E-Journal

Taxation Latest Case Law
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Summary: Goods and Services Tax Case Laws

1. **Can DRC Proceedings Be Sustained When Wrong ITC Entry is Duly Rectified in GSTR-9/9C and No Revenue Loss Occurs?**

Case: Periyasamy Karthikeyan vs. State Tax Officer

- The Madras High Court held that where ITC was wrongly reflected under CGST and SGST instead of IGST in GSTR-3B, but the mistake was transparently disclosed and rectified in GSTR-9 and GSTR-9C with Chartered Accountant certification, fresh proceedings alleging revenue loss are unsustainable.

- In the present case, proceedings initiated through ASMT-10 were earlier dropped by the department after considering the assessee's reply, yet DRC-01A and DRC-01 were subsequently issued again on the very same issue, despite no concealment or suppression.

- The Court ruled that there was no loss of revenue as the ITC was available with the Government and only wrongly classified between tax heads; once rectified through GSTR-9/9C, the question of excess claim or short payment does not arise, and the impugned assessment order was liable to be quashed.

2. **Can a Single SCN under Section 74 Covering Multiple Financial Years Be Issued Validly?**

Case: Paras Stone Industries vs. Union of India

- The Bombay High Court held that issuance of a composite show cause notice under Section 74 of the CGST Act covering multiple financial years is without jurisdiction, as the statute does not permit consolidation of different tax periods in a single notice.

- In the present case, the DGGI issued a consolidated SCN for FYs 2017-18, 2018-19 and 2019-20 alleging suppression and short payment of tax, which was challenged by the petitioner relying on binding Division Bench judgments applicable in Maharashtra.

- The Court quashed the impugned composite SCN, rejecting the objection of alternate remedy, and granted liberty to the department to issue separate notices year-wise strictly in accordance with Section 74, if otherwise permissible in law.

3. **Can GST Assessment Be Done Through A Single Composite Order Covering Multiple Financial Years Under GST?**

Case: Madeena Steels vs. Assistant Commissioner of State Taxes

- The Andhra Pradesh & Telangana High Court held that a single composite assessment order covering multiple financial years is impermissible under the GST framework, as separate proceedings must be initiated for each tax period or assessment year.

- In this case, the assessee was subjected to a single show-cause notice and assessment order covering the period from July 2017 to January 2022, which was later affirmed in appeal, prompting a writ challenge.

- Relying on the Division Bench ruling in S J Constructions, the Court quashed both the assessment and appellate orders, while granting liberty to the department to initiate fresh proceedings independently for each financial year in accordance with Section 73 of the CGST/APGST Acts.

4. **Can a Single GST Show-Cause Notice Club Multiple Financial Years and Tax Periods**?

Case: **Mahashay Marketing vs. Union of India**

- The Karnataka High Court held that issuance of a composite show-cause notice and passing of a consolidated order covering multiple tax periods and financial years is impermissible under the GST law.

- In this case, the department issued a single SCN along with an addendum (for non-fraud cases), clubbing several tax periods and financial years, followed by letters and an Order-in-Original culminating the proceedings.

- Relying on the binding precedent in Pramur Homes and Shelters v. Union of India, the Court ruled that such consolidation is illegal, and consequently quashed the SCN, addendum, all subsequent communications, and the final order, while granting liberty to the department to initiate fresh proceedings strictly in accordance with law.

5. **Do Counselling Services Provided to Foreign Educational Institutions Qualify as Export of Services Entitling GST Refund**?

Case: **Commissioner of Delhi GST vs. Global Opportunities (P.) Ltd.**

- The Supreme Court dismissed the SLP filed by the Revenue against the High Court's order holding that counselling services provided by an Indian educational consultancy to foreign educational institutions qualify as export of services under the GST law.

- The assessee raised invoices on foreign institutions, received commission in foreign exchange, and provided services on its own account, thereby establishing that the recipient of services was located outside India.

- It was held that the assessee did not act as an intermediary since it neither arranged nor facilitated services between two parties, and therefore was entitled to refund of

GST along with statutory interest, with only a limited extension of time granted for processing the refund.

6. **Can a Final GST Order Be Passed Without Maintaining a Minimum Three-Month Gap from SCN?**

Case: A. M. Marketplaces (P.) Ltd. vs. Union of India

- The Bombay High Court held that a minimum time gap of three months between issuance of a show-cause notice and passing of the final order under Section 73 of the CGST Act is mandatory to ensure a meaningful opportunity of hearing to the assessee.

- The Court observed that the three-month period is essential to enable the assessee to examine the demand, exercise the option of self-assessment and voluntary payment, seek adjournments, and effectively participate in personal hearings, in line with principles of natural justice.

- In the present case, the final order was passed within about two months and thirteen days from issuance of the SCN, rendering the statutory safeguards illusory; accordingly, the impugned order was quashed and the matter was remanded for fresh consideration.

7. **Can Limitation for GST Refund Be Calculated from a Revised Claim Filed After a Deficiency Memo?**

Case: Homag India (P.) Ltd. vs. Joint Commissioner of Central Tax, Appeals-II

- The Karnataka High Court held that for determining limitation under Section 54 of the CGST Act, the date of the initial refund application must be considered and not the date of a revised refund application filed pursuant to a deficiency memo.

- In this case, the assessee had filed the original refund claim within the prescribed limitation period, but after a deficiency memo was issued by the department, a revised application was filed which was subsequently rejected as time-barred.

- The Court ruled that such rejection was erroneous, clarified that limitation runs from the date of the original application, and remanded the matter to the department for fresh consideration in accordance with law.

8. **Can Appeal Be Reconsidered If Proper CA Certificate with UDIN is Obtained After Dismissal of GST Appeal?**

Case: Iliyash Sekh vs. Assistant Commissioner of CGST & C. EX.

- The Calcutta High Court held that dismissal of an appeal under Section 107 of the CGST Act for non-submission of a proper CA certificate with UDIN was justified, as

such certificate was material for just adjudication of alleged short payment based on differences between GSTR-1 and GSTR-3B.

- However, noting that the assessee subsequently obtained a valid CA certificate with UDIN and claimed reconciliation of returns, the Court observed that principles of natural justice required a post-decisional opportunity to place the documents on record.

- Accordingly, the matter was remanded to the Appellate Authority for reconsideration after granting a hearing, the impugned appellate order was kept in abeyance for eight weeks, and liberty was granted to the assessee to file all supporting documents, with merits left open for fresh decision.

9. **Can GST Demands Based on GSTR-1 vs GSTR-3B Mismatch Be Sustained Without Full Reconciliation**?

   Case: **M/s Sterling** & **Wilson Pvt**. **Ltd**. **vs**. **Commissioner**, **Odisha CT** & **GST** (**GSTAT – First Judgment**)

- **In its first-ever judgment**, **the GST Appellate Tribunal** (**GSTAT**) held that where tax demands arise solely due to mismatch between GSTR-1 and GSTR-3B, and there is no finding of fraud or suppression, the matter requires proper factual re-examination rather than mechanical confirmation of demand.

- The Tribunal noted that once the First Appellate Authority itself concluded that Section 74 was not applicable due to absence of intent to evade tax, the proceedings could not be straightaway converted to Section 73 without re-determination by the Proper Officer as mandated under Section 75(2) of the CGST Act.

- Accordingly, the GSTAT set aside the orders to the extent they treated the case under Section 73 and remanded the matter to the Proper Officer for fresh adjudication, permitting the assessee to file amendments and reconciliation, emphasizing that honest taxpayers should not be penalised for technical or timing mismatches in returns.

10. **Can a Single Composite SCN Covering Multiple Financial Years be Issued under Section 73 of GST Law**?

    Case: **Tvl**. **Shot X Retail** (**P**.) **Ltd**. **vs**. **State Tax Officer** (**ST**)
    Court: **Madras High Court**
    W.**P**. (**MD**) **No**. **698 of 2026**

- The Madras High Court held that issuance of a single composite show cause notice and a consolidated assessment order covering multiple financial years under Section 73 of the CGST/TNGST Acts is impermissible in law and without jurisdiction.

- In the present case, the tax authorities issued one SCN and passed a single assessment order clubbing proceedings for FYs 2022-23 to 2025-26, which was challenged by the assessee as being contrary to the statutory scheme requiring year-wise adjudication.

- Relying on earlier binding precedent, the Court quashed the composite assessment and all consequential proceedings, holding that separate proceedings must be initiated for each financial year, while granting liberty to the department to issue fresh SCNs independently for each year.

11. **Can CGST and State GST Authorities Conduct Parallel Adjudication on the Same Subject Matter under GST Law?**

Case: Saraswati Spinning and Weaving Mills vs. State of Himachal Pradesh
Court: Himachal Pradesh High Court

- The Himachal Pradesh High Court held that once adjudicatory proceedings on a subject matter are initiated by either the State GST or the Central GST authority, Section 6(2)(b) of the CGST Act bars the other authority from commencing parallel adjudication on the same issue.

- In this case, the petitioner challenged DRC-01 SCNs, Order-in-Original dated 03.02.2025 and DRC-07 dated 05.02.2025 issued by CGST on the ground that the State GST authorities had already initiated proceedings on the same subject matter for FYs 2019-20 and 2020-21.

- Relying on the Supreme Court decision in Armour Security (India) Ltd., the Court clarified that while bona fide investigation and issuance of summons may continue, parallel adjudicatory proceedings are impermissible; accordingly, both State and Central authorities were directed to coordinate, communicate, and ensure that no multiple adjudications take place on the same subject matter, with merits kept open.

12. **Can IT Services Rendered to a Foreign Parent Be Automatically Treated as Intermediary Service to Deny GST Refund?**

Case: Vistex Asia Pacific (P.) Ltd. vs. Union of India
Court: Bombay High Court

- The Bombay High Court held that mere characterization of services as "intermediary services" without a detailed examination of the service agreement is unsustainable, and denial of refund on such basis requires deeper contractual scrutiny.

- In this case, the petitioner, a subsidiary of a US parent company, claimed refund of unutilized ITC treating IT services rendered to its parent as export of services, which was initially sanctioned but later denied by the department by classifying the petitioner as an intermediary.

- The Court noted that unlike earlier precedent where agreements were conclusively examined, the present service agreement required a de novo analysis of contractual clauses, circulars, and statutory provisions, and accordingly remanded the matter to the appellate authority for fresh consideration.

13. **Can a Single SCN under Section 74 Clubbing Multiple Financial Years Survive under GST Law?**

Case: Speedways Logistics (P.) Ltd. vs. Union of India
Court: Bombay High Court

- The Bombay High Court held that a single show cause notice under Section 74 of the CGST/MGST Acts clubbing multiple financial years or tax periods is impermissible, as the GST framework mandates year-wise assessment and limitation.

- In this case, the SCN covered the period from April 2019 to March 2023 alleging suppression of taxable value and wrongful availment of ITC, which the assessee challenged on the ground that consolidation of multiple years distorted statutory limitation and jurisdiction.

- Relying on binding precedents, the Court quashed the composite SCN, holding that limitation under Sections 73 and 74 runs separately for each financial year, consolidation collapses distinct tax periods and due dates, and such clubbing violates the statutory scheme and the taxpayer's right to respond year-wise.

14. **Can Refund of Inverted Duty ITC be Denied when Input and Output GST Rates are the Same After Circular 173/05/2022?**

Case: South Indian Oil Corporation vs. Assistant Commissioner of Central Tax
Court: Karnataka High Court

- The Karnataka High Court held that refund of accumulated ITC on account of inverted duty structure cannot be denied merely because the GST rate on input and output supplies is the same, in view of Circular No. 173/05/2022-GST which deleted such restriction by substitution.

- In this case, the petitioner engaged in procurement and packing of edible oils under the same HSN at 5% GST accumulated ITC due to higher tax incidence on certain inputs, but the refund claim was rejected by the department under Section 54(3)(ii) on the ground that input and output tax rates were identical.

- Relying on its earlier decision in Indian Oil Corporation Ltd., the Court held that Circular No. 135/05/2020-GST was wrongly applied and that post 06.07.2022, refund of inverted duty ITC is admissible even where input and output tax rates are the same, and accordingly directed that the petitioner's refund claim be allowed.

15. **Can Directors' Personal Bank Accounts be Attached for GST Dues of a Company under Liquidation?**

Case: N. Ramkhuar Narasimhan vs. Assistant Commissioner (ST)
Court: Madras High Court

- The Madras High Court held that GST dues of a private company under liquidation cannot be recovered by attaching the personal bank accounts of its directors, as the liability remains that of the company and recovery must be confined to company assets.

- In this case, the company incurred GST dues during the liquidation period when it was under the control of a liquidator, yet the department proceeded to attach the personal bank accounts of the directors for recovery of interest and penalty.

- The Court ruled such action to be unjustified and illegal, observing that tax had already been recovered from the company's credit ledger and that directors cannot be held personally liable for company dues during liquidation, directing that the attachments be vacated and granting liberty to the directors to seek appropriate relief.

16. **Can Portal-Only Service of SCN and No Personal Hearing Sustain an Ex Parte GST Assessment?**

Case: Cmkr Ganesan and Bros vs. Deputy Commissioner (CT) GST, Madurai
Court: Madras High Court

- The Madras High Court held that though uploading of show cause notice on the GST portal constitutes valid service under Section 169 of the CGST/TNGST Acts, mere portal upload without ensuring effective service and without granting personal hearing cannot justify passing an ex parte assessment order.

- In the present case, the department issued SCN and reminders only through portal uploads, and upon non-response, passed an ex parte assessment order without affording personal hearing. The statutory appeal was also rejected on limitation grounds.

- The Court observed that in the absence of response, the officer ought to have resorted to other statutory modes of service under Section 169(1), such as RPAD, to secure effective notice. Holding that principles of natural justice were violated, the assessment and appellate orders were set aside and the matter was remanded for fresh adjudication subject to payment of 25% of the disputed tax.

17. **Can a Refund of IGST on Ocean Freight Be Paid to the Assessee When Tax Incidence Was Passed on to Consumers**?

Case: **Union of India vs**. **Torrent Power Ltd**. (**SLP Appeal** (**C**) **No**. **13084 OF 2025**)
Court: **Supreme Court of India**

- The Supreme Court held that where an assessee had passed on the incidence of IGST paid on ocean freight under a CIF contract to its consumers, refund could not be paid to the assessee but must be credited to the Consumer Welfare Fund in terms of Sections 54(5), 54(8)(e) and 57 of the CGST Act.

- In this case, Torrent Power Ltd., engaged in electricity generation and distribution, had paid IGST under reverse charge pursuant to Notification No. 10/2017-IGST (Rate). After the levy was declared unconstitutional in Mohit Minerals, the assessee sought refund, which was initially denied on grounds of unjust enrichment.

- The Gujarat High Court directed refund to the assessee, accepting its undertaking to deposit the refunded amount in a separate account and pass on the benefit to consumers through tariff adjustments approved by the Electricity Regulatory Commission.

- Setting aside the High Court's order, the Supreme Court ruled that such a refund mechanism was not contemplated under Section 54 of the CGST Act. Since the tax burden was admittedly passed on, the statutory exception under Section 54(8)(e) did not apply, and the refundable amount of Rs. 19.28 crore was directed to be credited to the Consumer Welfare Fund within three months.

18. **Can Ex Parte GST Assessment Be Sustained When SCN Is Served Only Through Portal Upload**?

Case: **Sri Velmurgan Starch Industries vs**. **State Tax Officer/Commercial Tax Officer**, **Thuraiyur**
Court: **Madras High Court**

- The Madras High Court held that though uploading of Show Cause Notice on the GST portal is a permissible mode of service under Section 169 of the CGST/TNGST Act, the same cannot be treated as sufficient compliance in cases where the assessee does not respond and claims lack of knowledge of such notice.

- In the present case, the SCN and subsequent notices were served only by way of portal upload, and the assessment order came to be passed ex parte without granting any personal hearing to the petitioner-assessee.

- The Court observed that when repeated portal communications evoked no response, the Proper Officer ought to have resorted to alternative statutory modes of service

such as Registered Post with Acknowledgement Due (RPAD), so as to ensure effective opportunity of hearing in terms of Section 75 of the Act.

- Holding that absence of meaningful opportunity vitiated the assessment proceedings, the Court set aside the impugned order and remanded the matter for fresh adjudication subject to deposit of 25% of the disputed tax, with a direction to grant clear notice and personal hearing.

19. **Does Voluntary Cancellation of GST Registration Wipe Out Past Tax Liabilities**?

Case: **Manikanta Electronics Services Center vs**. **State of Telangana**
Court: **Telangana High Court**

- The Telangana High Court held that cancellation of GST registration on voluntary application does not absolve a taxpayer from any existing tax liabilities pertaining to the period prior to such cancellation.

- In the present case, even after cancellation of registration in 2021, the department issued a show cause notice under Section 73 for FY 2018-19 alleging incorrect declaration of input/output taxes in returns filed by the assessee.

- The assessee failed to respond to the SCN despite reminders and opportunity of personal hearing, pursuant to which the Assessing Authority proceeded to confirm the demand of tax along with penalty for the relevant period.

- The Court further held that rejection of the rectification application under Section 161 was valid since the assessee sought re-examination of the entire matter, which is beyond the limited scope of rectification, while granting liberty to prefer an appeal in accordance with law.

20. **Can Salary Paid to Foreign Employees be Taxed as Import of Manpower Services under GST**?

Case: **Huawei Technologies India** (**P**.) **Ltd**. **vs**. **State of Karnataka**
Court: **Karnataka High Court**

- The Karnataka High Court held that where foreign nationals are directly employed by the assessee and there exists a clear employer-employee relationship, the salary paid to such employees is outside the ambit of GST in terms of Entry 1 of Schedule III of the CGST Act.

- In the present case, the department sought to levy IGST alleging that the assessee had imported 'Manpower Recruitment and Supply Services' from foreign nationals working in India as non-resident taxable persons.

- The Court observed that the foreign nationals were exclusively employed by the assessee for a fixed tenure and did not qualify as 'Non-Resident Taxable Persons' under Section 2(77) of the CGST Act, thereby negating the allegation of import of services under Section 2(11) of the IGST Act.

- Accordingly, the impugned SCN was quashed holding that services rendered by employees to employer in course of employment are neither supply of goods nor services under GST, and in absence of any invoice, the deemed value of such supply would be Nil in light of CBIC Circular dated 26.06.2024.

21. **Can Portal-Based Service of Notice Be Treated as Valid After Cancellation of GST Registration**?

Case: **Raj Shekhar Pandey vs. State Tax Officer**
Court: **Uttarakhand High Court**

- The Uttarakhand High Court held that once GST registration stands cancelled, an assessee cannot be expected to continuously monitor the GST portal, and therefore, portal-based service of show cause notice alone cannot be treated as sufficient compliance with statutory requirements.

- In the present case, the impugned proceedings were initiated by issuance of SCN dated 16.11.2024 and culminated into order dated 13.01.2025, even though the petitioner's GST registration had already been cancelled pursuant to surrender application filed on 29.04.2023.

- The Court observed that making a notice available on the common portal is only one of the permissible modes of service under Section 169 of the CGST Act, and cannot be treated as an exclusive method, especially when the assessee is no longer a registered person.

- Accordingly, the impugned order was quashed for want of proper service of notice, and liberty was granted to the petitioner to file reply to the SCN, with direction to the department to pass a fresh order strictly in accordance with law after ensuring effective service through alternative modes.

22. **Can GST Liability Be Quashed if Tax Funds Are Misappropriated by the Assessee's Chartered Accountant**?

Case: **Knight Fly Boyz vs. Deputy Commissioner of State Tax (SGST)**
Court: **Punjab and Haryana High Court**

- The Punjab & Haryana High Court held that notices served upon the assessee through its Chartered Accountant were legally valid, as the CA was admittedly acting as an authorised agent of the assessee, and service upon an agent amounts to valid service upon the principal.

- The assessee contended that it had transferred the GST dues to its CA for deposit with the department, but the CA had misappropriated part of the funds and criminal proceedings had already been initiated against him.

- The Court observed that such alleged fraud or misappropriation by the CA may give rise to independent civil or criminal remedies against the professional concerned, but cannot absolve the assessee of its statutory tax liability under the GST law.

- Accordingly, the writ petition filed without availing the statutory appellate remedy under Section 107 of the CGST Act was dismissed, holding that the tax demand cannot be set aside merely on account of misconduct or fraud committed by the assessee's agent.

23. **Can Show Cause Notice be Issued without Pre-SCN Consultation after Notification No. 79/2022-CT?**

Case: Manpar Exim Inc. vs. Additional Director, Directorate General of GST Intelligence
Court: Supreme Court

- The Supreme Court dismissed the SLP filed against the High Court order which had upheld that pre-show cause notice consultation is no longer mandatory after the amendment made vide Notification No. 79/2022-Central Tax dated 15.10.2022.

- In the present case, the petitioner challenged the demand confirmed under Section 74 alleging fraudulent availment and passing of fake ITC, primarily on the ground that no pre-SCN consultation was undertaken before issuance of show cause notice.

- The High Court had observed that pursuant to the amendment in Rule 142(1A), the word "shall" was substituted with "may", thereby making pre-consultation discretionary and not a mandatory procedural requirement prior to issuance of SCN.

- Upholding the High Court's view, the Apex Court found no reason to interfere and directed the petitioner to avail the statutory appellate remedy under Section 107 of the CGST Act, thereby affirming validity of SCN issued without prior consultation.

24. **20% Pre-Deposit for filing Appeal before GST Tribunal should be calculated as per demand order of Adjudication order or as per demand order of First Appellate Authority? Answered by Jharkhand High Court**

Case: Ashirwad Food Industries vs. Union of India
Court: Jharkhand High Court

- The Jharkhand High Court held that once the assessee has already made the requisite statutory pre-deposit at the first appellate stage under Section 107 of the CGST/JGST Act, no further pre-deposit can be insisted upon for filing an appeal before the GST Appellate Tribunal against the order-in-appeal.

- In the present case, the petitioner had deposited Rs. 23.85 lakh at the time of filing appeal before the First Appellate Authority against an original demand of approximately Rs. 2.38 crore, which was subsequently reduced to around Rs. 40 lakh in the appellate proceedings.

- The department contended that a further pre-deposit of 20% would be required for filing appeal before the Tribunal; however, the Court observed that the amount already deposited exceeded the statutory requirement based on the reduced demand.

- Accordingly, the Court directed that the appeal filed before the GST Tribunal be accepted without insisting on any additional pre-deposit and clarified that no coercive steps should be taken merely on account of non-payment of further pre-deposit.

25. **Can University Affiliation Fees Be Exempt from GST under Notification 12/2017 as Services Relating to Admission or Examination?**

Case: **Bharathidasan University vs. Joint Commissioner of GST (ST-Intelligence)**
Court: **Madras High Court**

- The Madras High Court held that affiliation fees collected by the University from affiliated colleges do not qualify for exemption under Notification No. 12/2017, as such services are not services relating to admission of students or conduct of examinations.

- In the present case, the University collected affiliation fees during FYs 2019-20 to 2022-23, and the department issued intimations demanding GST along with interest and penalty on the ground that affiliation is not a service provided directly to students for admission or examination purposes.

- The Court observed that though affiliation is a prerequisite enabling colleges to admit students, it is not integrally connected with the actual process of admission or conduct of examinations, and therefore falls outside the limited scope of exemption granted under Notification 12/2017.

- Accordingly, the Court upheld the levy of GST on affiliation fees, holding that exemption provisions must be strictly construed and cannot be extended to services merely incidental or prior to admission or examination, thereby deciding the matter in favour of the Revenue.

26. Can Appeal Be Dismissed as Time-Barred When Rectification Was Filed Or Writ Was Pursued Bona Fide?

Case: Vyas Traders vs. Additional Commissioner, Grade-2
Court: Allahabad High Court

- The Allahabad High Court held that where an assessee files a rectification application under Section 161 against an order passed under Section 73, the limitation period for filing appeal under Section 107 remains in abeyance till disposal of the rectification application. Accordingly, dismissal of appeal as time-barred was held to be unsustainable in light of the binding precedent in Prakash Medical Stores v. Union of India.

- In the first issue, the petitioner's rectification application was rejected and the subsequent appeal was dismissed on limitation grounds. The Court set aside the appellate order, holding that since 10% of the disputed tax had already been deposited, the appeal must be decided on merits and cannot be rejected as barred by limitation.

- In the second issue relating to a seizure and penalty order (MOV-06/MOV-09), the petitioner had initially filed a writ petition within limitation, which was later withdrawn with liberty to file appeal. The appellate authority rejected the appeal as time-barred.

- The Court held that the petitioner was entitled to benefit of Section 14 of the Limitation Act, 1963, as he had been bona fide prosecuting remedy before the wrong forum. The impugned order was set aside and the matter was remanded for decision on merits, holding the appeal to be within limitation.

27. Can Interest Be Levied in Adjudication When It Was Not Quantified in the SCN?

Case: Ziva Auto Sales vs. State of U.P.
Court: Allahabad High Court

- The Allahabad High Court held that an adjudication order cannot travel beyond the scope of the show cause notice (SCN), and where interest was not quantified in the SCN, its subsequent levy in the final order is legally unsustainable.

- In the present case, the authorities issued an SCN for tax, interest and penalty for the period April 2020 to March 2021; however, while tax and penalty were specified, the interest component was not quantified despite the liability being ascertainable at the time of issuance of notice.

- The Court observed that once the interest liability for FY 2020-21 was known to the department, failure to quantify it in the SCN amounted to a material defect, and the assessee was deprived of proper opportunity to contest the exact demand.

- Holding that Section 73 read with Section 75 of the CGST/UPGST Acts mandates that an order cannot exceed the proposal contained in the SCN, the Court quashed both the impugned SCN and the adjudication order as being contrary to law.

28. Can An Ex Parte GST Assessment Stand When SCN Is Uploaded On Portal But No Alternative Mode of Service Is Adopted?

Case: **Praveen Constructions vs. State Tax Officer, Tirunelveli**
Court: **Madras High Court**

- The Madras High Court held that when a show cause notice is uploaded only on the GST portal and there is no response from the taxpayer, the officer must explore other valid modes of service prescribed under Section 169(1), preferably by Registered Post with Acknowledgment Due (RPAD), to ensure effective service.

- In the present case, repeated notices were uploaded on the common portal, but the petitioner remained unaware of them and no personal hearing was granted before passing the assessment order confirming the proposals in the SCN.

- The Court observed that merely fulfilling procedural formalities by uploading notices on the portal, without ensuring effective service, would not meet the object of the GST law and would only lead to unnecessary litigation.

- Holding that there was lack of effective opportunity and violation of principles of natural justice, the Court set aside the ex parte assessment order and remanded the matter for fresh consideration after proper service and grant of hearing.

29. Can Benefit of Section 16(6) be Availed Retrospectively After Cancellation of Registration?

Case: **Saleena Shahul Hameed vs. State Tax Officer**
Court: **Kerala High Court**

- The Kerala High Court held that newly inserted Section 16(6) of the CGST Act, enabling availment of ITC upon revocation of cancellation of registration, is not retrospective in operation and cannot be invoked for past concluded proceedings.

- In the present case, the taxpayer had voluntarily closed down the business and cancelled registration with effect from 30.11.2018. Subsequently, a demand under Section 73 was confirmed in 2024 on account of mismatch between GSTR-1 and GSTR-3B, which was not challenged by way of appeal.

- After insertion of Section 16(6) with effect from 01.10.2024, the taxpayer sought restoration of registration solely to avail ITC benefit under the newly introduced provision.

- The Court held that Section 16(6) does not create a fresh cause of action for restoration of registration merely to claim its benefit, and since the provision was not in existence when the demand order was passed, the benefit could not be claimed retrospectively. Accordingly, relief was denied and the matter was decided in favour of the Revenue.

Summary: Income Tax Case Laws

1. **Can a Huge Delay in Filing an Income Tax Appeal Be Condoned When it Arises from Wrong Form 3CD Reporting and Reliance on CA Advice?**

   Case: Shiwaji Pd. Jaiswal vs. Deputy Commissioner of Income-tax, Circle-1 (Gauhati ITAT)

- The Gauhati Bench of the ITAT held that a delay of 1862 days in filing an appeal before the Commissioner (Appeals) can be condoned where the assessee demonstrates reasonable cause, including erroneous reporting in Form 3CD by the Chartered Accountant and bona fide reliance on professional advice.

- In this case, the return was processed under section 143(1) making a substantial disallowance under section 43B based on incorrect Form 3CD figures, leading the assessee to believe that the resulting tax demand arose from a CPC processing error and to initially contest it through the e-filing portal instead of filing an appeal.

- The Tribunal observed that once the assessee became aware of the mistake, immediate corrective steps were taken by revising the tax audit report and filing the appeal, and therefore set aside the order of the Commissioner (Appeals), condoned the delay, and remanded the matter for adjudication on merits.

2. **Can the Assessing Officer Adjust Refunds Beyond 20% of Disputed Penalty Without Principal Commissioner's Approval?**

   Case: Fork Media Group (P.) Ltd. vs. Centralized Processing Centre, Bengaluru

- The Bombay High Court held that in the absence of any specific direction from the Principal Commissioner, the Assessing Officer cannot recover more than 20% of the disputed demand during pendency of appeal, in view of CBDT Instruction No. 1914 and subsequent Office Memorandums.

- In this case, although no tax demand arose for AY 2021-22, a penalty of Rs. 1.16 crore under section 270A was levied and challenged in appeal, yet refunds of subsequent years were adjusted resulting in recovery exceeding 20% of the disputed penalty.

- The Court ruled such excess recovery by way of refund adjustment to be contrary to CBDT instructions and directed the Assessing Officer to retain only 20% of the disputed penalty and refund the balance amount to the assessee within a reasonable time.

3. **Can Interest Earned on Unutilized Government Grants Be Taxed as Income of a State-Established Educational Trust?**

Case: Gujarat Knowledge Society vs. Income-tax Officer

- The Ahmedabad Bench of the ITAT held that interest earned on unutilised Government grants, which is mandatorily refundable to the State Government, cannot be treated as taxable income of the assessee-trust as it does not enjoy beneficial ownership over such interest.

- In this case, the assessee, a State Government-established educational trust, had invested unutilised Government grants in Gujarat State Financial Services Ltd. as per binding State Government directions, and the interest so earned was required to be transferred back to the State and treated as Government revenue.

- The Tribunal ruled that since the interest retained the character of Government funds and the trust was only a custodian thereof, exemption under section 10(23C)(iiiab) of the Income-tax Act, 1961 was rightly allowable and the interest income could not be brought to tax.

4. **Can Capital Gains on a Joint Development Agreement Be Taxed in the Year of Agreement without a Completion Certificate?**

Case: Keshava Reddy vs. Deputy Commissioner of Income-tax

- The ITAT held that mere execution of a Joint Development Agreement and handing over possession of land for development does not amount to a "transfer" under section 2(47)(v) of the Income-tax Act in the absence of part performance under section 53A of the Transfer of Property Act.

- Since no consideration was received and possession was given only for development purposes, capital gains were not taxable in the year of the JDA but were chargeable only in the year in which the completion/occupancy certificate was issued and constructed flats were received, in terms of section 45(5A).

- The Tribunal further held that developer's cost of construction cannot be treated as consideration for computing capital gains; instead, stamp duty value of the built-up area received on the date of completion certificate must be adopted, with correct indexed cost of acquisition, and exemption under sections 54/54F was allowable by treating all flats received under the JDA as one residential house.

5. **Can Transfer of Rights in an Allotted Residential Unit by Agreement to Sell be Treated as a 'Transfer' for Capital Gains?**

Case: Anshu Dhawan vs. Income-tax Officer (Delhi ITAT)

- The Delhi ITAT held that rights acquired by an assessee in a residential unit upon allotment constitute a capital asset, even if possession and registered conveyance are not obtained.

- In this case, the assessee was allotted a residential unit in 2010 and subsequently transferred her enforceable rights therein through a registered agreement to sell dated 15.07.2021 for a consideration of ₹2.22 crores.

- The Tribunal ruled that such transfer squarely falls within the definition of "transfer" under section 2(47) of the Income-tax Act, 1961, and therefore the resultant loss was assessable under the head "Capital Gains", entitling the assessee to claim long-term capital loss.

6. **Can Corporate Image Advertisement Expenses Be Treated as Capital and Deferred over Multiple Years?**

Case: Dy. CIT (CC-1), Baroda vs. Rinki Petrochemicals & Industries Ltd.

- The Gujarat High Court held that corporate image advertisement expenditure is not capital in nature and is allowable as revenue expenditure under section 37(1) of the Income-tax Act, 1961, in the year in which it is incurred.

- In this case, the assessee incurred advertisement expenditure of about Rs. 5.02 crore and, although treated as deferred revenue in the books, claimed the entire amount as deduction in the return of income.

- The Court ruled that book treatment is not decisive for tax purposes and since the expenditure did not result in creation of any capital asset or enduring advantage, the full amount was allowable in the year of incurrence, rejecting the Assessing Officer's approach of spreading it over multiple years.

7. **Can Exemption u/s 11 & 12 Be Denied Only Due to Delayed Filing of Form 10B When It Was Already On Record?**

Case: Vishva Kalyan Foundation vs. Income-tax Officer (Exemption)

- The Ahmedabad ITAT held that exemption under sections 11 and 12 of the Income-tax Act cannot be denied merely due to belated filing of audit report in Form No. 10B, when the same was already available on departmental records at the time of processing of return.

- In this case, although Form No. 10B was filed with a delay of about 73 days, it was uploaded along with the return of income and was available with the CPC before processing under section 143(1); however, CPC denied exemption solely on the ground of delay and raised tax demand.

- The Tribunal ruled that since the statutory audit report was on record at the time of processing, denial of exemption was unjustified, and exemption under sections 11 and 12 was rightly allowable to the assessee.

8. **Can the Date of Registration Determine the Date of Acquisition of Property for Capital Gains**?

Case: **Shreshta Sheel Patil vs**. **Income-tax Officer**
Court: **ITAT**, **Bengaluru**

- The ITAT held that the date of acquisition of immovable property for capital gains purposes is the date on which substantial rights in the property are transferred, i.e., when full sale consideration is paid and possession is handed over, and not the date of registration of the sale deed.

- In this case, although the sale deed was registered on 24-04-1998, the deed itself clearly recorded that the entire sale consideration had been paid by 10-04-1996 and possession was handed over on 20-04-1996, which facts were not disputed by the Revenue.

- The Tribunal ruled that merely because registration took place later, the year of acquisition could not be shifted to the year of registration, and accordingly, the Cost Inflation Index applicable to FY 1996-97 was rightly adopted for computing indexed cost of acquisition, deciding the issue in favour of the assessee.

9. **Can Actuarial Provision for Gratuity and Leave Encashment Be Treated as Application of Income under Section 11**?

Case: **ACIT**, **Central Circle-1(4)**, **Mumbai vs**. **Anandilal** & **Ganesh Podar Society**
Court: **Mumbai ITAT**

- The Mumbai ITAT held that provision for gratuity and leave encashment made on actuarial basis in accordance with Accounting Standard-15 constitutes valid application of income under Section 11 of the Income-tax Act, 1961.

- In the present case, the assessee-trust running educational institutions created actuarially determined provisions towards gratuity and leave encashment arising out of statutory and employment obligations, which were disallowed by the Assessing Officer as contingent liabilities not involving actual cash outflow.

- The Tribunal ruled in favour of the assessee, holding that the expression "applied" under Section 11 must be understood in commercial sense and includes accrued and crystallized liabilities incurred in furtherance of the objects of the trust, even if there is no immediate payment during the relevant assessment year.

10. **Can Criminal Proceedings for TDS Non-Payment be Revived after Compounding Fee is Accepted under Section 279**?

Case: **Jyotsana Investments Company Ltd**. **vs**. **R**.**K**. **De**
Court: **Calcutta High Court**

- The Calcutta High Court held that once the Revenue accepts statutory compounding fees under Section 279(2) of the Income-tax Act for offences under Sections 276B and 278B, continuation or revival of criminal prosecution thereafter is impermissible and amounts to abuse of process of law.

- In the present case, prosecution was launched against the assessee-company and its directors for failure to deposit TDS. Pursuant to High Court directions, the Department quantified the compounding fee, which was duly paid along with outstanding TDS and interest, and the matter remained dormant for nearly 15 years.

- Subsequently, the Trial Court revived the proceedings and issued warrants of arrest and attachment orders, including against a deceased director, despite the offence having been compounded and accepted by the Department.

- The High Court quashed the entire criminal proceedings and set aside all consequential orders, holding that once compounding is accepted under Section 279, the offence stands settled and cannot be reopened or revived by the Trial Court.

11. **Can Expenditure on Application Software Licences with Short Useful Life Be Treated as Capital Expenditure**?

Case: **Edgeverve Systems Ltd**. **vs**. **Asstt**. **Commissioner of Income-tax**
Court: **ITAT**, **Bengaluru**

- The ITAT held that expenditure incurred on application software licences having short useful life and requiring periodic renewal cannot be treated as capital expenditure where no ownership or proprietary rights in the software are acquired by the assessee.

- In the present case, the assessee was granted only a restricted right to use the software for business purposes without any rights to modify, transfer, or commercially exploit the same, and the licences were valid only for limited durations requiring frequent renewal.

- The Tribunal observed that such expenditure was incurred to facilitate efficient conduct of day-to-day business operations and did not result in creation of any enduring benefit or capital asset.

- Accordingly, the software licence fees were held to be allowable as revenue expenditure under Section 37(1) of the Income-tax Act, 1961, being wholly and exclusively incurred for the purposes of business.

12. **Can Purchases be Treated as Bogus Merely Because the Supplier Did Not Respond to Notice or File ITR?**

Case: Income-tax Officer vs. Rajeev Kumar Kapoor
Court: ITAT, Lucknow Bench

- The ITAT held that purchases made from a GST-registered supplier cannot be treated as bogus merely because the supplier failed to respond to notice under Section 133(6) or had not filed its Income Tax Return.

- In the present case, the assessee engaged in trading of gold, silver and bullion had furnished complete purchase records, stock registers, expense registers and inventory ledger, all of which were duly examined by the Assessing Officer without any defect or discrepancy being found.

- The Tribunal observed that the transactions were duly reflected in GST returns and the assessee had availed input tax credit on such purchases, thereby establishing the genuineness of the transactions recorded in the books of account.

- It was thus held that merely because the supplier was non-responsive or a non-filer of ITR, the purchases could not be treated as unexplained expenditure under Section 69C read with Section 115BBE, and the addition made by the Assessing Officer was unjustified and liable to be deleted.

13. **Can the Assessing Officer Reject an Assessee's Method of Accounting Without Invoking Section 145(3) of the Income-Tax Act?**

Case: Milan Theatres (P.) Ltd. vs. DCIT
Court: Mumbai ITAT

- The ITAT held that where the assessee, a real estate developer, had consistently followed the Project Completion Method for revenue recognition, which had also been accepted in earlier assessment years, the Assessing Officer could not reject such method without invoking Section 145(3) and recording satisfaction regarding incorrectness or incompleteness of accounts.

- In the present case, the assessee had converted a shopping complex ('Milan Mall') from a capital asset into stock-in-trade and offered income to tax upon completion of

the project in AY 2017-18, in accordance with the Project Completion Method regularly followed in its books of account.

- The Assessing Officer sought to tax income based on dates of sale agreements and also disallowed proportionate interest from capitalised borrowing costs on an estimated basis, without identifying any violation of accounting standards or establishing any nexus with non-business purposes.

- The Tribunal held that in absence of compliance with statutory preconditions under Section 145(3), rejection of the method of accounting and consequential additions were jurisdictionally infirm and unsustainable in law.

14. **an Addition u/s 68 Be Made When the Assessee Proves Lender's Identity with ITRs and Bank Statements?**

Case: Singla Realters Ltd. vs. Income-tax Officer
Court: Delhi ITAT

- The Delhi ITAT held that no addition under Section 68 can be sustained where the assessee duly discharges its onus by establishing the identity of the lender through documentary evidence such as Income Tax Returns and bank statements.

- In the present case, the assessee had furnished necessary documents in support of the loans received; however, the Assessing Officer proceeded to make addition under Section 68 without properly appreciating the evidences placed on record.

- The Tribunal observed that once the assessee proves the identity and basic credentials of the lender through financial records, the burden shifts upon the department to rebut the same with cogent material.

- Accordingly, the addition made by the Assessing Officer under Section 68 was deleted, though the Tribunal upheld disallowance of 20% of certain unsubstantiated business expenditure under Section 37(1) in the absence of complete supporting details relating to construction material and travelling expenses.

15. **Can Section 54B Exemption Be Denied When Agricultural Land Is Sold and Reinvestment is Made in Other Agricultural Land?**

Case: Deputy Commissioner of Income-tax vs. Bhupinder Singh Bhalla
Court: Delhi ITAT

- The Delhi ITAT held that exemption under Section 54B cannot be denied where the assessee sold agricultural land and invested the sale proceeds in purchase of other agricultural lands, provided the nature and usage of land for agricultural purposes is duly established through revenue records.

- In the present case, the assessee sold agricultural land and reinvested the consideration in purchase of three agricultural lands, however the Assessing Officer disallowed the exemption on the ground that the land was not used for agricultural purposes.

- The Tribunal noted that both the land sold as well as the lands purchased were assessed to land revenue as agricultural lands and the Girdawri records clearly evidenced agricultural produce and actual agricultural activity being carried out on such lands.

- It was further observed that the assessee had consistently declared agricultural income from the said land for the preceding ten years and the department failed to discharge its burden to disprove the agricultural usage, thereby making the assessee eligible for exemption under Section 54B.