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AIFTP TIMES

ESTD. 11th NOVEMBER 1976

Volume 11 – No. 7 • July 2020

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— Hon'ble Shri Justice S. C. Dharmadhikari

This publication will be a useful reference to all those practicing in direct taxes. .....I am confident that this book will provide great clarity and be a useful guide to the Tax Practitioners, assesses as well as tax officials for better understanding of the Scheme.

Looking through this magnificent book, I am amazed at Mr. Joshi's talent and what he has achieved during these difficult times of pandemic crisis.

— Dr. K. Shivaram, Sr. Advocate

.....the book shall be of immense help to all the stakeholders, be it an advocate or a chartered accountant or a tax practitioner or an assessee or the Tax Administration.

— Mrs. Prem Lata Bansal, Sr. Advocate

He has raised several issues vis-à-vis the scheme and has tried to find the answers of issues with the help of clarifications issued by the Central Board of Direct Taxes on VSV Scheme.

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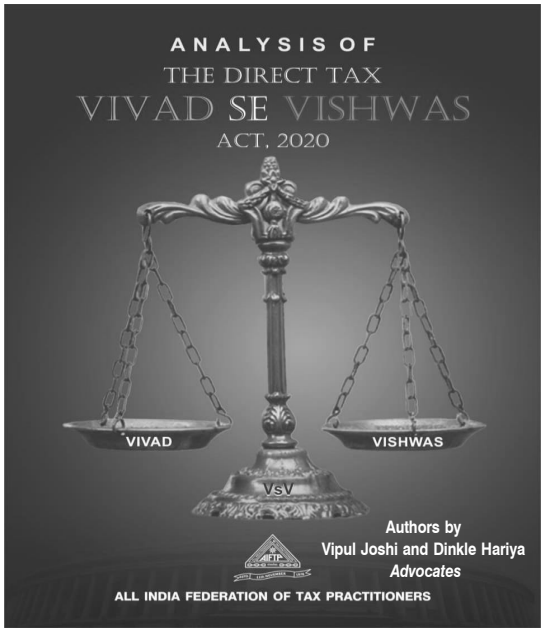

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Sr. No.	Date	Day	Zone	Topic	Speaker
65	6/6/2020	Saturday	Western	Issues in Export (including deemed export) of Goods & Refund under GST	Rahul Thakar, Adv.
66	6/6/2020	Saturday	Eastern	Three years of GST – From landmark rulings to virtual courts	Abhishek A Rastogi
67	7/6/2020	Sunday	Eastern	Tips on health issues post COVID-19 and allied matters.	Dr. Biswaroop Roy Chowdhury
68	10/6/2020	Wednesday	Western	Search and Seizure under GST, impact of Contravention under Customs Act	Shri Pankaj Ghiya, Adv.
69	13/6/2020	Saturday	Western	Interplay between Income Tax Act and Black Money`s Act, Money Laundering, Benami Transactions Act.	Hon`ble Ms. Justice Harshaben Devani, Ahmedabad
70	14/6/2020	Sunday	Western	Principles of Natural Justice as Applicable to Tax Proceedings and Writs in Taxation.	Adv. Manish J Shah, Ahmedabad
71	21/6/2020	Sunday	Western	Lessons we learned from COVID 19	Pujya Gnanvatsal Swami BAPS Swaminarayan Sanstha
72	1/7/2020	Wednesday	Southern	InstaGST Web App	CA Annapurna Srikanth CA Roopa Venkatesh

Note: Available YouTube links and PPTs are uploaded in our website i.e. www.aiftponline.org

Direct Taxes

Ms. Neelam Jadhav, *Advocate*, KSA Legal Chambers

High Court

1. S.271(1)(c) : Penalty - making a wrong claim is not at par with concealment or giving inaccurate information, levy of penalty u/s. 271(1)(c) is not justified.

The Assessee filed its return of income declaring total loss. The case was selected for scrutiny, during the assessment, it was observed by the AO that, the assessee had debited some amount under the head 'selling and distribution expenses' and claimed it as bad debt in the books of account. Subsequently it was found that the said amount was paid to XYZ as compensation for the supply of inferior quality of goods. The AO held that the amount claimed as bad debt was not actually a debt and therefore it was not allowable as a deduction u/s. 36(1)(vii), further held that the said claim was also not admissible even u/s. 37(1) of the Act. As the payment made to XYZ was not wholly and exclusively for business purposes but for extraneous considerations. And therefore claim of the Assessee was rejected. The total loss figure furnished by the assessee was different from the amount mentioned; taking the view that assessee had furnished inaccurate particulars of income. The AO took the view that assessee's claim was not actually bad debt but represented as payment made to XYZ which was also not incurred wholly and exclusively for the purposes of business. The AO held that, the assessee had willfully reduced its incidence of taxation, thereby concealing its income as well as furnishing inaccurate particulars of income. Therefore, he imposed the penalty. The CIT (A) held that assessee had made a wrong claim by submitting inaccurate particulars of income by claiming bad debt which was not actually a debt and also not an expenditure allowable u/s. 37(1). Tribunal upheld the order of CIT (A) and rejected the appeal of the assessee.

While deciding the penalty, the Honorable High Court observed that the Assessee clarified during the assessment proceedings that the said amount which was written off was actually not bad debt but in the nature of rebate and discounts given to XYZ on account of quality claims made by it from time to time. And while the charge against the assessee was of furnishing inaccurate particulars of income, whereas the penalty was imposed additionally for concealment of income. The assessee had declared the full factual matrix or facts before the AO while passing the assessment order. Claim based on such facts was found to be inadmissible, is not the same thing as furnishing inaccurate particulars of income as contemplated u/s. 271(1)(c). And hence Honorable High Court held that, making a wrong claim is not concealment or giving inaccurate information for levy of penalty.

Ventura Textiles Ltd. v. CIT, ITA No. 958 of 2017, dt.12/06/2020, (Bom)(HC) Source : bombayhighcourt.nic.in

Tribunals

2. S.115JB : Minimum Alternate Tax - Payment of tax (Computation) - lower authorities did not specifically deal with certain issues of adjustment in computing book profit u/s. 115JB, matter remitted back for re adjudication and passing speaking order.

The assessee is engaged in the business of plastic processing machines, said Company was declared as a sick company under the provisions of the Sick Industrial Companies (Special Provisions) Act, 1985. The Hon'ble BIFR sanctioned the rehabilitation scheme for assessee on 21/09/2010 with directions for implementation for revival of the assessee. The Scheme envisages various reliefs and concessions from various agencies as a part of rehabilitation Scheme. As per the Scheme, the rehabilitation period was from 01/04/2009 to 31/03/2017. The Clause 11.4 of the Scheme envisages certain tax concessions for the assessee. i.e. To consider to exempt / grant relief to the company from the provisions of Section 41, 72, 43-B and 115JB of the Income Tax Act for a period of eight years from the cut-off date except for the prosecution and criminal proceedings. The assessee received a letter from [DIT(Recovery)], in the said letter, it was stated that BIFR has discharged the company from the purview of SICA on the ground that the revival of the company has substantially been implemented and the net worth has turned positive. The assessee sought relief till the end of rehabilitation period i.e. up to AY 2017-18 based on certain precedents of similar BIFR cases, wherein such MAT exemption was allowed by the BIFR for the rehabilitation period. The assessee claimed deduction while computing income for AY 2013-14. The AO held that relief u/s.115JB, would be available only till net worth becomes positive. Since the assessee was discharged by SICA and its net worth turned positive by virtue of implementation of revival scheme, the assessee would be precluded from relief u/s 115JB in view of Explanation 1 (vii) to S. 115JB (2) and therefore, no relief would be available to the assessee from AY 2011 -12 onwards from applicability of provisions of Sec.115JB. The AO further view that expenses pertained to AY 2011-12, there was no specific order of relief u/s. 28 or S.41. Therefore, the deduction of the same was not allowed to the assessee. The CIT(A) upheld the action of AO and held that exemption from MAT is available up to AYr 2010-11.

The Honorable Tribunal while deciding the issues observed that, the assessee's net worth has turned positive as on 31/03/2011. The manner of computation as provided in S.115JB is complete code in itself and the computations were to be made strictly in the manner as provided therein. Expl.1 (vii) envisages reduction of profit of sick industrial company for the assessment year commencing on and from the assessment year relevant to the previous year in which the said company has become a sick industrial company u/s.17(1) of SICA. and ending with the assessment year during which the entire net worth of such company becomes equal to or exceeds the accumulated losses. Further Tribunal observed that, as per the express provisions of Expl. 1 (iii) to S.115JB (2), the assessee entitled for deduction of amount of loss brought forward or unabsorbed depreciation whichever is less as per books of account. It revealed that the assessee has claimed lower depreciation and book loss while computing book profit u/s.115JB for AY 2012-13 which has not been disturbed by AO in the AY 2012-13. Further Tribunal observed that, the issue of adjustments has not been examined by AO nor CIT(A). Hence, the Honorable Tribunal remitted matter back to the CIT(A) to specifically adjudicate the issues raised by way of a speaking order.

COVID 19 pandemic lockdown period excluded in computing 90 days total time limit for pronouncing appellate order. (Rule 34(5)(c) of ITAT Rules, 1963)

Rule requiring pronouncement of orders within 90 days, disregarding the important fact that the entire country was in lockdown, hence compute the period of 90 days by excluding the period during which the lockdown was in force. The exception, to 90-day time- limit for pronouncement of orders, inherent in rule 34(5)(c), with respect to the pronouncement of orders within ninety days, clearly comes into play. There is no, and there cannot be any, bar on the discretion of the benches to re-fix the matters for clarifications because of considerable time lag between the point of time when the hearing is concluded and the point of time when the order thereon is being finalized.

Windsor Machines Ltd. v. Dy. CIT, ITA Nos. 2709, 2710, 4696 & 4697 /Mum/ 2019 dt.28/05/2020 (Mum)(Trib.) Source : www.itat.gov.in

Indirect Taxes

Tanmay Mody, *GST Practitioner*

1) GST – Maharashtra AAR

Whether GST is applicable on the accounting entry made for the purpose of Indian accounting requirements in the books of accounts of Project Office for salary cost of Expat employees?

Held: A project office is an extension of the foreign Head Office, and as in the subject case shall carry on all activities relating and incidental to execution of the Project in India. Thus, the expat employees are employees of the employer i.e. the Head Office and since the Project Office is an extension of the Head Office, there is a relation of employer and employee between the Project Office and the expat employees. For GST to be applicable on the accounting entry made for the purpose of Indian accounting requirements in the books of accounts of Project Office for salary cost of Expat employees paid by the Head Office, such accounting entry should be seen as a supply of goods, services or both. Since there is a relation of employer and employee between the Project Office and the expat employees, the provisions of Schedule III of the CGST Act comes into play as per which services by an employee to the employer in the course of or in relation to his employment will not be considered as a supply. GST is not applicable on the accounting entry made for the purpose of Indian accounting requirements in the books of accounts of Project Office for salary cost of Expat employees.

(Source: Order No. GST-ARA-38/2019-20/B-27 dt. 11th March, 2020 by the Maharashtra AAR in the case of M/s. Hitachi Power Europe GmbH)

2) GST – Maharashtra AAAR

Taxability of membership/subscription fees, admission fees collected by the Club from its Members. Whether the transaction between the appellant and its members can be construed as supply in terms of section 7 of the CGST Act, 2017?

Held: The appellant is not providing any specific facility or benefits to its members against the membership fee charged by it, as the entire subscription amount is spent towards meetings and administrative expenditures only. Thus, the appellant is not doing any business as envisaged under section 2(17) of the CGST Act, 2017. Once it has been established that the Appellant is not doing any business in terms of section 2(17) of the Act, it can be deduced that activities carried out by the Appellant would not come under the scope of supply as envisaged under section 7(1) of the CGST Act, 2017. Since the impugned activities of the appellant will not be construed as supply, the question regarding the availment of Input Tax Credit on the input services does not arise. The rulings pronounced by AAR is set aside and it is held that the amount collected as membership subscription and admission fees from members is not liable to GST as supply of services.

(Source: Order no. MAH/AAAR/SS-RJ/15/19-20 dt. 6th November, 2019 by the Maharashtra AAAR in the case of Rotary Club of Mumbai, Queens Necklace)

3) Service Tax – Refund of "Pre-Deposit"

Rejection of refund to the petitioner on the ground that since the petitioner had deposited the said amount, even though under protest, before preferring the appeal to CESTAT and not by way of pre-deposit under Section 35F of the CEA, 1944, notwithstanding the appeal of the petitioner been allowed, the petitioner was not entitled to refund.

Held: The respondents as State can recover and/or retain as tax only such amounts which are assessed and found due as tax and which assessment has attained finality. The respondents, as State, cannot retain even a single paise of the assessee, unless has been found due towards tax liability and which is not the case here. The respondents are reminded of Article 265 of the Constitution of India prohibiting any tax to be levied or collected except by authority of law. Allowing the respondents to retain the said amount, would also be in violation of Section 72 of the Contract Act, 1872, obliging a person to whom money has been paid by mistake or under coercion, repay the same. The said provision enshrines the principle of unjust enrichment and restitution and the respondents State, by refusing to refund the sum, are purporting to unduly enrich themselves. Petitioner has sought refund of the amount by calling it "pre-deposit", when it was not deposited by way of pre-deposit but under protest, however, the wrong nomenclature given by the petitioner to the deposit would not be a ground for allowing the respondents State to unduly enrich themselves.

(Source: Order in W. P. No. 13114/2019 dt. 10th June, 2020 by the Delhi High Court in M/s. Team HR Services P Ltd v. Union of India & Anr.)

4) Central Excise – Refund of Balance in PLA

Whether the balance lying in the assessee's PLA, which became non-usable with effect from 1 July, 2017 with the introduction of GST regime, is refundable or not?

Held: PLA deposit is nothing but "duty waiting to be debited" and "not a duty under the Act" and hence limitation provisions would not apply to the same. If an assessee is not able to utilize the said PLA deposit, the depositor is entitled for refund of the same. Admittedly, such deposits are made by the appellant for utilization in future. In case the same could not be used on account of introduction of GST and there being no transitional provision for transfer of such PLA deposit, the same would be refundable to the appellant. Apart from the fact that limitation provisions are not applicable, it is also seen that such refund becomes admissible only with effect from 1 July, 2017 and not before that. The refund application is required to be considered as having been filed before the period of one year as the cause of action arose only on 1 July, 2017.

(Source: Order no. 50462/2020 dt. 4th March, 2020 by the Principal Bench, CESTAT, New Delhi in the case of M/s. Sun Ultra Tech P. Ltd.)

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There shall be Discounts on bulk advertisements.		

Membership of AIFTP as on 27th April, 2020

Life Members

	Associate	Individual	Association	Corporate	Total
Central	0	1137	25	0	**1162**
Eastern	6	1839	36	0	**1881**
Northern	0	1311	18	1	**1330**
Southern	1	1503	20	5	**1529**
Western	5	2617	37	6	**2665**
Total	**12**	**8407**	**136**	**12**	**8567**

Associate Editor of AIFTP Times : Mr. Deepak R. Shah

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