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LEX LOQUITUR

A NEWSLETTER SUMMARIZING LATEST COURT RULINGS

CONTENT

Preface

Dear Reader,

Courts "rule". They actually do. Significance, application and implication of such rulings needs to be understood and appreciated.

Lex Loquitur is an endeavor to bring to you the latest rulings from the Courts and various other judicial fora. We intend to cull out the ratio of some important rulings and summarize them for your ready reference, with our observations/ comments, if any.

We trust you will find it an interesting read.

We would, however, look forward to your feedback/comments. Do write to us at:
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Warm Regards
Team Lex Loquitur
UBR LEGAL, ADVOCATES

Matters Argued by us

1. Whether entry tax can be recovered from manufacture of IMFL when it has collected tax from dealers?

United Spirits Limited v. State of UP and 2 others – WP No. 1891/2024 [Allahabad High Court]

Decision: **No.**

The petitioner is a manufacturer of Indian Manufactured Foreign Liquor (IMFL). It sells IMFL to dealers for further sale in the State of Uttar Pradesh. It was assessed to entry tax under the UP Entry Tax Act, 2000. An appeal against the assessment orders did not meet with success. It was contended that said 2000 Act was held to be ultra vires by the Hon'ble Allahabad High Court. An ordinance was passed the State Legislature bringing into the UP Entry Tax Act, 2007 retrospectively from 1999. However, the schedule in the 2007 Act did not mention IMFL and hence, no tax could be levied on such goods; the savings and validation clause does not save the assessment orders which are not as per the new Act. Hence, writ petition came to be filed before the High Court.

The High Court set aside the orders and allowed the writ petition. It held: (i) that the state government issued circular dated 18.10.2006 stating that no entry tax could be realized from the manufacturer for the impugned period; (ii) there is a categorical finding of fact that the manufacturer had not collected the tax from the dealers; (iii) hence; the said circular is binding on the authorities; relies on constitution Bench judgment of the Supreme Court in case of Ratan Melting.

2. Whether the department can club multiple financial years for raising demand of CGST?

IBC Knowledge Park (P) Limited v Union of India & Ors – WP No. 13355 of 2024 (T-Res) [Karnataka High Court]

Decision: No.

The petitioner is supplying information technology related services. It files returns and pays output GST. For certain financial years, there was a dispute relating to date of filing of the returns. The department demanded interest on alleged delayed payment of tax under section 50 read with section 75(12) of the CGST Act. The said demand was challenged in writ petition on several grounds including that section 75(12) cannot be invoked in absence of determination.

The High Court set aside the order and allowed the writ petition. It held: (i) batching of multiple financial years starting from 2017-2018 to 2022-2023 is not correct; (ii) it would denude the benefit of the amnesty scheme ingrained u/s 128A of the CGST Act, 2017 for the period 2017-2018 to 2020-2021 as issue involved is only of interest; (iii) directs the assessing officer to pass separate orders in order to enable the petitioner to avail benefit of the scheme for waiver of interest and penalty; leaving open orders for subsequent years to be challenged again; on merits.

Matters Argued by us

3. Whether a trader, not registered in a particular state under GST, be denied the right to appeal against a penalty order under Section 129(3)?

N K Agro Exports (India) Private Limited v Union of India & Ors – WPA No. 30780 of 2024 [Calcutta High Court]

Decision: No.

The petitioner is a trader. It sold goods to a dealer in the State of West Bengal. The goods were intercepted. An order imposing penalty came to be passed under section 129(3) of the West Bengal GST Act on alleged discrepancies in the E-way bill accompanying the goods. The petitioner could not file appeal as it was not a registered dealer in West Bengal. It raised several grievances; however, to no avail. Hence, writ petition came to be filed.

The High Court allowed the writ petition. It observed that; pursuant to directions of the court, the petitioner was able to file the appeal online with the assistance of the office of the Advocate General. Hence, directs the appellate authority to consider the appeal on merits; without getting into issue of limitation and to decide the appeal in 8 weeks.

4. Whether failure of Income Tax Department to act upon a rectification order granting refund is correct or not?

Kalmar India Private Limited v Union of India & Ors – WPL No. 6798 of 2025 [Bombay High Court]

Decision: No.

The petitioner company was amalgamated with another company. The issue related to AY 2008-2009. Assessment order came to be passed disallowing losses pre amalgamation. Petitioner applied for rectification. The rectification was allowed and refund was ordered in 2021. Thereafter, the petitioner wrote several letters to the respondents, including a complaint with CPGRAM seeking refund and implementation of the order. However, there was no response. Hence, writ petition was filed.

The Bombay High Court expressed serious concerns over the prolonged delay, finding no reason to disbelieve the petitioner's claims. It directed the Principal Chief Commissioner, Income Tax-6, Mumbai to file a detailed affidavit explaining the delay and the circumstances and naming the officials responsible. Failure to do so may result in accountability being fixed on the highest official. The court also permitted the respondents to process and issue the refund in the meantime, if due. It is noted that interest liability due to departmental delays should not be borne by the State Exchequer alone and could be recovered from the responsible officials.

5. Whether the supply of bunker and water to a charterer, prior to vessel delivery, be liable to service tax?

The Shipping Corporation of India Limited v. Commissioner of Central Excise & Service Tax – Service Tax Appeal No. 87546 of 2016 [Mumbai CESTAT]

Decision: No.

The appellant is a public sector undertaking engaged in providing shipping services. It provides vessels on voyage and charter hire to customers. It pays service tax on charter hire charges. However, the department (for period from 2009 to 2014) proposed demand of service tax on bunker and water, on board, provided to the charterer. Demand of over Rs.15 crores was confirmed along with interest and equivalent penalty. The same was challenged in appeal.

CESTAT, Mumbai set aside the order and allowed the appeal. It held: (i) examines the agreement for charter hire; in detail; and holds supply of bunker and water before delivery would not form part of taxable service; (ii) providing bunker and water on board is not provision of any service and hence, not taxable; (iii) under section 67 only gross amount charged for service can be included in the value of taxable service; (iv) relies upon decision of tribunal in case of Express engineers; ICC and united shippers (affirmed by Supreme Court) and allows the appeal.

6. Whether mere disclosure of a company as an 'associated enterprise' under the Income Tax Act automatically trigger excise valuation rules applicable to 'related persons' under the Central Excise law or not?

Shiva Steel Industries (Nagpur) Limited v. Commissioner of Central Excise, Nagpur – Excise Appeal No. 1807 of 2012 [CESTAT, Mumbai]

Decision: No.

The appellant manufactures M.S. ingots. During scrutiny, the department found that for the purpose of income tax, the appellant had shown M/s Ujjawal Ispat Private Limited, as their associated company in terms of Section 40A(2)(b) of the Income Tax Act, 1961 and have shown such details including the name of Directors in Form 3CD of income tax return. Based on this, they are liable to pay central excise duty @110% to their associated company as per Section 4(1)(b) of the Central Excise Act, 1944 read with Rules 8 & 9 of the Central Excise Valuation (Determination of price of Excisable Goods) Rules, 2000 for 2006-2007 to 2009-October, 2010. Demands were confirmed along with equivalent penalties. Hence, appeal.

CESTAT, Mumbai set aside the order and allowed the appeal. It held: (i) section 40A of the income tax act is for purposes of allowing deductions. Mere mention of name of party in a return cannot make the party "related" for the purposes of excise law; (ii) explaining in detail the provisions of the Central Excise Valuation Rules, it is observed that mere fact that the parties are "interconnected undertakings" would not be a ground to invoke Rule 8/9 of the Valuation Rules, the department needs to be prove that they are related as per section 4(3)(d); thereby affecting the price of the goods; (iii) follows decision of the Tribunal in Gajra Gears; Ramson Casting and Supreme Court decision in Besta Cosmetics.

7. Whether exemption under Section 11 of the Income Tax Act, 1961 can be denied merely on the ground that the charitable activities of an organization are directed primarily towards its members?

Hotel and Restaurant Association v. ITO(E), Mumbai- ITA No. 2252/Mum/2024 [ITAT, Mumbai]

Decision: No.

The appellant is a central body representing hotels and restaurants in India. It claimed exemption from payment of income tax under section 11 of the Income Tax Act. It filed "nil" returns for AY claiming that its activities are "charitable" in nature. However, the exemption was denied by the AO on the ground that the activities are only for its members and hence, not charitable in terms of proviso to section 2(15) of the Act. On appeal, the rejection was confirmed by the CIT(A) holding that the appellant is a mutual concern only benefiting the members thereof. Hence, appeal before ITAT.

ITAT, Mumbai set aside the orders and allowed the appeal. It held: (i) the appellant had produced evidence that it was undertaking activities for general public as well; apart from its members; (ii) the appellant had produced evidence in the form of details of conventions, lectures, exhibitions, meetings, etc for achieving the objects and also the details of filing PILs for the benefit of general public/non-members; (iii) however; the AO or Ld. CIT(A) did not carry out any verification; accordingly remits the matter back to the file of the CIT(A).

8. Whether packing and labelling of rubber 'O' rings amount to manufacture under Section 2(f)(iii) of the Central Excise Act, 1944?

Schrader Duncan Ltd. v. Commissioner of Central Excise, Mumbai-III – E/86965/2015 [CESTAT, Mumbai]

Decision: No.

The appellant is a manufacturer of tyre parts. It is registered with the central excise department. It is also engaged in trading of "O" rings used by automobile industry. It purchased the same from SSI manufacturers and affixed code (for identification purposes). However, central excise authorities issued show cause notice proposing demand of central excise duty on the ground that activity of packing and affixing labels amounts to manufacture in terms of section 2(f)(iii) of the Central Excise Act. The said show cause notice was dropped by the original adjudicating authority. However, on appeal by the Revenue, the appellate commissioner allowed the appeal. Hence, present appeal.

CESTAT, Mumbai set aside the order and allowed the appeal. It held: (i) the goods "O" rings are specifically covered under chapter heading 4016 as "rubber O rings" and hence, not covered by the third schedule; (ii) the said goods are not "parts, components or assemblies" of automobiles and hence; cannot be classified under chapter heading 87; (iii) activity of packing and labelling does not amount to manufacture as no distinct and identifiable marketable commodity does not emerge; (iv) on perusal of the VAT invoices, it can be seen its a trading activity.

9. Whether the retained tax benefits under a state incentive scheme affect the excise valuation?

Alpha Industries v. Commissioner of Goa &– E/86794/2015 [CESTAT, Mumbai]

Decision: No.

The appellant is a manufacturer of parts of ATM. It pays central excise duty on the final products on transaction value. The State of Goa offered sales tax deferment (incentive scheme) for units to collect sales tax and defer the payment. However, in 2005, the State Government amended the same where the unit was to pay "Net Present Value" of the sales tax amount collected i.e. deposit 25% of the sales tax collected and retain the balance 75%. The central excise department sought to levy duty on this amount of sales tax retained as "additional consideration" under section 4 of the Central Excise Act. Demands were confirmed along with interest and penalties. Hence, appeal.

The CESTAT, Mumbai set aside the order and allowed the appeal. It held: (i) the sales tax/VAT retained by the unit under the NPV scheme is not includible in the assessable value; (iii) the issue is no longer res integra in view of decision in the case of Uttam Galva and others; (ii) the Civil appeal filed by the department against decision in the case of Mahindra Steel has been dism[illegible]

10. Whether retrospective amendment of Section 7(1)(aa) from 01.07.2017 is constitutionally valid and legally sustainable?

Indian Medical Association Vs Union of India - W.A. No.1659 of 2024-[Kerala High Court]

Decision: No.

The petitioner is a non-profit professional association registered under the Societies Registration Act. The petitioner runs various mutual schemes for the benefit of its member-doctors. The members pay admission/annual and fraternity contributions. The petitioner did not pay any GST on such contributions made by its members under principle of mutuality would insulate services rendered by a Club/Association to its members from the levy of GST on supply of service. The said basis was removed by adding a deeming provisions of section 2(17) (e) and Section 7(1) (aa) read with the Explanation thereto.

The Petitioner challenged the said provisions before the High Court. The Ld. Single Judge of the Kerala High Court upheld the provisions but ruled against the retroactive operation. Writ appeals were therefore filed petitioner and respondents challenging the judgment to the extent it ruled against them.

The division bench of the Kerala High Court has struck down the provisions of the Central Goods and Services Tax Act, 2017, which allowed the levy of GST on supply by clubs and associations to its members and held that the giving of retrospective effect for the provisions was also illegal. The bench observed that altering the basis of taxation with retrospective effect, when parties have not anticipated such a levy for the past period, is against fairness and the rule of law. The bench reasoned that the provision went against the definition of "supply" given under Article 246A read with Article 366 (12A) and Article 265 of the Constitution. It observed that Section 7(1)(aa), even after its insertion, cannot override a constitutional doctrine unless Parliament does so through clear and express constitutional amendment and held the section Unconstitutional to the Extent It Defeats Mutuality.

11. Whether the transaction under the Development Agreement constituted a "transfer of development rights" attracting GST under Entry 5B of the Notification dated 28.06.2017 (as amended)?

Shrinivasa Realcon Private Ltd. Vs. Deputy Commissioner Anti Evasion Branch, CGST & Central Excise Nagpur & ors.- WP No. 7135 OF 2024- [Bombay HC]

Decision: No.

The petitioner entered into an Agreement of Development dated 7.1.2022 with a landowner for developing a plot measuring 8000 sq. ft. As per the agreement, the petitioner was allowed to develop the property and utilize its existing FSI (Floor Space Index) or any increases thereof. The landowner received ₹7 crores and two apartments as consideration. The revenue issued a Show Cause Notice (SCN) and a demand order, demanding GST on the transaction, citing Entry 5B of the Notification dated 28.6.2017 (amended on 29.3.2019). The petitioner challenged such denial before the High Court by writ.

The High Court held that held that GST on development right cannot be taxed under reverse charge as Entry 5B, relates to services which can be said to be supplied by any person by way of transfer of development rights or Floor Space Index (FSI) [including additional FSI] for construction of a project by a promoter. The expression “transfer of development rights” read in conjunction with ‘FSI’ as indicated in entry 5B, would only relate to a TDR (Transferable Development Rights) as per the regulations for grant of TDR in the Unified Development Control and Promotion Regulations for the State of Maharashtra. Therefore, the TDR / FSI as contemplated by entry 5B, cannot be related, to the rights which a developer derives from the owner under the agreement of development for constructing the building for the owners, in lieu of the owner agreeing to permit the developer to transfer certain built up units for consideration to be appropriated by the developer. The transaction, as per the agreement, does not fall within entry 5B of the Notification dated 28.6.2017, as it stand amended by the Notification dated 29.3.2019, in view of which, neither the show cause notice nor the consequent order can be sustained.

12. Whether dealers can claim Input Tax Credit for purchases link to exempt sales under UPVAT Act or not?

Neha Enterprises v. Commissioner of Commercial Tax, Lucknow, Uttar Pradesh – Civil Appeal No. 6553 of 2016 [Supreme Court]

Decision: No.

The appellant filed its returns for the AY 2010-11. The appellant had sold raw materials amounting to Rs. 1.89 crore to a manufacture exporter during AY 2010-11. That sale was exempt from tax u/s7 (c) of UPVAT Act. The dealer claimed ITC for taxes paid on purchases linked to the exempt sales. Assessment Order was passed denying such ITC. The appeal filed by the dealer before additional commissioner and Tribunal was dismissed. The dealer filed a revision before the High Court and the same was dismissed.

The High Court held that Section 13(7) clearly reveals that the applicant was not entitled for the input tax credit with respect to the sale of goods exempted under Section 7(c) of the Act.

On appeal the Supreme Court held that Section 13(7) of the VAT Act warrants a strict interpretation, as it expressly and unambiguously prohibits the claim of Input Tax Credit (ITC) when the sale made by the Appellant to the exporter is exempted through notification as per Section 7(c) of the VAT Act. An exemption from Tax would not warrant the dealer to claim ITC as both the concepts i.e., Tax exemptions and ITC entitlements operate independently. Thus, the sale made to the exporter was exempted from the VAT to boost exports/manufacturing as part of the policy, and the statutory mandate to prohibit ITC on purchases linked to sales made to the exporters under Section 7(c) would override the policy intent because of the strict interpretation of the tax statutes. Hence, the dealer is not entitled to claim ITC on the purchase of goods where the subsequent sale of those goods is exempt from tax.

13. Whether state rules can be inconsistent with Central Rules under the CST Act or not?

State of Rajasthan & Ors v Combined Traders – Civil Appeal No. 1208 of 2025 [Supreme Court]

Decision: No.

The Respondent sold certain goods to two firms against Form C to claim a reduced rate of tax u/s 8(1) of the CST Act. Upon investigation, the firms were found to be bogus, leading to cancellation of the forms by exercising the power provided under Rule 17(20) of the Rajasthan CST Rules read with Sections 48 and 16(4) of the Rajasthan Value Added Tax Act, 2003. Even the registration certificate was cancelled and tax liability was sustained on the respondent. The respondent filed a Writ Petition before the Rajasthan High Court, challenging the Rule 17(20) of the Rajasthan CST Rules been ultra vires Sections 8(4), 13(1)(d), 13(3) and 13(4)(e) of the CST Act. The High Court struck down the said rule to be ultra vires Sections 8(4), 13(1)(d), 13(3) and 13(4)(e) of the CST Act. Hence, appeal.

The Supreme Court upheld the decision of the Rajasthan High Court and held that State Government cannot exceed its delegated powers by authorizing cancellation of Form C, which the Central Rules do not permit. There cannot be any inconsistency between the Central and State Laws. The Central Government alone has the power to prescribe conditions for Form C, and since the Central Rules do not permit cancellation, the State cannot introduce such a provision overriding the Central framework. The Central Rules do not provide for the cancellation of Form C, a State cannot exceed its delegated authority by framing rules allowing such cancellation, even in cases of fraud, misrepresentation, or legal contravention. The Court clarified that the State can frame Rules, but it should not be in derogation of the Central Rules.

14. Whether GST is applicable on compensation paid in favor of assessee towards acquisition of lands by the State or KIADB under the Head Solatium or not?

Smt. Asha R & Anr v The Assistant Commissioner of Commercial Taxes (Enforcement 17) – WP No. 2552 of 2024 (T-IT) [Karnataka High Court]

Decision: No.

The Petitioners were the owners of immovable properties which were acquired by the Karnataka Industrial Area Development Board (KIADB) for the benefit of the Bangalore Metro Rail Corporation Limited (BMRCL). It was for construction of Bangalore Construction Project under the provisions contained in section 28 of the KIADB Act. In pursuance of the same, BMRCL offered package compensation to the petitioner. The petitioners entered into agreements with KIADB u/s 29(2) of KIADB Act and received compensation towards the acquisition of land. Show Cause Notice was issued to Petitioners to pay GST towards the solatium component of the package compensation received by the petitioner. Reply was filed by the petitioner. Order was passed by the respondent upholding and confirming the demands in all writ except WP No. 2552 of 2024. Hence, the writ petition.

The High Court held that the compensation including solatium does not constitute a "supply" under Section 7 of the CGST Act. There is no service or act of tolerance involved to trigger Entry 5(e) of Schedule II. Such transactions are rightly covered under Schedule III – activities that are neither a supply of goods nor services. Statutory compensation cannot be treated as taxable consideration. Therefore, no GST is payable on solatium paid during compulsory land acquisition.

15. Whether denial of refund on the account of not having GST registration for supply of service is correct or not?

Alstom Transport India Limited v. Additional Commissioner of Central Tax – WP No. 21164 & 21179 of 2021 [Andhra Pradesh High Court]

Decision: No.

The petitioner is engaged in the manufacturing and supply of railway equipment and supply of engineering services for Metro Projects. The petitioner initially registered itself for supply of goods. Thereafter, the petitioner registered itself for the supply of services. The petitioner filed two refund application for the period June 2019 to February 2020 and for the period March 2020 to June 2020 for providing zero rated supplies on payment of IGST. SCN was issued to show cause refund should not be rejected. Reply was filed. Refund rejection order was passed rejecting the refund. Petitioner filed appeal. Order was passed rejecting the refund claim. Hence the petition.

The High Court held that there is no requirement under the GST law to apply for separate GST registration for goods and service. The non-mentioning of the categories of supply being undertaken by the applicant / registered person, in the application form, cannot preclude grant of refund to such persons. By extension, the petitioner would be entitled to a refund, in relation to zero rated services, once the petitioner is a registered person. The petitioner would not be precluded from claiming such refund on the ground that the certificate of registration does not contain the details of the services which are being supplied.

16. Whether Work contract services for track doubling & infrastructure under RVNL is liable to 12% GST or not?

STS-KEC(JV) Vs State Tax Officer- W.P. (MD). Nos. 3938 to 3942 of 2024 (Madras High Court)

Decision: Yes.

The petitioner had been awarded a contract by RVNL for the doubling of the railway track between Vanchi Maniyachchi and Nagercoil. The petitioner had paid GST at the rate of 12% as per Sl. No. 3(v)(a) of Notification No. 11/2017-CGST (Rate) dated 28.06.2017. However, the Revenue issued a notice asserting that the project was liable to 18% GST, on the ground that RVNL is not directly under the control of Indian Railways and hence not covered by the said exemption. Hence, the petition.

The High Court held works contract for tack doubling and infrastructure under RVNL is liable to 12% GST. The exemption notifications must indeed be strictly construed, such strictness would not mean that the scope of the exemption notification can be curtailed by importing conditions or giving an artificially restrictive meaning to the words. The term "railways" in the exemption notification was not defined with reference to the Indian Railways Act, 1989, and therefore, should be understood in a broader sense. Even assuming the applicability of the Indian Railways Act, the Court held that the definition of "railway" under the Act is not confined to any particular entity, and covers the entire railway industry or utility, including projects executed by RVNL. It would fall foul of settled legal principles to suggest that the term 'railway' used in the notification should be limited only to 'Indian Railways, and exemption notifications cannot be curtailed by importing artificial restrictions or external conditions. Therefore, the contract between the petitioner and RVNL for railway infrastructure development constitutes original work pertaining to railways is falling within the scope of the exemption under Sl. No. 3(v)(a) of Notification No. 11/2017.

17. Whether ITC under Section 16(2)(b) of the CGST Act be denied merely because the recipient did not physically receive the goods?

Sane Retails Private Limited vs The State of Bihar & Ors -Civil Writ Jurisdiction Case No. 470 of 2024 [Patna HC]

Decision: No.

The petitioner had procured goods from various suppliers and instructed them to deliver the goods directly to the end customers. This "bill-to-ship-to" model was adopted to optimize logistics and avoid unnecessary warehousing or handling. The suppliers issued tax invoices in the name of the petitioner, and the petitioner duly paid consideration along with applicable GST. However, the Revenue Authorities denied ITC on the ground that the petitioner did not physically receive the goods at its own location. The appellate authority under Section 107 of the CGST Act upheld this denial. The petitioner challenged this order by filing a writ petition before the Patna High Court.

The court criticized the Revenue's narrow interpretation of "receipt" under Section 16(2)(b), emphasizing that such an interpretation could stifle legitimate trade models. It relied on the Explanation to Section 16(2)(b) and CBIC Circular No. 241/35/2024-GST dated 31.12.2024, which allows ITC in "bill-to-ship-to" models. The court expanded the interpretation of "receipt" to include actual receipt in cases involving transfer of title in goods and reaffirmed that once tax is paid and credit conditions are met, ITC cannot be disallowed based on technicalities.

18. Whether reassessment notices issued on or after 1st April 2021 for the Assessment Year 2015-016 are valid and within limitation or not?

Deepak Steel and Power Limited v ACIT – CIVIL APPEAL NO.5177 OF 2025 [Supreme Court]

Decision: No.

The appellants were issued reassessment notices dated 25.06.2021 under Section 148 of the Income Tax Act for the Assessment Year 2015-2016.The assessees challenged these notices before the High Court of Orissa at Cuttack, contending that the notices were barred by limitation and therefore invalid. The High Court, however, refused to entertain the writ petitions on merits, relying on its earlier decisions. Hence, the appeal.

The Supreme Court referred to the binding three-judge bench decision of the Hon'ble Supreme Court in Union of India & Ors. v. Rajeev Bansal, 2024 SCC OnLine SC 2693, where it was held that all reassessment notices issued on or after 01.04.2021 for AY 2015-16 must be dropped as they fall outside the permissible time limit. Relying on this concession and binding precedent, the Hon'ble Supreme Court allowed the appeals, quashed the impugned notices.

19. Whether penalty u/s 271 (1) (c) of the Income Tax Act is applicable if assessee voluntarily disclose bona fide mistakes or not?

Chhattisgarh State Power Transmission Company Limited v DCIT – Tax C No. 91 of 2024 [Chhattisgarh High Court]

Decision: No.

The appellant is engaged in the business of providing/rendering extra high voltage power transmission services through its voltage power sub-stations (132 KV & above) and transmission lines throughout the State of Chhattisgarh. The case of the assessee was selected for scrutiny assessment by issuance of mandatory notice under Section 143(2) of the IT Act under CASS by the Assessing Officer (AO) and statutory notices were issued accordingly. Ultimately, during the course of assessment proceedings, the assessee on its own volition, informed the AO about the difference in the figures of book profit for the purposes of computation of MAT under Section 115JB which was declared as 26,89,97,367/- instead Rs. 35,74,90,033/- attributing the same to inadvertent data feeding mistakes in the return filed. The AO imposed a penalty on the assessee under Section 271(1)(c) of the IT Act alleging that the assessee has tried to furnish inaccurate particulars of income and thereby sought to evade tax. The assessee filed an appeal before the CIT (Appeals). The CIT (Appeals) accepted the appeal of the assessee holding that mismatch in the figures of book profit was a case of feeding mistake and data transmission error and therefore there was no mala fide intention on the part of the assessee. The Revenue preferred an appeal before the Income Tax Appellate Tribunal (ITAT) challenging the order passed by the CIT (Appeals). The ITAT allowed the appeal of the Revenue and set aside the order passed by the CIT (Appeals). Hence, the present appeal.

The High Court held that Section 271(1)(c) of the Income Tax Act, 1961 deals with penalties for concealment of income or furnishing inaccurate particulars of income. Once the Tax Audit Report conducted under Section 44AB of the IT Act was filed and it was uploaded in the Income Tax Portal along with the return of income, there is no question of submission of any inaccurate particulars and no question of concealment of income by the assessee". The fact remains that correct figures provided were not brought to the notice of the Assessing Officer while filing return and revised return and ultimately it is the assessee itself who brought correct figures on record informing the AO about the difference in the figures of book profit attributing the same to be inadvertent data feeding mistakes in the return filed, therefore, the assessee's case will not fall within the mischief of Section 271(1)(c) of the IT Act. Hence, penalty under Section 271(1)(c) of Income Tax Act not applicable if assessee voluntary discloses bona fide mistake.

20. Whether income alleged to have escaped assessment in different years can be consolidated to meet Rs. 50 Lakhs threshold u/s 149 of Income Tax Act or not?

L-1 Identity Solutions Operating Company Limited v ACIT – WP(C) No. 4845 of 2025 [Delhi High Court]

Decision: No.

The Petitioner is engaged in in providing certain services to its foreign associated enterprises. During the period 21.03.2023 to 25.03.2023, the Income Tax Department conducted search and seizure operations under Section 132 of the Act, in the premises of the petitioner and other related entities. The petitioner received reasons for reopening the assessment and filed detailed objections, arguing that the Section 148 notices were time-barred. Despite this, the petitioner filed a return of income under protest. Subsequently, a Section 143(2) notice was issued and responded to, but the AO failed to dispose of the objections regarding the time-barred nature of the notices. The AO initiated reassessment proceedings for AY 2018-19, alleging the Assessee undercharged its AE by Rs. 27 lakhs for R&D services and overpaid Rs. 21 lakhs as management fees. Cumulatively, the AO claimed Rs. 73 lakhs of escaped income across multiple years, invoking Section 149(1A). Hence, a writ petition was filed.

The High Court held that the AO has erred in proceeding on the basis that it was open for the AO to issue a notice under Section 148 of the Act bearing in mind the cumulative income that has escaped assessment in respect of FYs 2016-17, 2017-18 and 2018-19. It is impermissible for the AO to add income which is alleged to have escaped assessment for different previous years for determining the threshold figure of ₹50 lakhs as specified under Section 149(1)(b) of the Act. Therefore, the Assessing Officer cannot add income that allegedly escaped assessment in different previous years, to meet the threshold of ₹50 lakh prescribed under Section 149(1)(b) of the Income Tax Act 1961 for initiating reassessment action after lapse of three years.

21. Whether order under Section 148A(d) of the Income Tax Act, 1961, which reopened the assessment for AY 2017-18, exceeded the scope of the notice issued under Section 148A(b)or not?

J. G'S Departmental Store v. Income Tax Officer Ward 60(1) & Ors. [Delhi High Court]

Decision: No.

The petitioner is a partnership firm engaged in operating departmental stores in Delhi. The Return filed on 30.10.2017 declaring income. Scrutiny assessment under Section 143(3) completed on 21.12.2019, assessing income after minor disallowances. During scrutiny, the AO examined cash deposits made during demonetization and accepted the petitioner's explanation of cash sales as the source of the deposits. Notices under Section 148A(b) issued. The petitioner submitted detailed replies. AO passed order on 19.03.2024, forming basis for the reassessment notice under Section 148. The petitioner filed a writ petition under Article 226 of the Constitution of India challenging reassessment proceedings under the Income Tax Act, 1961 for AY 2017-18.

The High Court held that the Assessing Officer, while passing the order under Section 148A(d) of the Income Tax Act, had gone beyond the scope of the show cause notice issued under Section 148A(b). The AO introduced a new line of reasoning and comparing cash deposits during the demonetization period with those of the previous financial year, which was not mentioned in the initial notice. As a result, the petitioner was denied a fair opportunity to respond to this new allegation. Accordingly, the Court set aside both the impugned order under Section 148A(d) and the reassessment notice under Section 148. However, the matter was remanded to the AO to reconsider the issue after giving the petitioner an opportunity to respond to the newly introduced information.

22. Whether parties can be denied reference to arbitration u/s 8 of the act unless serious allegations of fraud are established or not?

Bholashankar Ramsuresh Dubey v Dinesh Narayan Tiwari – WP No. 17174 of 2024 [Bombay High Court]

Decision: No.

The Petitioner-Defendant No.2, Respondent No.3-Defendant No.3 and Narayan Tiwari, the predecessor-in-tile of Respondent Nos. 1 and 2 Plaintiffs, had entered into a partnership under the name and style of M/s Tiwari Enterprises. They had agreed to share the profits in the ratio of 50%, 25% and 25%, respectively. The partnership was at will. The partnership firm-Defendant No.1 did develop certain properties. After Narayan Tiwari's demise, the Plaintiffs requested Defendant No.2 to determine his share in the firm. Defendant No.2, however, colluded with his son, Yogesh Tiwari, and allegedly forged documents to show Yogesh as a partner. The Plaintiffs filed a suit for rendition of accounts and determination of Narayan Tiwari's share. Defendant No.2, citing an arbitration clause in the 2003 partnership deed held by the Plaintiffs, filed an application under Section 8 of the Arbitration Act seeking reference to arbitration. By order dated 19.12.2023, the Civil Judge, Kalyan, rejected reference to arbitration, citing allegations of fraud and forged documents raised by the Plaintiffs, which were beyond the Arbitrator's scope. Aggrieved, Defendant No.2 filed an appeal under Section 37 of the Arbitration Act. The District Judge dismissed the appeal on a different ground that Defendant No.2 denied the existence or enforceability of the original Partnership Deed containing the arbitration clause, having instead relied on a Reconstitution Deed alleging retirement of Narayan and Rakesh Tiwari and induction of Yogesh Tiwari.

The High Court held that the dispute cannot be refused referral to arbitration under Section 8 of the Arbitration and Conciliation Act, 1996 (Arbitration Act) based solely on mere allegations of fraud simpliciter, unless serious allegations of fraud that go to the root of the partnership deed containing the arbitration clause are established. the allegations of fraud pertain to the execution of the Deed of Reconstitution, not the Deed of Partnership containing the arbitration clause. These allegations do not have public implications and primarily involve civil matters. As such, the civil aspect of fraud is suitable for arbitration. Therefore, the Civil Judge erred in refusing to refer the disputes to arbitration based on the fraud allegations and false document claims.

The court held that the Plaintiffs, as legal representatives of the deceased partner, are bound by the Arbitration Agreement in the Partnership Deed. The analogy of the group of companies and binding arbitration for non-signatories does not apply here. It concluded that section 40(1) of the Arbitration Act explicitly states that an arbitration agreement is not discharged by the death of any party and remains enforceable by or against the legal representatives of the deceased.

23. Whether court can appoint arbitrator in absence of arbitration agreement between disputing parties or not?

Andhavarapu Power Projects (P) Limited, Andhra Pradesh v. Odisha Renewable Development Agency, Khurda – ARBP No. 61 of 2023 [Orissa High Court]

Decision: No.

The applicant and respondent entered into an agreement dated 22.01.2010. Dispute arose between the parties. Applicant gave commencement notice dated 25.07.2023, however, no response from the respondent. Therefore, a petition was filed before the High Court seeking appointment of an arbitrator.

The High Court held that upon perusal of clause 19 of the agreement, the Court was of the view that in case of disputes between the parties, reference was required to be made to the respondent, but strangely competence of respondent to adjudicate the disputes was not mentioned in the agreement. The Court, therefore, referred to Section 11(6-A) of the Act which provides that the Supreme Court or, as the case may be, the High Court, while considering any application under sub-section (4) or sub-section (5) or sub-section (6) [of Section 11], shall, notwithstanding any judgment, decree or order of any Court, confine to the examination of the existence of an arbitration agreement. Also, the reference to arbitration can only be made when there is existence of an arbitration agreement and when an application is made to the Court for appointment of arbitrator, existence of arbitration agreement is to be looked into. The court also placed reliance on the decision on Enzen Global Solutions Pvt. Ltd. v. Central Electricity Supply Utility of Odisha (2017) and held that coordinate Bench therein concluded about the existence of arbitration agreement from communication made between the parties as well as their conduct in Court. However, quite distinctly, there is no such arbitration agreement between the parties in the instant case. Therefore, the Court refused to appoint an arbitrator to resolve the dispute in absence of an arbitration agreement.

24. Whether the service of demand notice on the corporate debtor's key managerial personnel is valid to initiate insolvency process?

Visa Coke Limited vs. M/s Mesco Kalinga Steel Limited – Civil Appeal No. 357 of 2025 [Supreme Court]

Decision: Yes.

The appellant (seller/operational creditor) and respondent (purchaser/corporate debtor) had entered into a contract for sale and purchase of LAM coke. The delivery date was finalised and 100% advance payment was to be made by the corporate debtor through NEFT/RTGS or opening a letter of credit. However, the corporate debtor defaulted in making the requisite payments. The appellant sent a legal notice to the respondent but no response was received. Then, a demand notice under section 8 of the IBC was sent to the Director, CFO and Commercial Manager of the respondent/corporate debtor. On receiving no response, a petition for CIRP under Section 9 of IBC was filed before NCLT, Cuttack. The same was rejected on the ground of non-service of the demand notice to the corporate debtor. This was upheld by the Hon'ble NCLAT. Against such order of the NCLAT, the appellant/operational creditor approached the Hon'ble Supreme Court.

The Supreme Court held that since no prejudice could be established by the respondent/corporate debtor, therefore, the notice dated 31.03.2021 issued by the appellant to the Key Managerial Personnel of the Corporate Debtor and delivered at the registered office of the Corporate Debtor, can be construed as a deemed service of demand notice as required under section 8 of the IBC. In such view of the matter, the approach of the NCLT and the NCLAT rejecting the section 9 petition on the technical ground that no notice was sent to the corporate debtor and the notice sent by the appellant to the KMP of the corporate debtor cannot be taken to be a notice issued under section 8 of the IBC, is incorrect and is unsustainable in law. The Hon'ble Court while reaching this decision relied upon their own decision in the case of Rajneesh Aggarwal v. Amit J. Bhalla ((2001) 1 SCC 631) wherein it was held that a notice issued under Section 138 of the NI Act, 1881 upon the Director of the Company amounts to notice to the Company. The Hon'ble Bench observed that as the corporate debtor failed to highlight any prejudice caused due to the serving of the demand notice to the key managerial personnel, a substantive right could not be denied on a mere technicality.

25. Whether the proceedings under Section 37A of the Foreign Exchange Management Act, 1999 (FEMA) continue during moratorium under Section 33(5) of the IBC, 2016?

Anup Kumar Singh vs. Union of India & Ors. – WPA No. 4585 of 2023 [Calcutta High Court]

Decision: No.

The present petition was filed by the liquidator of the corporate debtor seeking to quash the notices dated 30.11.2022 and 30.01.2023 issued under FEMA after the initiation of the liquidation of the corporate debtor which was ordered by the Hon'ble NCLT vide order dated 14.09.2018. It was contended that such notices issued to the corporate debtor were in violation of the moratorium period as per Section 33(5) of the IBC.

The High Court while allowing the writ petition and quashing the notices and provisional seizure order relied upon the judgments in the case of Assistant Director, ED vs. Raj Kumar Ralhan, wherein the NCLT held that moratorium declared under Section 14 of the IBC was applicable to proceedings under the FEMA. The Enforcement Directorate could not proceed against the corporate debtor as long as moratorium under the IBC was in force. Reliance was placed on the judgments in the case of Paschimanchal Viduyt Vitran Nigam Ltd. vs. Raman Ispat Private Ltd. & Ors. ((2023) 10 SCC 60), Sundaresh Bhatt, Liquidator of ABG Shipyard vs. Central Board of Indirect Taxes and Customs ((2023) 1 SCC 472) and Duncans Industries Limited vs. AJ Agrochem ((2019) 9 SCC 725) holding the provisions of the IBC would override the provisions of other Acts like the FEMA and emphasised the importance of the non-obstante clause under Section 238 of IBC.

Therefore, once a liquidation order against the corporate debtor was passed, all the proceedings, including those that were pending under the FEMA at the time of such order shall not continue. No new proceedings could be initiated either. This highlighted the importance of the non-obstante clause as mentioned under Section 238 of the IBC, 2016 which gives the provisions of the IBC an overriding effect over the conflicting provisions.

26. Whether courts & SROs must report to Income Tax Authorities if suits/deeds mention cash transaction over and above Rs. 2,00,000/- or not?

The Correspondence, RBANMS Educational Institution v B. Gunashekar & Anr – Civil Appeal No. 5200 of 2025 [Supreme Court]

Decision: Yes.

The appellant is an Educational Institution and was in possession of the disputed property since 1929, utilizing it for educational and sporting purposes. The respondent and another individual entered into a sale agreement in 2018 with the alleged owners of the property. The respondent and other filed a Civil Suit against the appellant before the Trial Court at Bangalore, seeking permanent injunction restraining the appellant from creating any third-party interest over the suit schedule property. The appellant filed an application under Order VII Rule 11(a) and (d) of CPC seeking rejection of plaint. The Trial Court rejected the appellant's application. Aggrieved by such order the appellant filed a Civil revision petition before Karnataka High Court, which was also dismissed. Hence, the present appeal.

The Supreme Court held that it was erroneous on the part of the Respondent to seek a permanent injunction against the Appellant, instead of seeking the same from the vendor to whom they un-reportedly paid Rs. 75 lacs in cash as an advance sum in violation of Section 269ST of the IT Act. An action is to be taken on the recipient/vendor as well as there is also an onus on the Respondent-plaintiffs to disclose their source for such huge cash. The Supreme Court further fixed the liability of the Courts and registration authorities and directed the courts and registration authorities that it is obligatory to report any such suit which is filed claiming that a consideration of Rs. 2 lacs or above is paid in cash to the Jurisdictional Income Tax Authorities for verification whether there is any violation of Section 269ST of the IT Act, failing which an appropriate action would be taken against the erring official and allowed the appeal by rejecting the suit.

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