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By

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Dear Readers,

In this 104th edition, we bring you articles on two important aspects. The first one is the analysis of the recent judgments of High Courts surrounding the re-assessment controversy. Now, the question that is being texted is the fate of assessments for AY 13-14 and 14-15. Unless the matter is again solved by the apex court, this particular issue continues to haunt us. We have analysed three important decisions of High Courts on the said issue and provided our comments.

The next article is on the taxability of issuance of vouchers under GST laws. The recent Karnataka High Court decision in Premier Sales Corporation appears to be opening a can of worms under the GST laws for the said issue. We have taken the judgment as a base, travelled back in time and to see, how vouchers are treated under the indirect tax regime, to understand the current taxability of the same.

We have also collated certain important judgments under direct tax and indirect tax laws, provided our comments wherever necessary.

I hope that you will have good time reading this edition and please do share your feedback.

Thanking You,

Suresh Babu S
Founder &C hairman

GST

GST IMPLICATIONS ON ISSUE OF VOUCHERS

Contributed by CA Sri Harsha

The recent judgment of Karnataka High Court in the matter of Premier Sales Promotion (P.) Limited[1] (for brevity 'Premier Sales') is an interesting development qua the taxability of the vouchers. The vouchers have occupied a prominent place under the erstwhile indirect taxation regime. There are occasions where the vouchers are tried and failed to be taxed as 'goods' for the purposes of state and other similar levies.

Under the GST regime, one can find mention about the 'vouchers'. The legislature has defined the 'voucher' and there exists other provisions namely time of supply and valuation qua vouchers. This is a stark difference when compared with the previous regime. Though appreciable, there is still a lot, to be covered with respect to the taxability of 'voucher'.

In this article, we shall try to examine certain issues that surround the taxability of 'voucher'.In order to explore the various issues, we need to first understand what a 'voucher' is?

Vouchers and Types:

The 'voucher' is defined vide Section 2(118) of CT Act[2] to mean an instrument where there is an obligation to accept it as consideration or part consideration for supply of goods or services or both and where the goods or services or both to be supplied or the identities of their potential suppliers are either indicated on the instrument itself or in related documentation, including the terms and conditions of use of such instrument.

Hence, from the above, it boils down, that we can call an instrument as a 'voucher' only if the following two conditions are satisfied; where there is an obligation to accept it as consideration or part consideration for supply and where the goods/services/both to be supplied/identities of potential suppliers are indicated.

The first condition that is acceptance of instrument towards consideration, whether in whole or in part does not present any issue and can be said to be satisfied. The second condition that in order for an instrument to qualify as vouchers, there should be the identification of the goods or services or both to be supplied or identities of potential suppliers are available either on the instrument itself or in related documentation, including the terms and conditions, presents a challenge.

Not all vouchers may have an identity qua the goods or services or the potential suppliers. RBI[3] classifies the pre-paid payment instruments (PPIs) into three categories; closed system PPIs, semi-closed system PPIs and open system PPIs. Let us see, whether which of the above PPIs qualify as 'voucher' under the GST laws.

[1] [2023] 147 taxmann.com 85 (Karnataka)
[2] Central Goods and Services Tax Act, 2017
[3] Reserve Bank of India

Type of PPIs	Nature	'Voucher' under GST?
Closed	These PPIs are issued by an entity for facilitating purchase of goods or services from that entity only and do not permit cash withdrawal.	• Yes, since it satisfies both the conditions. • Since goods or services should be purchased from that entity, there is an identity of the potential supplier (in this case, the issuing entity, it self).
Semi-Closed	These PPIs are used for purchase of goods and services at a group of clearly identified merchant locations/establishments which have a specific contract with the issuer to accept PPIs as payment instruments.	• Yes, since it satisfies both the conditions. • Since goods or services should be purchased from a group of clearly identified establishments, there is an identity of the potential suppliers.
Open	These PPIs are issued only by banks and are used at any merchant for purchase of goods and services.	• No, since it does not satisfy the second condition. • There is no identification of the goods or services or potential suppliers. Hence, this may not be called as 'voucher' for the purposes of GST laws.

From the above, we understand that there are certain type of PPIs, that is 'Open System PPIs' which do not qualify as 'voucher' as per the definition available in CT Act. We shall understand the tax implications on issuance of such type of vouchers at appropriate place. Further, since the closed system PPIs are not regulated by RBI, as these instruments cannot be used for payments or settlement for third party services, the implications of this non-regulation by RBI also has a potential of creating taxation issues, which we shall deal at appropriate place.

Now, let us proceed to examine, the tax implications on issuance of semi-closed PPIs, which satisfy the definition of 'voucher' under GST laws. In order to understand the tax implications, we need to first agree upon, as to, whether a 'voucher' can be called as 'goods' or 'service'? This is important because, under the GST laws, there exists a separate legislative treatment for goods and services.

What is Voucher?, Is it Goods? Or Services? Or Actionable Claim? or Money?

This is the crux of the entire discussion. Let us examine, in a piece meal, the above question. First, let us examine, whether 'voucher' is 'goods' or 'actionable claim'?

Goods vs. Actionable Claim:

A few definitions that are relevant for the current discussion:

Section 2(52) of CT Act defines 'goods' to mean every kind of moveable property other than money and securities but includes actionable claim, growing crops, grass and things attached to or forming part of the land which are agreed to be severed before supply or under a contract of supply.

Section 2(1) of CT Act defines 'actionable claim' shall have the same meaning as assigned to it in Section 3 of Transfer of Property Act, 1882.

Section 3 of Transfer of Property Act defines 'actionable claim' as'a claim to any debt, other than a debt secured by mortgage of immovable property or by hypothecation or pledge of moveable property, or to any beneficial interest in moveable property not in possession either actual or constructive, of the claimant, which the civil courts recognize as affording grounds of relief whether such debt or beneficial interest be existent, accruing or conditional or contingent'.

One stark difference between the erstwhile indirect taxation regime to the current GST regime is the definition of 'goods'. Earlier, the actionable claims are not included in the definition of 'goods'. They used to be outside the ambit of definition of 'goods'. Under the GST laws, the definition of 'goods' specifically includes 'actionable claim'.

Though, the definition of 'goods' specifically include 'actionable claim' in its ambit, the supply of all the actionable claims are not categorised as supplies under GST laws. This is evident from reading of Entry 6 of Schedule III to CT Act, which lists, 'actionable claims, other than lottery, betting and gambling' as activities or transactions which shall be treated as neither supply of goods nor supply of services.

Hence, supply of actionable claims (Other than lottery, betting and gambling) are neither supply of goods nor supply of services. In other words, if vouchers can said to be actionable claim, though they fall under the ambit of 'goods', they can still be out of provisions of GST laws, because of specific mention in Schedule III.

The entire aspect of inclusion of 'actionable claim' in the definition of 'goods' and providing a special treatment to actionable claims other than lottery, betting and gambling are challenged on violation of constitutional safeguards in the matter of Skill Lotto Solutions Private Limited[4] in the context of lotteries. The Supreme Court held that inclusion of 'actionable claim' in the ambit of 'goods' is in line with inclusive definition of 'goods' in Article 366(12) of Constitution and accordingly turned down the petition.

Therefore, the essential point that emerges from the above discussion is, if the 'voucher' can be called as 'actionable claim', then by virtue of Entry 6 of Schedule III, the transaction or activity of dealing with vouchers will be treated as neither supply of goods nor services, since 'voucher' is neither lottery or betting and gambling. Hence, let us proceed to understand, whether 'voucher' can be called as 'actionable claim'.

[4]2020 (12) TMI 140 – Supreme Court

The expression 'actionable claim' is defined under Section 2(1) of CT Act to have the same meaning as it has under Section 3 of Transfer of Property Act. On a reading of the definition of 'actionable claim' under the transfer of property act, a claim to any beneficial interest in moveable property is covered. Hence, if the 'voucher' can be said to be a claim to any beneficial interest in moveable property, then it can be called as 'actionable claim'.

The Supreme Court had an occasion to deal, under the erstwhile indirect taxation regime, whether the lotteries can be called as 'actionable claim'? The question before the apex court in Sunrise Associates[5] was to examine the correctness of the decision in H. Anraj ,[6] where in it was held that sale of lottery tickets attracts the sales tax obligations, since the lottery tickets can be called as 'goods'. In H. Anraj, the two judge bench held that the lottery ticket gives raise two rights – one, right to participate in the draw, and two, right to win the prize, depending on chance. The two-judge bench held that the first right can be said to be transfer of beneficial interest in moveable property and so 'goods' and the second right, may be called as 'actionable claim'.After referring to the various judgments and literature, the constitutional bench in Sunrise Associates held that there cannot be split of rights in the lottery tickets and the entire ticket constitutes one right, a chance to win, which fits categorisation under actionable claim. Since 'actionable claim' is excluded from the purview of 'goods', lottery tickets cannot be held as 'goods'.The Supreme Court further stated that actionable claims are a species of goods and also transferable for value. For all purposes, actionable claims are goods except for the purposes of tax laws. The Court stated that since lottery envisages a chance to win, the same cannot be said to be goods, because the chance itself cannot be goods.

In a different context dealing with taxability of sale of DEPB license, the Supreme Court in Yasha Overseas[7] had an occasion to deal with goods vs. actionable claims. The question that arose before Supreme Court in Yasha Overseas is, whether the judgment of Sunrise Associates which overruled H. Anraj has an effect of unsettling the judgment of Supreme Court in Vikas Sales Corporation[8] (wherein it was held that REP licenses are 'goods'), since the above judgment was pronounced placing reliance on H. Anraj. The second question is that, whether the decision of Vikas Sales Corporation is applicable for DEPB also, thereby, whether DEPB can also be said to be 'goods'?

The Supreme Court in Yasha Overseas held that the overruling of H. Anraj by Sunrise Associates does not disturb the judgment in Vikas Sales Corporation. Accordingly, the judgment in Vikas Sales Corporation, wherein it was held that REP licenses are 'goods' and accordingly the sale of REP licenses attracts obligations under sales tax is in accordance with the law. Further, the Supreme Court stated that there is no stark difference between REP licenses and DEPB licenses and held that sale of DEPB licenses are also termed as sale of 'goods', thereby attracting obligations under sales tax act.

Further, the Court while providing concluding remarks in Yasha Overseas, in Para 42 stated that if more analogies are to be given one might compare DEPB with prepaid meal tickets or prepaid petrol coupons or accumulated flying miles. The Court stated that a meal ticket, a petrol coupon or flying meals credit has its own intrinsic value and if those are permitted free transferability those would soon become market commodities and would be sold and brought for their value as 'goods'.

[5](2006) 5 SCC 603
[6]1985 (10) TMI 258 – Supreme Court
[7](2008) 8 SCC 681
[8]1996 (5) TMI 363 – Supreme Court

From the above, a conclusion can be drawn that, if an instrument, only provides a right to a claim, then it can be said to be an actionable claim. An argument can be made that a voucher signifies assignment of beneficial interest or a right to claim the goods which are not in possession of the beneficiary, either actual or constructive and voucher itself having no value, it can be called as an actionable claim.

The voucher can be argued to be a different from a prepaid meal ticket or prepaid petrol coupons and accumulated flying miles as mentioned In terms of Para 42 of Yasha Overseas, since the latter has only pre-defined purposes, whereas the former can be used for anything. Even assuming that both are same, since the vouchers cannot be freely transferred and cannot become market commodities, the chances of it being called 'goods' is low.

Hence, there exists a high chance that 'vouchers' are actionable claims and accordingly engaging in the activity or transactions dealing with vouchers can be said to be neither supply of goods nor services.

Goods vs. Services:

Assuming that vouchers are not actionable claims, now, let us proceed to examine, whether vouchers can be called as a 'goods' or 'service'?

As stated earlier, the definition of 'goods' covers all kind of moveable properties. Is voucher a kind of moveable property? As discussed earlier, the Supreme Court in Sunrise Associates while dealing with the question as to whether lottery ticket is goods or actionable claim overruled the previous decision in H. Anraj. While overruling the previous decision of H. Anraj, in concluding remarks, the Court entertained the conclusion of H. Anraj, wherein the rights in lottery are split into two and one of them was made susceptible to tax and stated that even if the right to participate is assumed to be a separate right, there is no sale of goods within the meaning of sales tax statutes when that right is transferred, there is no underlying moveable property. Applying the same to the vouchers, when vouchers are supplied, there is no underlying moveable property and hence one can argue that per se issuance of vouchers is not supply of goods.

Further, in another matter, the Supreme Court had an occasion to deal with the taxability of vouchers under the previous regime. The brief facts are, Sodexo SVC India Private Limited[9] (for brevity 'Sodexo') was engaged in issuance of vouchers to its customers, who in turn issues the same to their employees. The employees present the vouchers to various vendors (with whom Sodexo has agreements and known as 'affiliates') for purchase of goods or services. The vendors/affiliates then present the vouchers to Sodexo and request for settlement of money. Sodexo pays money which is collected from customers/employers to the vendors/affiliates. For the facilitation of the entire transaction, Sodexo charges a service fee from both the customers and its affiliates. On such service charges, Sodexo was remitting service tax. There was a demand from local body tax (LBT) or octroi authorities stating that Sodexo vouchers were 'goods' and since they were brought within the limits of city for consumption or sale, the said vouchers attract obligations under LBT.

[9] 2016 (331) ELT 23 (SC)

Sodexo stated that they were engaged in provision of service of facilitation of the entire transaction and not engaged in sale of goods. Since the actual sale of goods takes place from affiliates to their customers (employees), Sodexo cannot be said to be engaged in sale of goods attracting obligation under LBT. The High Court, however, has not accepted the argument of Sodexo and held that the vouchers are nothing but goods, since they are capable of being paid or sold and same are capable of being delivered, stored and possessed, thereby satisfying the test laid down in Tata Consultancy Services .[10]

The matter reached to Supreme Court. After listening to both the parties, the apex court held that the vouchers cannot be called 'goods'. The Court stated that Sodexo is only facilitating the transaction but not engaged in sale of goods and following the decisions of Bharat Sanchar Nigam Limited[11] and Idea Mobile Communication Limited ,[12] held that such issuance of vouchers is not goods and accordingly struck down the demand of LBT. Further, the court after referring to the decisions of Sunrise Associates and Yasha Overseas have stated that the appropriate test would be as to whether such vouchers can be traded and sold separately and since the answer is negative, the vouchers cannot be called as 'goods' in terms of LBT legislations.

Hence, from the above, one conclude that there are low chances to call 'vouchers' as goods even under the GST laws.

Then, 'voucher' can be a service? This is because, the definition of 'service' [Section 2(102) of CT Act] is laid in a manner to mean anything other than goods. Since vouchers cannot be goods and as we have also assumed that it is not an actionable claim, then it should be the residuary item, that is 'service'. Let us proceed to examine the same.

On a close reading of the definition of 'service', it would be evident that the said definition apart from stating that anything other than goods is out of its ambit, also excludes money and securities. However, it includes activities relating to the use of money or its conversion by cash or by any other mode, from one form, currency or denomination, to another form, currency or denomination for which a separate consideration is charged.

Hence, the separate consideration that is charged from the client for converting the cash into vouchers and vouchers back into cash at the redemption by the affiliates or vendors, such amounts are chargeable to tax and such amounts can be said to be consideration for supply of services. However, the question, is whether the issuance of vouchers can per se called supply of services? To my mind, the answer should be no.

Then, what is 'voucher', if it is not 'goods', 'services' or 'actionable claim'. Is it 'money'? Let us proceed to examine the same.

[10](2005) 1 SCC 308
[11](2006) 3 SCC 001
[12](2011) 12 SCC 608

Services vs. Money:

The definition of 'money' is laid down vide Section 2(75) of CT Act, to mean the Indian legal tender, or any foreign currency, cheque, promissory note, bill of exchange, letter of credit, draft, pay order, traveller cheque, money order, postal or electronic remittance or any other instrument recognised by RBI when used as a consideration to settle an obligation or exchange with Indian legal tender of another denomination but shall not include any currency that is held for numismatic value.

From the above, money covers any other instrument recognised by RBI. Semi-closed system PPIs and Open systems PPIs are regulated by RBI and so there is no doubt as to their qualification as to 'money'. As far as the closed systems PPIs are concerned, since they are not regulated by RBI,can it be said to be outside the definition of 'money'? Though closed system PPIs are not regulated by RBI, it should still fall under the definition of 'money' because they are still recognised by RBI. Hence, whether it is closed, semi-closed or open system PPIs, all of them fall under the definition of 'money'.

The next question that arises is, whether voucher will fall under the definition of 'money' only when it is used as a consideration to settle an obligation or at the time of issuance itself? In other words, the vouchers can be called as money, at the time of issue by the supplier to an entity or only at the time when the voucher is applied for redemption by the user with a vendor?

In our opinion, the voucher can be said to be money at the time of issuance itself. It is equivalent to taking money from the customer and issuing him demand draft. The demand draft can be used as consideration to settle an obligation at a later point of time, and this should not put the cash tendered by customer not as money at the time when he applies for demand draft. Applying the same analogy to vouchers, the issuance of vouchers itself should be treated as money.

The Karnataka High Court in the case of Premier Sales had an occasion to deal this aspect. In the facts of that case, Premier Sales is engaged in transaction of PPIs of Gift Vouchers and E-vouchers from the issuers and supplying them to its client for specified face value. Its clients issue such vouchers to their employees in the form of incentive or to other beneficiaries under promotional scheme for use as a consideration for purchase of goods or services or both as specified therein. Premier Sales has submitted its application to decide upon the taxability of their activity before the AAR[13] . The AAR has held that supply of vouchers is taxable as goods and taxable at 18%. Premier Sales has challenged the said order before the AAAR[14] , wherein they have confirmed the order of AAR. The said order was challenged before the Karnataka High Court.

The High Court framed the question as whether the vouchers themselves are chargeable to tax at the time of supply or chargeable when the goods and services are redeemed? The High Court held that in the facts of Premier Sales the vouchers issued were semi-closed PPIs in which the goods or services to be redeemed are not identified at the time of issuance and since the substance of transaction between Premier Sales and its clients is procurement of printed forms and their delivery. The Court held that printed forms are like currency and the value printed on the form can be transacted only at the time of redemption of the voucher and not at the time of delivery of vouchers to its client. The Court concluded that issuance of vouchers is similar to pre-deposit and not supply of goods or services and hence vouchers can neither be taxes as goods nor services.

[13] Authority for Advance Ruling

[14] Appellate Authority for Advance Ruling

From the above, it can be understood that the Karnataka High Court has not dealt as to what exactly the nature of 'vouchers', but concluded that they are akin to money and hence excluded from the definition of 'goods' and 'services'. The Karnataka High Court has referred to the decisions of Delhi Chit Fund Association[15] and Sodexo (supra) to arrive at this conclusion. Hence, in the opinion of Karnataka High Court, there cannot be any tax on mere issuance of semi-closed PPIs.

Position under EU VAT:

It appears that there exists a similar problem even under EU VAT laws. The EU has released a guideline[16] (which came effective from 01 Jan 2019) dealing with taxation in case of single point voucher [SPV] and multi point voucher [MPV].

Earlier to the above guideline, the vouchers are meant to be face value vouchers and deems the supply of such voucher as a supply of service. The position prior to the new guidelines is that, the legislation identifies two types of vouchers. One, vouchers for goods or services where only one VAT rate applies (single purpose) and two, where vouchers where several VAT rates could apply because the voucher can be used to buy different products. For single purpose vouchers, the VAT is due when the voucher is issued but not when it redeemed. The other type of voucher is sub-divided into two types, credit vouchers (the issuer is not generally the redeemer) and retailer vouchers (where the retailer is both issuer and redeemer). The taxability for credit vouchers is said to be when voucher is redeemed and for retainer vouchers, when voucher is transferred after issue and when it is redeemed.

The new guidelines now try to bring more simplified regime. The new guidelines state that the vouchers can be two types, that is SPV and MPV. A SPV will be one where, at the time of issue, both the liability to VAT and the place of supply of underlying goods or services are known. Any VAT due on SPV would be the time of issuance of voucher and no VAT is payable at the time of redemption. In case of MPV (other than SPV), the VAT due is payable on redemption.

Concluding Remarks:

As stated in the opening of the article, that there is so much ground to be covered for the taxability of the vouchers, I believe that the above discussion is undisputed proof. It seems that position under EU VAT laws is also catching up now.

The Government has to come up with clear communication as to how the vouchers are taxed in the hands of the issuer. There should be enough clarity that the entity which is dealing with issuance of vouchers for its clients for a consideration, such activity is to be included in the definition of 'service' and the valuation of said service should be restricted only to the service charge or fee but not the entire amount [Taking clue from Sodexo judgment by Supreme Court].

[15] WP (C) 4512/2012

[16] VAT: treatment of vouchers from 1 January 2019 - GOV.UK (www.gov.uk)

Followed with the above, then there should be enough legislative provisions dealing with the taxability of redemption of the vouchers. The provisions as contained in Section 12(4) and Section 13(4) of CT Act appears to be dealing with instances where supply of vouchers are made by supplier himself. These provisions appear to deal with closed system PPIs, but not with semi-closed PPIs. Then, there should be also a guidance on the fate of open system PPIs, which do not fit under the definition of 'voucher' under the GST laws.

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DIRECT TAX

REASSESSMENT CONTROVERSY - POST SC DECISION IN ASHISH AGARWAL

Contributed by CA Sri Harsha & CA Narendra

Background:

Reassessment under Section 147 of ITA[1] is always a major source for litigation before the judicial fora.

In order to reduce the litigation and create a tax friendly environment, reassessment provisions under Section 147 were completely replaced with new provisions though the FA[2], 2021.

However, insertion of new reassessment provisions has indirectly created huge litigation during recent times. Even after the matter reached the Hon'ble Supreme Court, the issue has not been resolved completely.

Let us understand the history of controversy which was created by the new reassessment provisions under Section 147- Section 151 as amended by the FA,21.

During the outbreak of COVID-19 pandemic, CG[3] has enacted the TOLA,20 [4]. Section 3 of TOLA extends the time limit for various compliances under the ITA to 31.03.2021, if the due date for such compliance falls between 20.03.2020 and 31.12.2020. It further provides that the CG may further extend the time period specified in above.

By utilizing the power conferred under Section 3 of TOLA, the CG, by Notification[5] , extended the time limit for issue of notice under Section 148 to 30.04.2021 and the same is further extended to 30.06.2021.

[1]Income Tax Act, 1961
[2]Finance Act
[3]Central Government
[4]Taxation and Other Laws (Relaxation and Amendment of Certain Provisions) Act, 2020.
[5]No. 20/2021 dated March 31, 2021

However, when the Notifications are effective, through the FA,21, provisions of reassessment have been replaced with a new set of provisions which are effective from 01.04.2021.

This insertion of new provisions by the FA,21 has created huge controversy. This is because, on one hand, the last date under section 149 for issue of notice under section 148 (if such date falls between 20.03.2020 and 31.03.2021) has been extended to 30.06.2021. On the other hand, reassessment provisions have been completely changed though the FA,21 with effective from 01.04.2021.

When there is an overlap between old and new provisions, a notification5 issued by the CG under the TOLA states that provisions of section 149 and section 151 as stood before the amendment by FA,21 shall be applicable. The major question of law that has been raised before the Hon'ble High Court is:

'as the old provisions for reassessment has been substituted by Finance Act, 2021 and such old provisions are not applicable on or after 01.04.2021, whether the central government with the delegated power is empowered to issue such Notification extending the time limit for issue of notice even on or after 01.04.2021 under the old provisions?'

In this regard, many High Courts have held that as the reassessment provisions have been completed changed through the FA,21 with no saving clause for the old provisions, and parliament has made the new provisions effective from 01.04.2021 though it is well aware of the existence of Notification for extension of dates, notice issued under section 148 post 01.04.2021 under old reassessment provisions are not tenable accordingly quashed the reassessment notices. For detailed analysis, read our article .[6]

[6]SBS-I-19th-Edition.pdf (sbsandco.com)

The Hon'ble Chhattisgarh High Court[7] has upheld the issue of notice under section 148 whereas Allahabad High Court[8], Rajasthan High Court[9] and Delhi High Court[10] have quashed the reassessment notice under section 148. Against the High Court Judgment, Revenue has filed an SLP before the Hon'ble Supreme Court[11].

At the Supreme Court:

After considering facts, the Hon'ble Supreme Court has allowed the appeal of the revenue with the following remarks:

- The respective impugned section 148 notices issued to respective assesseeshall be deemed to have been issued under section 184A of the ITA as amended by FA, 21 and AO shall provide information and material to the assessee within 30 days so that assessee can reply within 2 weeks.
- The requirement of conducting enquiry as specified under section 148A(a) be dispensed with as one time measure vis-à-vis those notices which have been issued under old provisions from 01.04.2021 to till date.
- Thereafter, AO shall pass order under section 148A(d) appropriately and issue notice under section 148 as amended.
- *All defences which may be available to the assessee under section 149 or under FA 2021, and whatever rights available to the AO under FA, 2021 are kept open and continue to be available.*

CBDT Instruction:

As Hon'ble Supreme Court has given a direction for making the reassessment under the new provisions, CBDT, in order to implement the Apex Court's order, has issued an Instruction[12] to the income tax authorities. In the Instruction given by it, CBDT has interpreted the Apex Court's order as follows:

- The benefits of new provisions shall be applicable to past assessment years as well.
- *Decision of Apex Court read with the time extension provided under the TOLA,2020 will allow the notices to travel back in time to their original date when such notices were to be issued and then new section 149 is applicable.*
- *Accordingly, reassessment notices can be issued for the AY 2013-14, AY 2014-15 and AY 2015-16 if the case falls under amended section 149(1)(b).*
- *Notices can be issued for the AY 2016-17 and AY 2017-18 if the case falls under amended section 149(1)(a).*

Based on the above Instructions, Revenue has issued the information as directed by the Hon'ble Supreme Court to the assessee for the AY 2013-14 and AY 2014-15.

Issue Involved:

The Hon'ble Supreme Court has held that Revenue on the basis of the notification has issued notices for the reassessment under the old provisions which is a bonafide mistake. Accordingly, the Hon'ble Supreme Court has given certain directions as stated above.

[7]Palak Khatuja [TS-816-HC-2021(CHAT)]
[8]Ashok Kumar Agarwal [TS-926-HC-2021(ALL)]
[9]Bpip Infra Private Limited [TS-1081-HC-2021(RAJ)]
[10]Mon Mohan Kohli [TS-1110-HC-2021(DEL)] and others.
[11]UOI v Ashish Agarwal[2022] 138 taxmann.com 64 (SC)

[12]Instruction No.01/2022

However, the question that arises now, is whether the CBDT Instruction which says that the notices issued will travel back in time to their original date and whether the issue of notice under Section 148 is valid for the AY 2013-14 and AY 2014-15 is in accordance with the law, is left open?

In this regard, the Hon'ble Delhi High Court in the case of TouchstoneHoldings (P.) Ltd[13] has held that:

'The time period for assessment stood extended till 30th June, 2021. The initial reassessment notice for AY 2013-14 has been issued to the petitioner within the said extended period of limitation. The Supreme Court has declared that the said reassessment notice be deemed as a notice issued under section 148A of the Act and permitted Revenue to complete the said proceedings. In this case, the income alleged to have escaped assessment is more than 50 lakhs and therefore, the rigour of Section 149(1)(b) of the Act (as amended by the Finance Act, 2021) has been satisfied.'

The Hon'ble Delhi High Court has simply quoted the judgement of the Apex Court in the case of Ashish Agarwal (supra) and held that reassessment notice is valid. However, the Hon'ble Delhi High Court has not considered the amended provisions of reassessment for issue of notice.

Gujarat High Court:

The Hon'ble Gujarat High Court in the case of Keenara Industries P Ltd & Others[14] (in batch of appeals) has made detailed analysis of the Apex Court Order and the CBDT Instructions. The Hon'ble Gujarat has made the following observations:

- Various High Courts have held that Notification issued by the CG is ultra vires.
- The Hon'ble Supreme Court is in complete agreement with the view taken by the various High Courts on the issue of notice under unamended provisions.
- However, as issue of notice by considering the extension notification under the old regime by the AO is a bonafide mistake, the Apex Court in order to balance the interest of the revenue and assessee, has held that notice issued under section 148 shall be considered deemed to be notice under section 148A.
- Hon'ble Supreme Court has kept all contentions open for both the sides to agitate under the Finance Act, 2021 in appropriate proceedings after once the procedure finalized by the Court has been followed.
- As the rights of both the sides have been kept open by the Apex Court while striking a balance between rights of the revenue and those of the respective assesses, the challenge on the part of the assessee with regard to the issue of limitation and other challenge as permissible under the Finance Act, 21 cannot go away.
- It is by virtue of the Apex Court's decision and direction that such a challenge lies and therefore, arguments of the respondents-revenue cannot be countenance that in wake of the decision of the Ashish Agarwal (supra) and the notice issued under section 148 of the Act earlier as was deemed to have been issued under section 148A of the IT Act and substituted by the Finance Act, 21, this challenge would not lie.
- The Board Circular if is applied, the fresh notice would travel back to the date on which the original notice was to be issued. It would result into the following aspects:

[13][2022] 142 taxmann.com 336 (Delhi)

[14]SPECIAL CIVIL APPLICATION NO. 17321 of 2022

(i)as per amended law, notice under section 148 is required to be issued along with the order under section 148A(d), therefore, the notice earlier issued in pre-Ashish Agarwal period, could be issued before 148A(d) order.

(ii)section 153(2) of the Amended Act provides that the reassessment proceedings need to be completed within 12 months from the end of financial year in which the notice under section 148 is issued.

- In the CBDT Circular, travelled back theory is applied, the due date for completion of the reassessment proceeding would be 31.03.2023. However, in all cases for the assessment year 2013-14 and 2014-15 where the original notices are issued between 01.04.2021 and 30.06.2021 and the fresh notices under section 148 are issued in post Ashish Agarwal's judgment, the due date for completing the reassessment would be 31.03.2024. The department itself has accepted that the due date for passing of the reassessment order is 12 months from the end of financial year 2022-23 i.e. the fresh notice under section 148 dated 15.08.2022 is 31.03.2024 which is a contradiction of the Board Circular proposing the travel back theory and the actual application of amended law.

- The theory of time travel in the Notification is not tenable as discussed herein above. The notices originally issued under section 148 of the Act would be converted into show cause notice under section 148A(b) and thereafter, while issuing the fresh notice under section 148 read with order under section 148A(d) of the Act would relate back to the date of original notice issued under section 148 A of the Act. The new law would apply retrospectively to the notices from such original date. The amendment is not retrospective and therefore, the time travel would not be permissible.

- The CBDT's Instructions No.1 of 2022 dated 11.05.2022 if permits the Jurisdictional Assessing Officer to act beyond the jurisdiction prescribed under the statute, the same is ultra vires the provision of Finance Act, 21.

- The Hon'ble Apex Court could have simply overturned the notices under section 148 as notices issued under amended provisions of section 148. However, these notices have been converted into show cause notices under section 148A with a rider that all defences under section 149 of ITA would be available to the assessee as well as revenue.

In respect of extension Notification under TOLA, Hon'ble High Court has held that Notification cannot extend the limitation of the repealed provisions and once the provisions are repealed, there cannot be any extension of time under the repealed provisions.

Further, the Hon'ble Gujarat High Court has negated the judgment of the Hon'ble Delhi High Court in the case of TouchstoneHoldings (P.) Ltd (supra).

Accordingly, the Hon'ble High Court has held that as per the unamended provision applicable till 31.03.2021, notice under section 148 of the Act cannot be issued beyond the period of six years from the end of relevant assessment year and such six years' period for the assessment years 2013-14 and 2014-15 will get over by 31.03.2020 and 31.03.2021 respectively. Accordingly, notices issued by the revenue under section 148 for the AY 2013-14 and AY 2014-15 on or after 01.04.2021 are time barred.

The Hon'ble Justice Mauna M. Bhatt has supplemented the views expressed by the Hon'ble JusticeSonia Gokani. The most important aspect highlighted by the Justice Mauna M. Bhatt is that the judgement of the Hon'ble Supreme Court is

not only applicable to those notices which are challenged before the High Courts but all notices which are issued between 01.04.2021 and 30.06.2021 under the unamended provisions.Hon'ble Justice has opined that *'to strike a balance between rights of the revenue as well as respective assessees, keeping in mind that the revenue may not suffer as ultimately it is a public exchequer, the Hon'ble Supreme Court in exercise of its power under Article 142 of the Constitution of India, has made the order, which shall be applicable PAN India. Therefore, I am not in agreement with submissions of petitioners that the decision in the case of Ashish Agarwal (supra) would be applicable to the cases, where such notices have been challenged before different High Courts. In view of the fact recorded by Hon'ble Supreme Court that about 90,000 reassessment notices were issued after 01.04.2021, which were subject matter of more than 9,000 petitions/ appeals and further permitting the revenue to deal with about 90,000 notices, with clear direction to make the said decision applicable PAN India, in my opinion, the decision of Hon'ble Supreme Court in the case of Ashish Agarwal (supra) would apply to all the cases, where notices were issued between 01.04.2021 to 30.06.2021.'*

Allahabad High Court:

The Allahabad High Court in the case of Rajeev Bansal[15] has also analyzed the concept of issue of notice post Hon'ble Supreme Court judgement in the case of Ashish Agarwal (supra).

The Hon'ble Allahabad High Court has heavily relied upon the coordinate bench ruling in the case of Ashok Kumar Agarwal[16] wherein the coordinate bench has held that extension of time limit provided under TOLA,20 cannot be applied to amended section 149 for issue of notice under section 148. By placing the reliance on the above ruling, the Hon'ble High Court has made the following observations:

- Once the new provision is inserted, previous provision cannot survive, except for things which have already been done.

- In the absence of any express saving clause, reassessment on or after 01.04.2021 can be made only under the amended provisions.

- It would be oversimplistic to ignore the provisions of, either the Enabling Act (TOLA,2020) or the Finance Act 2021 and to read and interpret the provisions of Finance Act 2021 as inoperative in view of the facts and circumstances arising from the spread of the pandemic Covid-19.

- While modifying the judgment and orders passed by the High Courts in view of the observations noted herein above, it was noted by the Apex Court that there was a broad consensus on the proposed modification on behalf of the revenue and the counsels appearing on behalf of respective assessees.

- From a careful reading of the judgment of the Apex Court, there remain no doubt that the view taken by the Division Bench of this Court in Ashok Agarwal on the legal principles and the reasoning for quashing the notices under Section 148 of the unamended IT Act, issued after 01.04.2021 adopted by the Division Bench had been affirmed in toto.

By making the above observation, the Hon'ble Allahabad High Court has held that notice issued on or after 01.04.2021 by invoking the extension of time as specified in section 3 of TOLA,2020 are not valid. Further, with regard to the CBDT Instruction for implementation of the Apex Court's order, the High Court has held that the third bullet to clause (6.1) of the CBDT Instruction which states that the Apex Court has allowed time extension provided by TOLA and the "extended reassessment notices" will travel back in time to their original date when such notices were to be issued and then Section 149 of the Act is to be applied at that point, is a surreptitious attempt to circumvent the decision of the Apex Court.

[15]WRIT TAX No. - 1086 of 2022

[16][TS-926-HC-2021(ALL)]

The High Court has further held that the directions issued in clause 6.2 to deal with the cases of the assessment years 2013-14 to 2017-18 are based on the misreading of the judgment of the Apex Court in Para 6.1 of the Instructions. Terming reassessment notices issued on or after 1.4.2021 and ending with 30.6.2021 as "extended reassessment notices", within the time extended by the Enabling Act (TOLA 2020) and various notifications issued thereunder, in Para 6.1 is an effort of the revenue to overreach the judgment of this Court in Ashok Kumar Agarwal (supra) as affirmed by the Apex court in Ashish Agarwal (supra).

Authors' Comments:

The judgement of the Hon'ble Gujarat High Court in the case of Keenara Industries P Ltd & Others (supra) and the Hon'ble Allahabad High Court in the case of Rajeev Bansal has provided some clarity with regard to doubts created post Supreme Court judgement and CBDT Instruction.

The Hon'ble Justice of the Gujarat High Court has categorically mentioned that the Apex Court's order is not only applicable to those notices which are challenged before various High Courts, but all notices issued between 01.04.2021 and 30.06.2021.

While adjudicating the matter, both Gujarat High Court and Allahabad High Courts have once again reiterated that CBDT directions are binding only on the revenue authorities and not on the Courts.

With the above detailed analysis given by the Gujarat High Court, the controversy relating to the issue of notice under section 148 on or after 01.04.2021 under unamended provisions may come to an end unless such decision is challenged before the Apex Court.

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SUMMARY OF JUDGEMENT

SUMMARY OF GST DECISIONS

Contributed by Team SBS

1. **Allhabad High Court in Bharadwaj Constructions vs State of UP[1] – Non-Payment of GST by the recipient of service [State Government]:**

In this matter, the petitioner has approached the High Court for praying for the direction that the service recipient should be releasing the GST on the running bills raised. The petitioner was awarded various works by the Public Works Department for construction, widening and beautification of roads in various part of the state. The works were awarded prior to introduction of GST laws. After the enforcement of GST regime, a Government Order was issued directing various heads of departments that contracts for new works and contracts which were already in existence and were awarded before the GST regime, all were to be governed by the GST regime and the additional tax burden shall be computed with the help of formula with respect to existing contract provided under the government order. The amount of additional tax burden so determined had to be paid to the contractor and the said amount of tax was thereafter to be deposited with GST department. The petitioner has realised that they have not been paid the GST portion for the on-going works and accordingly made multiple representations to the heads asking for releasing of GST amounts in line with the government order. The petitioner stated that they cannot pay the GST amount to the credit of government unless the same is received from the service receiver. The High Court after hearing the petition stated that the petitioner should make a fresh representation to the service receiver who shall seek internal clarification and pass a reasoned order within a period of two weeks.

Our Comments:

Orders like the above are the need of hour. The cash strapped state governments find it difficult to release the GST portion on the running bills. The service provider is already burdened with the delay in payments of the invoice value. Added to this burden, the non-releasing of GST portion would put the service provider in a tricky situation. The GST authorities on the other hand proceed to recover the GST portions, whether the same were realised from the service receiver or not. Armed with these types of orders, the service provider can seek a time bound response from the service receiver, which will help to achieve a certainty in his tax obligations.

2. **High Court of Madras in TVL Metal Trade Incorporation – Parallel Proceedings – Already proceeding initiated by Central Government and a summons issued by State Government:**

In this case, the petitioner has been issued summons by the State GST department. The petitioner was already in receipt of summons from the Centre GST Department and has participated in that proceedings. The petition is filed challenging the summons issued by State GST department, seeking the court's intervention to struck them down on the ground of simultaneous proceedings for the same subject matter.

[1] 2023 (2) TMI 396 – Allahabad High Court

The Court held that since no action was taken by the State GST department and only summons were issued for production of documents, it cannot be said that the State GST department is also dealing with the subject matter. The Court directed the petitioner to attend before the State GST department and then only it can be known that, whether the Centre and State GST departments are proceeding on the same subject matter. Accordingly, the Court directed the petitioner to appear before the State GST department and state his all objections and ordered that the State GST department to consider the submissions on merit and then to decide as to whether the petitioner can be prosecuted once again under State GST laws when the Central GST Department has already prosecuted.

Our Comments:

Though there is no bar for concurrent audits/investigation/proceedings, but for the same period or subject matter leads to harassment. There should be adequate provisions or clarification barring the simultaneous proceedings by the state and centre tax authorities, especially for the same tax period irrespective of the subject matter. In the above decision, the High Court should have struck down the summons issued by State GST department on the sole ground that the proceedings were for the same period. The Calcutta High Court in RP Buildcon Private Limited & Anr[2] has passed restraint orders on the other authorities when proceedings relate to the same tax periods [Refer our Edition #100 to read our comments on the above judgment].

3. Gujarat High Court in Smita and Sons Coal Private Limited[3] - Power of Provisional Attachment is harsh in nature and should be used in the fit cases and not routinely:

The petitioner has purchased goods from a dealer when the latter's registration is intact. The petitioner has paid the invoice amount and tax portion on the said purchase. Later the same goods were sold by the petitioner. An investigation revealed that the seller of the goods to petitioner is engaged in raising invoices without actual supply of goods. Accordingly, the seller's registration is cancelled, and investigation was undertaken. The investigation revealed that the seller has passed on irregular credit to the tune of Rs 6 Crore (approx.) to some 60 buyers. One of them turned out to the be the petitioner.

Acting with such information, the petitioner was summoned wherein the above aspect was not discussed. The petitioner has seeken adjournment to appear. Post that another letter was sent by the tax authorities inquiring the details of freehold property and others. The petitioner has responded that they do not have any freehold property. Later, the tax authorities have proceeded to attach the bank account of the petitioner under the provisions of Section 83.

The petitioner has challenged the above action attaching the bank account. The petitioner stated that the provisional attachment is serious and harsh in nature and should not be resorted in a casual manner as done in his case. The petitioner prayed that the court should intervene and set aside the attachment order. The revenue pleaded that the investigation revealed that the seller is involved in fake invoices and passing the credit. Since the petitioner has made a purchase from that seller, there is a high chance that the said credit involved is fake in nature.

[2] 2022 (10) TMI 501 – Calcutta High Court
[3] [2023] 147 taxmann.com 141 (Gujarat)

The High Court after hearing both the parties, have stated that the tax authorities have not followed the procedure prescribed in Circular 20/16/05/2021 – GST and by following their own judgment in Arya Metacast Private Limited[4] (wherein the Radhe Krishna[5] of Supreme Court is followed) has restricted the provisional attachment only to the tune of principal amount involved in the transaction as against the complete freeze of the bank account.

Our Comments:

This is the classic case of abuse of powers under Section 83. Though the provisions of Section 83 and the Circular issued on the subject state that the Commissioner must arrive to the decision of the provisional attachment after considering all the data and evidence, it is hardly followed. The provisional attachment are used in a routine manner to affect the business of tax payer and thereby, making the taxpayer surrender and pay the taxes without putting them to due process of law. The taxpayer having no other way must approach the High Courts seeking the cancellation of the provisional attachment. Hence, it is advisable for the taxpayers to do due diligence on vendors before deciding to make a purchase.

4. Gujarat High Court in Mobile Shoppe[6] - Allowed Refund of IGST Paid on Export of Mobile Phones by Customs Authority, held that the GST Department cannot instruct the Customs Authority to withhold refund:

In an interesting case, the petitioner needed to approach the High Court seeking grant of refund of IGST paid. The petitioner is engaged in export of mobile phones. The modus operandi adopted is that the foreign buyers place orders on petitioners for various mobile phones. In turn, the petitioner places orders for such mobile phones on its sister concern, Anjali Enterprises, who in turn places order on various vendors. The vendors on instruction from Anjali Enterprises bills it and ships to the airport for export by petitioner. The vendors generate e-way bills marking the 'ship to' address as airport. Later, Anjali Enterprises generates only invoices on petitioner billing them the value of mobile phones. Since there is no movement of goods (goods already reached airport for export), Anjali Enterprises only raises invoice without e-way bill. The petitioner pays the taxes to Anjali Enterprises, claims them as credit, exports goods with payment of tax (by using the credit) and claims such tax paid as refund because of exports.

A search was conducted on the petitioner by the GST authorities. The GST authorities questioned the claiming of refund of taxes paid by petitioners, since such refund documents were not accompanied by e-way bills. The petitioner stated that since the vendors raise e-way bills with 'ship to' as airport, there is no further requirement for Anjali Enterprises to raise another e-way bill on the petitioner. Since the same is not required, even in terms of CBIC Circular, asking the same and denying the refund on the ground of non-availability of such a document is not in accordance with the law. The GST authorities have written to the Customs Officer asking them to detain the goods and withhold the refunds. The Customs Officer after obtaining responses from the petitioner, have concluded that the petitioner is eligible for refund. The Customs Officer understood the ambiguity has arisen due to

[4][2022] 137 taxmann.com 173 (Gujarat)
[5]2021 (4) TMI 837 – Supreme Court
[6][2023] 147 taxmann.com 186 (Gujarat)

the mismatch of address of the petitioner and nothing more and prepared to lift the detention order. Apprehending that the petitioner may fly off after lifiting of the detention order, the Joint Commissioner of CGST has directed to investigate the entire matter. This made the petitioner to approach the High Court for seeking its intervention for not permitting the operation of Rule 96.

The High Court stated that there cannot be any jurisdiction of Central GST Officers to instruct the Customs Officer to detain and withhold the refund. The Customs Officer, being proper officer, having conducted the investigation, lifted the detention order. The High Court allowed the refund to be paid to the petitioner and also asked the Central CGST officers to conclude the investigation within a fixed time period.

SUMMARY OF JUDGEMENT

SUMMARY OF IT DECISIONS

Contributed by Team SBS

1. **Delhi Tribunal in the case of Wolters Kluwer Financial Services Belgium NV[1] –management support services are held not taxable as FTS under India-Belgium DTAA by invoking Most Favoured Nation (MFN) clause.**

   The assessee, who is a resident of Belgium,had provided management support services to its subsidiary company incorporated in India. Under article 12 the India-Belgium DTAA, management support services are defined as FTS and taxable at the rate of 10%. However, as per the protocol of India-Belgium DTAA, where India enters into a DTAA after 01.01.1990 with a third state, being a member of OECD, vide such DTAA India limits its taxation in respect of royalty or FTS to a lower rate or a more restricted scope thanprovided in the India-Belgium DTAA. Such other country is termed as MFN. Accordingly, the same rate or same scope provided in that other DTAA shall also apply under India-Belgium DTAA.

   The Tribunal has noted that the India-UK DTAA has a restrictive scope under the meaning of FTS by excluding the managerial services from FTS and UK being a member of OECD makes UK the MFN for application of protocol of India-Belgium DTAA. Accordingly, it was held that the managerial services provided by the assessee (Belgium entity) to its Indian subsidiary are not taxable under India-Belgium DTAAby invoking the MFN clause.

2. **Bombay High Court in the case of Abbott India Limited[2] - CBDT circular on disallowance of freebies to doctors is inapplicable to AY 2008-09.**

   The assessee during the AY 2008-09, has claimed an expense on account of distribution of medicine samples to doctors as deduction. The revenue has drawn attention on the fact that, the medical council of India had amended the regulations called Indian Medical Council (Professional conduct, Etiquette and Ethics) Regulations, 2002 vide a notification dated 14.12.2009 to impose a prohibition on the medical practitioner from taking any gift, travel facility, hospitality, cash and monetary grants from the pharmaceutical and allied health sector industry.

   In relation to such prohibition, CBDT has issued a circular in 2012 for disallowing expense on account of freebies provided by the assessee to any medical practitioner from deduction under section 37 of the Act. Basis above, the revenue had re-opened the case for re-assessment under section 147.

   Hon'ble HC has held that the circular issued by CBDT has retrospective effect but is applicable from the date when the medical council has amended the regulations and not prior to that date. It is also a settled principle that law to be applied is the one that is in force in the relevant assessment year, unless otherwise provided expressly or by necessary implication.

[1]TS-1034-ITAT-2022(DEL)
[2]TS-57-HC-2023(BOM)

Thus, it was held that the circular is applicable on the expenses claimed from 14.12.2009 and not applicable to current case which is for AY 2008-09 and resultingly held that there was no tangible material for the assessing officer to have reason to believe that income for the said assessment year 2008-09 has escaped assessment. Accordingly, the re-assessment proceedings under section 147 were set aside.

3. Delhi Tribunal in the case of Reverse Age Health Services Pte Ltd [3] - Benefit of treaty shall not be denied by invoking the substance over form when provisions of GAAR are not applicable.

Assessee being tax resident for the AY 2018-19 has transferred shares of Dr. Fresh Healthcare Private Limited which were acquired on 22.08.2016 and earned a short-term capital gain of Rs.1,92,63,473/-. In respect of such short-term capital gain, assessee while filing the return of income, has claimed the benefit of Article 13(4A) of India – Singapore DTAA and claimed the exemption from tax in India.

However, AO has denied the benefit of Article 13(4A) by resorting to Article 24A of the India-Singapore DTAA which states that a resident of a contracting state shall not be entitled to the benefits of Para 4A or Par 4C of Article 13 if its affairs were arranged with the primary purpose to take advantage of the benefits in the said paragraph 4A or paragraph 4C of Article 13.

In this regard, the Hon'ble Delhi Tribunal by placing the reliance on the decision of the Hon'ble Delhi High Court in the case of Black Stone Capital Partners[4] has held that as the assessee has obtained tax residency certificate and its two shareholders are also the tax residents of Singapore, provisions of Article 24A cannot be invoked.

Further, with regard, domestic GAAR provisions, it has held that as the amount involved in the transaction is less than the threshold provided in Rule 10U, provisions of GAAR cannot be invoked. Once the provisions of GAAR are not applicable, AO shall not deny the tax benefit by invoking the doctrine of substance over form. However, as provisions of MLI are not effective for the said assessment year, provisions of principle purpose test are not examined in the above case.

4. Kolkata Tribunal in the case of Premier Irrigation Adritec (P.) Ltd [5] - Interest on delayed payment of TDS is not allowed as expense under Section 37:

Assessee during the AY 2014-15 has paid certain portion of amount as an interest on TDS remittance to the exchequer and claimed the same as admissible expense under section 37. However, same has been disallowed by the revenue.

Before the Tribunal, assessee has contended that interest component does not form part of the 'tax' and the same being compensatory in nature is an allowable deduction as business expenditure under Section 37.

[3] [2023] 147 taxmann.com 358 (Delhi - Trib.)
[4] W.P.(C) 2562/2022
[5] [TS-39-ITAT-2023(Kol)]

The Tribunal has held that expense incurred by the assessee neither covered under section 30-36 nor it qualifies as expenditure wholly and exclusively incurred for the purpose of business or profession under Section 37. By placing the reliance on the decision of various courts, it has held that interest, whether such interest is payable on income or TDS, shall not be considered as business expenditure and accordingly not allowed as deduction.

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