circular¹⁰ clarifying the procedural aspects for filing/revising TRAN-1 and TRAN-2. The circular also states that filing or revising TRAN-1 and TRAN-2 is a one-time opportunity.

¹⁰ CBIC Circular No. 180/12/2022-GST dated 9 September 2022

High Court Decision

Circular which stated that refund would be allowed in cases where ITC is accumulated due to supply at concessional rate of GST has retrospective effect as it is clarificatory in nature¹¹

Petitioner a supplier of goods to all the Defence, Research & Development Organisation (DRDO) Laboratories across India. It supplies goods at a concessional rate of 5% GST. It filed a refund application under an inverted duty structure. This application was rejected by the Revenue relying upon para 3.2 of circular dated 31 March 2020. This circular states that refund would not be allowed in cases where the input and output supplies are same.

Petitioner filed writ petition highlighting that CBIC has issued a circular dated 6 July 2022 clarifying para 3.2 of circular dated 31 March 2020, which the Revenue has relied on to reject the refunds. Therefore, the refund should be granted due to the changed circumstances. The circular dated 6 July 2022 stipulates that the suppliers who supply goods at a concessional rate to companies involved in specified projects are entitled to a refund under the inverted tax structure. Revenue opposed the petition contending that the applicability of the circular dated 6 July 2022 cannot be applied retrospectively.

High Court for the State of Telangana held that the circular dated 6 July 2022 is clarificatory in nature whereby para 3.2 of the circular dated 31 March 2020 has been substituted. Being clarificatory, the circular dated 6 July 2022 would have effect from the date when the circular dated 31 March 2020 came into effect.

Advance Ruling

ITC is not available on vouchers procured from a third-party vendor for the redemption of loyalty points¹²

Applicant, who is into the business of selling goods on its e-commerce platform, proposes to run a loyalty program where loyalty points will be awarded based on purchases made by the customer on its e-commerce platform. Applicant would make the vouchers and subscription packages available to those customers who wish to redeem their loyalty points. Further, the Applicant will not receive any monetary consideration from these customers. The Applicant would procure the vouchers and subscription packages from third-party vendors on payment of applicable GST.

Applicant applied for an advance ruling concerning eligibility to avail the ITC of GST paid on the vouchers and subscription packages which will be procured from third-party vendors. It contends that section 17(5)(h) (i.e. goods lost, stolen, destroyed, written off or disposed of by way of gift or free samples) does not apply to the impugned transaction.

Karnataka Authority for Advance Ruling held that Applicant would not be eligible to avail ITC on vouchers and subscription packages procured from third-party vendors. It further held that redemption of loyalty points by the customer for receiving vouchers from the Applicant implies that the vouchers are issued free of cost to customers and amounts to disposal of vouchers (goods) by way of gift and is squarely covered under section 17(5)(h).

¹¹ Micro Systems and Services Sole Proprietorship Vs The Union of India and 5 Others [2022-VIL-622-TEL]

¹² Myntra Designs Private Limited [2022-VIL-253-AAR]

Notifications/ Clarifications

CGST provisions under the Finance Act, 2022 notified¹³

Section 100 to section 114 of the Finance Act, 2022, contains provisions to amend certain sections of the Central Goods and Services Tax Act, 2017.

Central Government has earlier notified two provisions, namely, transfer of any amount in an electronic cash ledger (section 49(10)) and interest on delayed payment of tax (section 50) with effect from 5 July 2022. The rest of the provisions have been notified from 1 October 2022.

Foreign Trade Policy 2015-2020 extended¹⁴

Ministry of Commerce & Industry has issued a press release stating that the existing Foreign Trade Policy (FTP) 2015-20, which was valid up to 30 September 2022, has been extended for a further period of six months.

Guidelines for the launching of prosecution under the CGST Act¹⁵

CBIC has issued an instruction containing guidelines for launching prosecution for offences under section 132 of the CGST Act. Important points from the instruction are provided below:

- The authorities to sanction prosecution are Pr. Commissioner/Commissioner of CGST or Pr. Additional Director General/Additional Director General, Directorate General of GST Intelligence (DGGI) of the concerned zonal unit/ Hqrs in respect of cases investigated by DGGI.
- There should be availability of adequate evidence to establish that the offender possessed mens-rea for committing the offence.

- The prosecution should not be launched just because demand has been confirmed, or in cases of technical nature, or difference of opinion.
- The prosecution should not be launched indiscriminately against all directors but only against persons who oversaw day to day operation of the company and had taken an active part in committing tax evasion.
- The evasion amount should be over INR 5 crores.
- The proper officer should forward the proposal of filing a complaint in the prescribed format to the Pr. Commissioner / Commissioner/DGGI within fifty (50) days of arrest for sanction. This proposal should be prepared within one month of the date of receipt of the adjudication order or receipt of the recommendation of Adjudicating Authority, as the case may be.

Customs (Import of Goods at Concessional Rate of Duty or for Specified End Use) Rules, 2022 notified¹⁶

Ministry of Finance has notified new Customs (Import of Goods at Concessional Rate of Duty or for Specified End Use) Rules, 2022, in suppression of earlier rules of 2017.

Important points in this regard are provided below:

- Importer to give one-time prior information in Form IGCR-1 and furnish continuity bond with surety or security and an undertaking. Once the information is submitted, an IGCR Identification Number (IIN) will be generated.
- IIN and continuity bond number are to be mentioned while filing the bill of entry.
- The bond will get debited automatically when the bill of entry is cleared for home consumption.

¹³ Notification No. 18/2022-Central Tax dated 28 September 2022

¹⁴ PIB dated 26 September 2022, Ministry of Commerce & Industry

¹⁵ Instruction No. 04/2022-23 [GST - Investigation] dated 1 September 2022

¹⁶ Notification No. 74/2022-Customs (N.T.) dated 9 September 2022 read with Circular No. 18/2022-Customs dated 10 September 2022

- Importer must maintain various records and submit a monthly statement in Form IGCR-3 by the tenth of the following month. Further, the importer may submit details of goods consumed in Form IGCR-3A at any point in time for immediate recredit of the bond, which shall become a part of the monthly statement of the subsequent month. Non-receipt or short receipt of goods is to be intimated on the common portal in Form IGCR-2.
- Goods should be sent to a job-worker, unit transfer or end-use recipient under an invoice/e-way bill.
- Jurisdictional Customs officer shall invoke the bond for recovery when rules have not complied.

including cable cranes; mobile lifting frames, straddle carriers and works trucks fitted with a crane). Goods classifiable under HSN 8705 attract 10% customs duty, whereas those under HSN 8426 attract 7.5% customs duty.

Parameters to arrive at the classification of goods that undertake lifting and handling functions and have mobility as function (referred to as Truck Cranes or All Terrain Cranes)¹⁷

As Truck Cranes or All Terrain Cranes have features similar to motor vehicles and load-handling heavy machines, there are differing opinions on the classification of such goods. Given the same, CBIC has issued a circular which states that classification of mobile machines that undertake handling and lifting functions as well as having mobility as a crucial feature may be decided on the set of parameters such as movement under load, location of propelling and control elements, number of engines and integration of working machine with the chassis.

The circular clarifies that mobile machines that can move under load should be classifiable under HSN 8705 (i.e. special purpose motor vehicles, other than those principally designed for the transport of persons or goods (for example, crane lorries, etc.)), whereas machines that do not move under load, or movement is limited should be classifiable under HSN 8426 (i.e. cranes

¹⁷ CBIC Circular No. 20/2022-Customs dated 22 September 2022

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