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NEWS BULLETIN



INCOME TAX BAR ASSOCIATION

Raipur (Chhattisgarh) Reg. No. : 32522 of 29.05.2015

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FROM PRESIDENT'S DESK



FCA SAKSHI GOPAL AGARWAL
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RESPECTED SENIORS, FELLOW MEMBERS AND MY PROFESSIONAL FAMILY

It gives me great pleasure to interact with all of you once again. Since the month of November, December and January was quite busy on account of various programme being scheduled for ITBA members viz. Diwali Milan, Annual Sports with IT Department and also with members of ICAI, Raipur, one night residential picnic to SWARAM Resort for members of ITBA. And with active participation in programme as without your co-operation this would not be possible.

On 1st of February our honourable finance minister Smt. Nirmala Sitharaman presented the budget for 2023-24. The union budget this year aims to further strengthen India's economic status. In the 75th year of India's independence the world has recognized the Indian economy as a "bright star" with its economic growth estimated at 7% which is the highest among all major economies. The budget 2023-24 is presented with a vision to create opportunities for citizens with focus on youth (the youth has been recognized as amrit peedi), growth and job creation and to have a strong and stable macro-economic environment. In month of February various programmes were scheduled for members to discuss on various issues related to budget to understand and evaluate the budget properly.

At last but not the least I express my heartfelt thanks to all committee members of ITBA for their wholehearted devotion toward IT bar and coming and working together just like family members.

WITH WARM REGARDS





SUPREME COURT

1. HERO MOTOCORP LTD. VS. UNION OF INDIA

Doctrine of promissory estoppel cannot be invoked against exercise of legislative powers of the State

The Hon'ble Supreme Court of India ("Court") in the case of Hero Motocorp Ltd. vs. Union of India and Ors., ruled on the applicability of doctrine of promissory estoppel against a statute/ legislative power.

The central government in the year 2003 incentivised setting up of new industrial units/ expansion of existing industrial units in Uttarakhand by providing 100% exemption from central excise duty for a period of 10 (ten) years from date of commencement of commercial production. Hero Motocorp Ltd. ("Petitioner") set up a new unit in Haridwar, Uttarakhand, which commenced commercial production in the year 2008 and availed exemption till July 1, 2017.

Upon implementation of GST, the central government realigned the incentives provided to the units and limited the benefit to 58% of central tax. Aggrieved by this, the Petitioner filed a writ petition before the High Court, seeking to invoke the doctrine of promissory estoppel, which was dismissed. The Petitioner challenged the decision of the High Court before the Hon'ble Supreme Court of India.

The Court observed that the claim of the Petitioner had substance and deserved due consideration. Based on the deliberations of the GST Council, the Court took note of the fact that the States need to correspondingly reimburse the units which were entitled to exemption under the existing incentive schemes. It was further noted that the GST Council is a constitutional body and has powers to make recommendations on wide range of issues concerning GST, including grant of exemption from GST. In light of this, the Court permitted the Petitioner to make representations to the respective state governments and the GST Council to consider such representations

HIGH COURT

1. OASIS REALTY VS. UNION OF INDIA

Balance in the Electronic Credit Ledger can be utilized for payment of pre-deposit

The Hon'ble High Court of Bombay ("Bombay HC") in the case of Oasis Realty vs. Union of India and Ors., ruled on utilization of input tax credit available in the electronic credit ledger ("ECL") for payment of pre-deposit while filing an appeal before the Appellate Authority.

Oasis Realty contended that the amount available in the ECL can be utilized for payment of pre-deposit, as stipulated under Section 107(6) of the MGST Act. However, GST Authorities contended that Section 49(4) of the MGST Act restricts usage of the amount available in the ECL only for payment of output tax and that the amount available in the ECL cannot be utilised for payment of pre-deposit.

The Bombay HC observed that the expression 'unless the Appellant has paid a sum equal to 10% of remaining amount of tax in dispute', is a precondition to file an appeal under Section 107 of the MGST Act. Further, the term 'tax' includes CGST, IGST, SGST or UTGST and given that pre-deposit is tax itself, the amount available in the ECL can be utilized towards payment of pre-deposit. The High Court referred to a circular dated July 6, 2022 issued by the CBIC, which clarified that any amount towards output tax payable, as a consequence of any proceedings instituted under the provisions of GST laws, can be paid by utilisation of the amount available in the ECL.

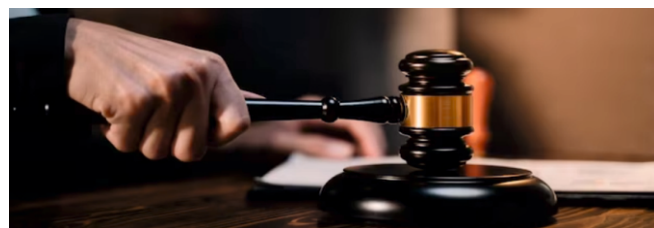
2. SHEETAL DILIP JAIN VS. STATE OF MAHARASHTRA AND ORS

Prescribed time limit of 30 (thirty) days to be granted for filing reply to SCN

In the case of Sheetal Dilip Jain vs. State of Maharashtra and Ors, SCN was issued to Sheetal Dilip Jain ("Petitioner"), under Section 73 of the CGST Act, whereby the Petitioner was required to file a reply within 7 (seven) days from the date of issuance of the SCN. Due to non-filing of reply/ non-payment of demand, the authorities issued an order against the Petitioner.

The Petitioner aggrieved by the order, approached the Bombay HC and contended that Section 73(8) of the MGST Act prescribes a period of 30 (thirty) days to file a reply to the SCN, issued under Section 73 of the MGST Act. It was further contended that the assessing officer cannot arbitrarily reduce the time frame provided under a statute.

Agreeing with the Petitioner's contentions, the Bombay HC set aside the order. The Bombay HC also saddled the assessing officer with costs for issuing orders in contravention of the provisions prescribed under the statute.



3. VICTORY ELECTRIC VEHICLES INTERNATIONAL LTD. VS. UNION OF INDIA

Pre-consultation process mandatory before issuance of SCN

In the case of Victory Electric Vehicles International Ltd. vs. Union of India and Anr., the Hon'ble High Court of Delhi ("Delhi HC") discussed the importance of pre-SCN consultation process, prior to issuance of SCN.

Victory Electric Vehicles International Ltd. ("Petitioner") inter alia contended that the adjudicating order passed on the basis of SCN, was untenable in law as the SCN was issued without pre-SCN consultation. It was contended that, in terms of Section 28(1)(a) of the Customs Act read with Pre-Notice Consultation Regulations, the SCN could only be issued after a pre-SCN consultation was provided. However, the Customs authorities contended that any exchange of communication prior to issuance of SCN constitutes pre-SCN consultation.

The Delhi HC observed that the assessee has a period of 15 (fifteen) days to file his submission, in writing, outlining the grounds in response to the allegations provided in the pre-consultation notice and to request for a personal hearing. The Delhi HC emphasised the importance of pre-SCN consultation and noted that after consultation, the concerned authority may decide to drop the proceedings if it is satisfied with the explanation provided by the assessee, thereby reducing the burden on judicial/ extra-judicial bodies. Given that the pre-SCN consultation procedure was not adhered to, the Delhi HC set aside the adjudicating order.

CHANGES IN GST LAWS IN MONTH OF NOVEMBER

LAST DATE TO CLAIM ITC AND AMEND SALES/CDN EXTENDED

As per GST Notification 18/2022, the time limit to claim ITC and amend sales/CDN has been extended (including for FY 21-22) by the CBIC. So, the date has been changed for claiming ITC, issuing CDN, and doing amendments to returns of the previous year till 30th November by notifying clause 100 of the Finance Act 2022 to be effective from 1st October 2022

Now, one can amend the details of taxable outward supplies made to the registered person that is already reported in table 4A, 4B, 6B, 6C – B2B invoices. The taxpayers will have to provide the financial year and invoice number and click on the amended records to search for invoice.

1. ASOKAN MEENA VS ITO (ITAT CHENNAI) APPEAL NUMBER : ITA NO. 680/CHNY/2022, DATE OF JUDGEMENT/ORDER: 02/11/2022

ISSUE - This appeal filed by the assessee is directed against the order of the Commissioner of Income Tax (Appeals), Income Tax Department, National Faceless Appeal Centre, Delhi, dated 29.06.2022, and pertains to assessment year 2017-18.

FACTS - The brief facts of the case are that the assessee is an individual and engaged in the business of purchase and sale of paddy, filed its return of income for the AY 2017-18 on 24.11.2017 admitting total income of Rs.5,70,920/-. The case has been selected for scrutiny under CASS to verify cash deposits during demonetization period. During the course of assessment proceedings, the AO noticed that the assessee has made cash deposits of Rs.24,66,500/- into three bank accounts in Specified Bank Notes of Rs.500/- & Rs.1,000/- denominations. The assessee has explained source for cash deposits and argued that cash deposit is out of her business income.

CONCLUSION - ITAT were of the considered view that neither the assessee proved its arguments for source for cash deposits nor the AO reached to a conclusion that the explanation offered by the assessee is not genuine. Under these facts and circumstances of the case, the only possible solution is to resolve the dispute by estimation of profit on cash deposits made during demonetization period. Therefore, it was direct to AO to estimate 30% net profit on total cash deposits of Rs.24,66,500/- made during demonetization period and delete the balance additions made u/s.69A of the Act.

2. AMIYA GOPAL DUTTA VS DCIT (ITAT KOLKATA) APPEAL NUMBER : I.T.A. NO. 126/KOL/2022, DATE OF JUDGEMENT/ORDER: 16/11/2022.

ITAT Kolkata held that as per board's instruction CBDT circular 1/2011 dated 31.01.2011, in the case of non-corporate assessee in non-metro cities, the ITR filed upto Rs. 15 lacs has to be assessed by ITO and therefore in the instant case the assessment is framed by the Assistant Commissioner of Income Tax in is void, ultra vires and nullity in the eyes of law.

Vide CBDT circular 1/2011 dated 31.01.2011, the Board has issued instruction that in the case of non-corporate assessee in non-metro cities, the ITR filed upto Rs. 15 lacs has to be assessed by ITO and therefore in the instant case the assessment is framed in violation of above instruction by the Board. Since the facts before us are materially similar to ones as decided by the Co-ordinate Bench of the tribunal in the case of HIRAK SARKAR, we, respectfully the decision of the coordinate bench, quash the assessment order passed on the ground of lack of jurisdiction. Accordingly, the appeal of the assessee is allowed.

3. GPL-RKTCPL JV VS NATIONAL FACELESS ASSESSMENT CENTRE DELHI (DELHI HIGH COURT) APPEAL NUMBER: W.P.(C) 5546/2021 & CM APPL. 17180/2021 DATE OF JUDGEMENT/ORDER: 17/11/2022.

ISSUE - Jurisdiction of Delhi High Court (HC) where Jurisdictional Assessing Officer (AO) is located outside NCT of Delhi is referred to larger bench Delhi High Court held that as the exercise of jurisdiction of Delhi High Court in case where the jurisdictional assessing officer is located outside NCT of Delhi in earlier judicial ruling is doubted. The matter is referred to larger bench of Delhi High Court.

FACTS - The present batch of petitions are being taken up together as they give rise to a common issue relating to their maintainability on account of the preliminary objection raised by the revenue that these writ petitions cannot be entertained by this Court as the situs of the jurisdictional assessing officers ["JAO"] are outside the National Capital Territory of Delhi and hence beyond the territorial limits of this Court. It was objected that this court lacks territorial jurisdiction for the reason that the impugned assessment order dated 30.05.2022 has been passed by the JAO located at Chandigarh, which is outside the jurisdiction of this Court; consequently, the more appropriate forum for invoking the writ jurisdiction under Article 226 of the Constitution, is the High Court of Punjab & Haryana. Further, it was also objected that the present petition has been filed challenging the assessment order dated 30.05.2022 for AY 2018-19, passed by the JAO located at Chandigarh as the PAN of the Petitioner is under the Jurisdiction of ACIT Exemptions Circle 1, Chandigarh.

CONCLUSION - Held that keeping in view the complexity of the legal issues involved and since we have doubted the correctness of the view expressed by a coordinate bench of this Court in RKKR Foundation wherein this court had decided to exercise its jurisdiction in a similar matter where the jurisdictional assessing officer was located outside the NCT of Delhi, we are of the considered view that the aforesaid questions of law requires to be settled and decided by way of an authoritative pronouncement by a larger bench of this Court.

4. ICICI Securities Limited Vs ITO (ITAT Mumbai) Appeal Number : ITA No. 1511/Mum/2022, Date of Judgement/Order: 09/11/2022

ISSUE - Non-deduction of TDS will not attract penal interest u/s 201 if primary liability is discharged by recipient.

FACTS - ICICI Bank, the assessee, is an Indian custodian of Shares & holds the shares as a custodian with him. The assessee sold the shares on behalf of his overseas client and remitted sales proceeds to its client. While remitting the payment assessee has not deducted TDS which is required to deduct. The sale was in the nature of capital gain and TDS was required to be deducted accordingly. IT Department levied interest u/s 201 for non-deduction of TDS. The assessee contested the interest charged by the department. The Receiver of sales proceeds i.e. overseas client has deposited the advance tax on the net proceeds

CONCLUSION - In the above judgment, ITAT has very pragmatically delivered the judgment and took a view that if the recipient of income has deposited tax timely in the form of advance tax to revenue, there is no loss suffered to revenue, and no liability for penal interest can be invoked. One can argue that such an interpretation makes the entire TDS process nonoperational. The above matter was related to TDS on Capital Gain but certainly one can take the same position for any other payments with a certain degree of caution.

HIGH COURT

1. GENPACT INDIA PRIVATE LIMITED VS. UNION OF INDIA

Services performed under a sub-contracting arrangement are not intermediary services

In the case of Genpact India Private Limited vs. Union of India, the petitioner was engaged in providing services in the nature of maintenance of vendor/ customer master data, book-keeping, finalization of accounts, managing customer receivables, developing, licensing and maintaining software as per clients' needs, technical IT support services, data analysis etc., to the clients of the overseas group company located outside India under a master services agreement ("MSA"). The petitioner was claiming refund of unutilized ITC of goods and services used for such export of services. While the adjudicating authority allowed refund to the petitioner, the appellate authority held that such services are in the nature of 'intermediary services' and hence do not qualify as 'export of services' ("Impugned Order"). The petitioner challenged the Impugned Order by way of a writ petition before the Hon'ble High Court.

The Punjab and Haryana High Court ("P&B High Court") delved into the definition of 'intermediary', as defined under Section 2(13) of the IGST Act and observed that the scope of 'intermediary' is to mediate between 2 (two) parties, i.e., the principal service provider (third party) and the beneficiary (the agent's principal) who receives the main service and expressly excludes any person who provides such main service on 'his own account'. Further, the following 3 (three) conditions need to be satisfied for a person to qualify as an 'intermediary':

1. The relationship between parties must be of principal-agent;
2. The person must be involved in arrangement/ facilitation of provision of services provided to the principal by the third party; and
3. The person must not actually perform the services intended to be received by the recipient of service itself.

Upon perusal of the MSA, the P&B High Court noted that there is no separate agreement entered into between the petitioner and the overseas group company's customers. In fact, a sub-contracting arrangement (and not principal-agency relationship) exists between the petitioner and the overseas group company. The services provided by the petitioner to overseas customers are the same services which the group company was contractually supposed to provide to these customers. Pursuant to the sub-contracting arrangement, the petitioner had undertaken to serve the overseas customers of the group company on its own account. By doing this, the petitioner did not facilitate the provision of services. The overseas group company remains responsible for obtaining new customers, negotiating and maintaining relationships with them, raising invoices for services provided, and resolving their disputes directly. For executing such a sub-contracting arrangement, the petitioner raises invoices upon the overseas group company and receives money. Therefore, the petitioner cannot be termed as an 'intermediary'.

The P&B High Court further noted that the respondents in the petitioner's own case during the erstwhile Service tax regime concluded that the petitioner cannot be treated as an intermediary. Considering that the definition and scope of 'intermediary' is clarified to be similar under the erstwhile Service tax and the present GST regime vide Circular and that sub-contracting of a service is not an 'intermediary' service, the P&B High Court held that if there is no change in any facts and/ or law, it is not open for revenue authorities to deviate from the views expressed previously and the principle of consistency should apply. Basis the above, the services supplied by the petitioner were held to qualify as 'export of services' and not 'intermediary' services. Accordingly, the Revenue authorities were directed to grant refund of accumulated ITC to the petitioner

2. MAHALAXMI INFRA CONTRACT LIMITED VS. GST COUNCIL AND OTHERS.

Amendment in Form GSTR-1/ Form GSTR-3B allowed to rectify incorrect GSTIN and avail ITC

In the case of Mahalaxmi Infra Contract Limited vs. GST Council and Others, the petitioner was engaged in the business of mining and transportation of goods for Central Government undertakings. While filing Form GSTR-1 for the month of January in 2019, the petitioner committed an inadvertent error by mentioning incorrect GSTIN of the concerned recipient. Consequently, the invoice did not reflect in the auto-generated Form GSTR-2A of the recipient and hence, they were not able to avail ITC in respect of GST charged on such invoice by the petitioner. The petitioner realized this error only at the time of finalization of accounts with the recipient in June 2021. However, the error could not be rectified due to non-availability of the functionality on GSTN portal.

Accordingly, the petitioner filed the Writ Petition before the Hon'ble High Court of Jharkhand ("Jharkhand HC") to allow the rectification.

The Jharkhand HC observed that the online mechanism for discovery and rectification of mistakes by way of filing suitable Forms, i.e., Form GSTR-2/ Form GSTR-1A/ GST-MIS 1/ GST MIS-2, as applicable, have not yet been activated. This has led to the unintended failure of the petitioner to discover its error and rectify it on its own. It was also observed that the present case was revenue neutral and did not present any additional tax impact, or loss of revenue for the State exchequer (as both the correct and incorrect GSTIN of the recipients fall within the jurisdiction of the State of Jharkhand). Therefore, in the interest of justice, the Jharkhand HC allowed the petitioner to make necessary corrections in its Form GSTR-1 for January 2019, either online or manually.

APPELLATE AUTHORITY FOR ADVANCE RULING (AAAR)/ AUTHORITY FOR ADVANCE RULING (AAR)

1. JAYSHANKAR GRAMIN AND ADIVASI VIKAS SANSTHA

Amount granted by Government for undertaking charitable activities, beneficial to public, construed as 'subsidy' In the case of Jayshankar Gramin and Adivasi Vikas Sanstha, the applicant was a charitable trust, which among other activities, rendered services under "One stop crises centre" scheme introduced by the Ministry of Women and Child Development to destitute women who are litigating divorce, or are homeless, or victim of domestic violence. The Central Government granted an amount of INR 200,000 (Indian Rupees two lakh) per month to the applicant to act as an implementing agency for the said scheme and for meeting the expenses involved. The amount of grant was subject to presentation of actual list of expenses incurred. The issue before the AAAR was whether by acting as an implementation agency, the applicant is 'supplying' 'services' to the government and whether the amount of grant received is towards 'consideration' for such supply.

Therefore, grant received from the government in this regard is to be construed as subsidy. It was held that as subsidy was specifically excluded from the purview of the term 'consideration', no supply could be said to take place between the applicant and the government. Accordingly, it was held that GST is not applicable.

2. BAMBINO PASTA FOOD INDUSTRIES PRIVATE LIMITED

ITC admissible on expenditure towards corporate social responsibility ("CSR")

In the case of Bambino Pasta Food Industries Private Limited, the applicant purchased oxygen plant along with its spare parts and donated the same to AIIM during the pandemic. The said expenditure is mandated to be incurred as per Section 135 of the Companies Act, 2013 ("Companies Act"). The issue before the Telangana AAR was whether ITC is admissible in respect of GST paid on procurements made for incurring CSR expenditure or not.

ITC cannot be said to be blocked under Section 17(5) of the CGST Act. The AAR concurred with the contentions of the applicant and held that expenditure made towards CSR under Section 135 of the Companies Act is in furtherance of the business and hence, ITC in respect of GST paid on procurements made for incurring CSR expenditure will be eligible under GST laws.

CHANGES IN GST LAWS IN MONTH OF DECEMBER

REVERSAL OF INPUT TAX CREDIT IN THE CASE OF NON-PAYMENT

In the said rules, after rule 37, the following rule shall be inserted, namely:—"37A. Reversal of input tax credit in the case of non-payment of tax by the supplier and re-availment thereof.-

Where input tax credit has been availed by a registered person in the return in FORM GSTR-3B for a tax period in respect of such invoice or debit note, the details of which have been furnished by the supplier in the statement of outward supplies in FORM GSTR-1 or using the invoice furnishing facility, but the return in FORM GSTR-3B for the tax period corresponding to the said statement of outward supplies has not been furnished by such supplier till the 30th day of September following the end of financial year in which the input tax credit in respect of such invoice or debit note has been availed, the said amount of input tax credit shall be reversed by the said registered person, while furnishing a return in FORM GSTR-3B on or before the 30th day of November following the end of such financial year: Provided that where the said amount of input tax credit is not reversed by the registered person in a return in FORM GSTR-3B on or before the 30th day of November following the end of such financial year during which such input tax credit has been availed, such amount shall be payable by the said person along with interest thereon under section 50

Provided further that where the said supplier subsequently furnishes the return in FORM GSTR-3B for the said tax period, the said registered person may re-avail the amount of such credit in the return in FORM GSTR-3B for a tax period thereafter."

MANNER OF DEALING WITH DIFFERENCE IN LIABILITY REPORTED IN STATEMENT OF OUTWARD SUPPLIES AND THAT REPORTED IN RETURN

In the said rules, after rule 88B, the following rule shall be inserted, namely "88C. Manner of dealing with difference in liability reported in statement of outward supplies and that reported in return.-

(1) Where the tax payable by a registered person, in accordance with the statement of outward supplies furnished by him in FORM GSTR-1 or using the Invoice Furnishing Facility in respect of a tax period, exceeds the amount of tax payable by such person in accordance with the return for that period furnished by him in FORM GSTR-3B, by such amount and such percentage, as may be recommended by the Council, the said registered person shall be intimated of such difference in Part A of FORM GST DRC-01B, electronically on the common portal, and a copy of such intimation shall also be sent to his e-mail address provided at the time of registration or as amended from time to time highlighting the said difference and directing him to -

(a) pay the differential tax liability, along with interest under section 50, through FORM GST DRC-03 or

(b) explain the aforesaid difference in tax payable on the common portal, within a period of seven days.

(2) The registered person referred to sub-rule (1) shall, upon receipt of the intimation referred to in that sub-rule, either ,-

(a) pay the amount of the differential tax liability, as specified in Part A of FORM GST DRC-01B, fully or partially, along with interest under section 50, through FORM GST DRC-03 and furnish the details thereof in Part B of FORM GST DRC-01B electronically on the common portal ;or

(b) furnish a reply electronically on the common portal, incorporating reasons in respect of that

part of the differential tax liability that has remained unpaid, if any, in Part B of FORM GST DRC-01B, within the period specified in the said sub-rule

(3) Where any amount specified in the intimation referred to in sub-rule (1) remains unpaid within the period specified in that sub-rule and where no explanation or reason is furnished by the registered person in default or where the explanation or reason furnished by such person is not found to be acceptable by the proper officer, the said amount shall be recoverable in accordance with the provisions of section 79.

1. JAY DAN GIGEV WELDING WORKS VS COMMISSIONER OF CENTRAL EXCISE & ST (CESTAT AHMEDABAD) DATE OF JUDGEMENT-06/12/2022

ISSUE - The issue involved in the present case is that whether the appellant is entitled for SSI exemption Notification No. 8/2003-CE dated 01.03.2003 as amended by Notification No. 8/2006-CE in respect of power driven pumps which does not bear BIS specification and the appellant did not obtain ISI certificate.

DISCUSSION - We find that admittedly the appellant's product is not in conformation to BIS standard as specified in the notification. They have not obtained any ISI certificate. Therefore, exemption of SSI Notification No. 8/2003-CE dated 01.03.2003 as amended, is not admissible to the appellant. This issue has been considered in the following judgments :-

- (a) Borana Pumps vs. Commissioner of CGST & C.Ex., Jodhpur – 2021 (378) ELT 189 (Tri. Del.)
- (b) Super Pumpms Pvt. Limited vs. CCE, Bhopal – 2016 (341) 345 (Tri. Del.)

CONCLUSION - In view of the above judgments, since the appellant does not have ISI certification to conform the BIS Standard, the appellant is not eligible for SSI exemption Notification No. 8/2003-CE dated 01.03.2003. Therefore, the demand of duty subject to recalculation by extending cum-duty price benefit is sustainable. Since duty shall be re-quantified, the appellant shall be entitled to the option of reduced penalty of 25% subject to payment of re-quantified duty, interest, if any and 25% penalty within one month from the date of communication of re-quantified duty to be made by the Adjudicating Authority to the appellant. Accordingly, the appeal is disposed of in the above terms.

2. VIVA HERBA PVT. LTD VS UNION OF INDIA (BOMBAY HIGH COURT) APPEAL NUMBER : WRIT PETITION NO. 540 OF 2011, DATE OF JUDGEMENT/ORDER: 16/12/2022

ISSUE - Bombay High Court held that there is limited scope of challenging the order of the settlement commission. Order of settlement commission cannot be challenged as if the order passed under an ordinary adversarial adjudication or as if the appellate power is being exercised.

FACTS- The Petitioner, Viva Herba Pvt. Ltd., filed a settlement application before the Settlement Commission for settlement of the case under Section 32E of the Central Excise Act, 1994, admitting the duty liability as against the duty demand and seeking cum-duty price benefit. The Settlement Commission rejected the prayer of the Petitioner, and therefore, the Petitioner is before us, challenging the order of the Settlement Commission

CONCLUSION - In the present case, since the Tribunal has opined that in the light of the transaction of the Petitioner, there is no evidence based on which it could be held that the price realized was inclusive of duty, and therefore, the benefit of cum duty could not be granted. Hence the Settlement Commission concluded that there was no evidence of the price realized being conclusive of duty given the manner in

which the goods were removed; the value of the goods as a benefit of cum duty price of clearance of goods could not be granted.

3. XIAOMI TECHNOLOGY INDIA PRIVATE LIMITED VS DCIT (KARNATAKA HIGH COURT), APPEAL NUMBER : WRIT PETITION NO.16692 OF 2022, DATE OF JUDGEMENT/ORDER: 16/12/2022

ISSUE - Karnataka High Court held the provisional attachment order unjustifiable as the same was passed simply stating that there is likely addition of the amount without mentioning of any valid and cogent reasons.

FACTS - Assessee-company engaged in the business of procurement, supply, and distribution of Xiaomi products in India including mobile phones, accessories, computers, etc. It was required to pay royalty to Qualcomm and Beijing Xiaomi software company Ltd.

During the period from 2019 to March 2022, there were proceedings between the assessee and the Assessing Officer (AO) in relation to the alleged payment of income tax. Meanwhile, an order was passed by Enforcement Directorate (ED) under FEMA seizing the bank account of the assessee.

Subsequently, AO issued a notice and an order was passed, under section 281B, provisionally attaching the fixed deposits of the assessee on the ground that huge tax demands are likely to be raised upon completion of the assessment.

Aggrieved by the attachment order, the assessee filed writ petition before the Karnataka High Court.

CONCLUSION - based on the absence of mandatory pre-conditions of provisional attachment of property, it was considered that there were no appropriate reasons to believe. Thus, considering the provisional attachment order to be arbitrary and contrary to law, the Court quashed the attachment order and allowed the assessee's appeal.

4. PALLAV PANDEY VS ACIT (ITAT DELHI), APPEAL NUMBER: I.T.A. NO. 7387/DEL/2019, DATE OF JUDGEMENT/ORDER: 13/12/2022

ISSUE - ITAT Delhi held that expenditure incurred wholly and exclusively towards transfer of shares is allowable transfer expenses as per section 48 of the Income Tax Act.

FACTS - Assessee filed return claiming transfer expenses of Rs. 25,92,818/- The assessment proceedings came to be initiated, during the assessment proceedings, the assessee contended that expenses of Rs. 25,92,818/- were incurred wholly and exclusively for transfer of shares and such expenses are eligible as per Section 48 of the Income Tax Act. A.O. has disallowed transfer expenses on the basis that the said transfer expenses of Rs. 25,92,818/- claimed by the assessee in the nature of fees for advisory service and management consulting. Therefore, the same cannot be considered to be allowable transfer expenses as per Section 48 of the Tax Act. CIT(A) has allowed the transfer expenses to the extent of Rs. 1,50,000/- (being 0.1% of the transaction cost) and balance disallowance of Rs. 24,42,818/- has been confirmed vide order dated 18/06/2019. Being aggrieved, the present appeal is filed.

CONCLUSION - In the present case, ITAT is of the opinion that, the expenses of Rs. 25,92,818/- incurred by the Assessee is allowable transfer expenses as per Section 48 of the Act and both the Lower authorities have committed an error in disallowing the expenses of Rs. 25,92,818/- incurred by the Assessee.



GLIMPSES OF ITBA



1st November, 2022 | Deepawali Milan was organised by the Income-tax Bar Association with a grand celebration. Members enjoyed tattoos, rangoli, lots of games, story-telling and other cultural activities. The program was held in presence of Chief-Guest Shri Pradeep Hedau, Pr. Commissioner of Income-tax.





GLIMPSES OF ITBA



19th November, 2022 | Lecture meeting on Amendments and procedural change in registration of charitable entities was organised with Raipur Branch of CIRC of ICAI jointly. Past President CA K.M. Deshpande enlightened members about the registration and other aspects of taxability of charitable institutions in detail.



23rd November, 2022 | Governing board of Income-tax Bar Association, Raipur met with Pr. CIT (MPCG) Shri Mohnish Verma in presence of CCIT Shri Bir Birsa Ekka. The Governing Board discussed with Pr. CIT on various tax matters like malfunctioning of Income-tax portal, processing, refunds and other grievances facing by the taxpayers.





GLIMPSES OF ITBA



10th and 11th December, 2022 | Annual Sports Competition was held by the association. Members participated and enjoyed fellowship during these two days' sports meet and healthy competitions for various sports was witnessed. ITBA congratulates all the winners and participants of two days Annual Sports Event organized jointly with Raipur Branch of ICAI. The names of winners & runner ups of various sports events are as under :

SPORTS EVENT	WINNERS	RUNNER UPS
Chess	Adv Suprabh Jha	CA Saurabh Kesarwani
Chinese Checker	CA Kalpana Aggarwal	Adv. Durga Shankar Sahu
Carrom Singles (Men's)	CA Anand Beriwal	Adv Suprabh Jha
Carrom Singles (Women's)	CA Riddhi Jain	CA Shikha Rakhecha
Carrom Doubles (Men's)	CA Anand Beriwal & CA Navin Khandelwal	Adv Suprabh Jha & Adv. Vimal Kumar Shrivastava
	CA Shashank Moghe	CA Jayant Bhura
Table Tennis Singles (Men's)	CA Shashank Moghe & Adv. G.L. Agrawal	CA Pranjal Singh & CS Sanjay Mohta
	CA Shashank Moghe	CA Pratik Agrawal
Badminton Singles (Women's)	CA Kalpana Aggarwal	CA Akriti Mishra
Badminton Doubles (Men's)	CA Shashank Moghe & CA Ashok Jhabak	CA Pratik Agrawal & CA Yogesh Jain
	CA Kalpana Aggarwal & CA Chandni Godheja	CA Riddhi Jain & CA Mrinalini Dubey
Badminton Doubles (Mixed)	CA Sakshi Gopal Aggarwal & CA Kalpana Aggarwal	CA Shashank Moghe & CA Riddhi Jain