UBR LEGAL ADVOCATES

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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 the department can deny the credit on the ground that there is no mechanism for transition of credit lying with IGST under GST Law?

Haier Appliances India Private Limited v. Union of India and others – WP(C) No. 9738/2024 (Delhi High Court)

Decision: No.

The petitioner is a leading manufacturer of electrical appliances. It filed Form Trans-1 for transition into GST regime. The credit lying at the Input Service Distributor (ISD) was also transitioned. The Revenue objected and proposed to deny credit of over Rs.17 crores on the ground that there was no mechanism for transition of credit lying with ISD. Demand was confirmed along with interest and penalties. Such order was challenged in writ petition.

The Delhi High Court set aside the order and allowed the writ petition. It took note of the amendment brought to section 140(7) which has been introduced retrospectively. It held that the authorities need to examine the application of the said provision. Following similar route adopted by the Bombay High Court in Merck Life science case; remands matter back keep all other contentions open.

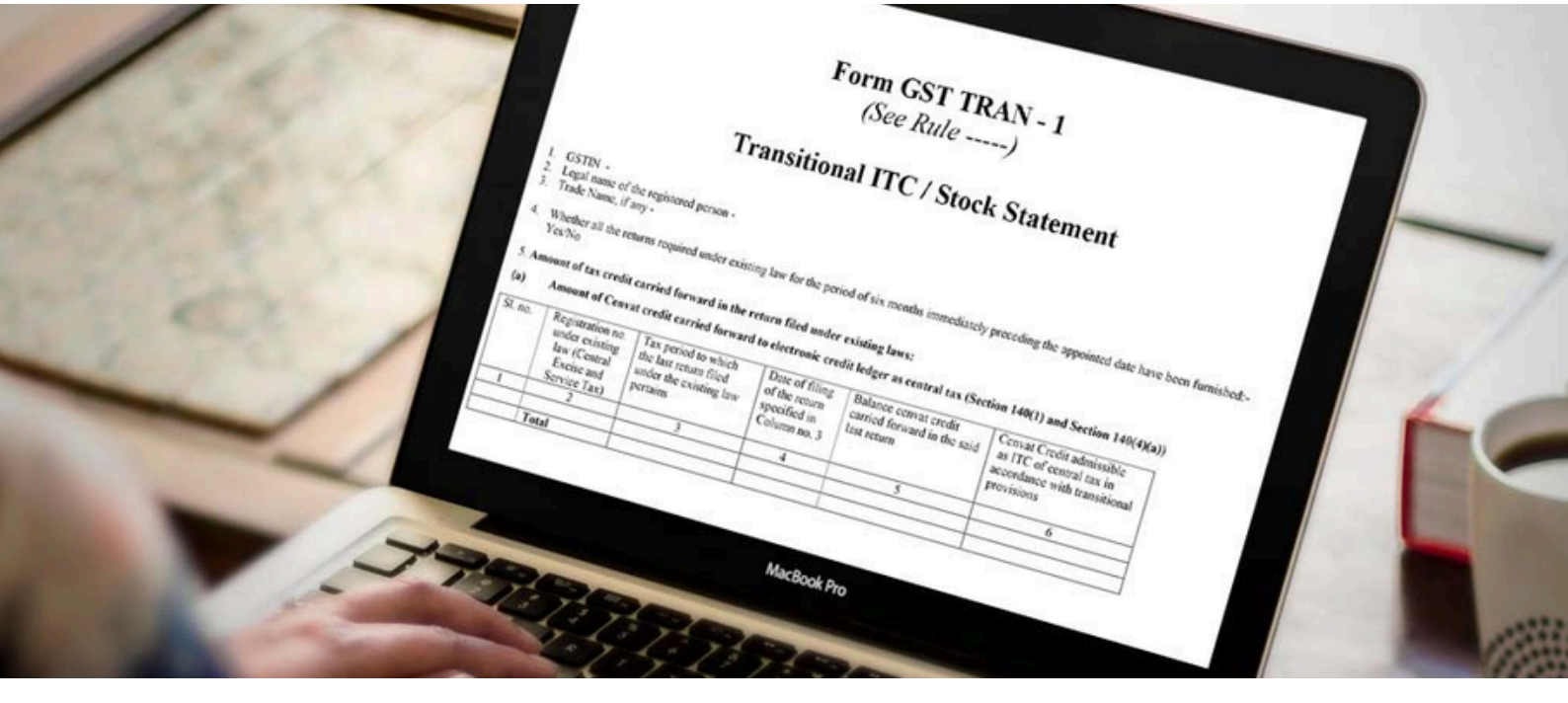
2. Whether the principle of unjust enrichment will apply to refund of electronic cash ledger in terms of section 49(6) read with section 54 of the Act?

Shapoorji Pallonji And Company Private Limited v. Union of India and others – WP No. 17717/2021 (Andhra Pradesh High Court (Amaravati Bench))

Decision: No.

The petitioner undertakes construction of infrastructure projects. It carried out works for State Government. The Government deducted TDS under section 51 of the CGST Act. The said amount was credited to the electronic cash ledger. The petitioner sought refund of Rs.5 crores lying in balance in cash ledger. The same was rejected on the ground of unjust enrichment. It was upheld in appeal. Hence, petition before the High Court. The petitioner submitted that principle of unjust enrichment does not apply to refund of electronic cash ledger in terms of section 49(6) read with section 54 of the Act.

The Andhra Pradesh High Court set aside the order and allowed the writ petition. It held: (i) the orders are, in a sense of speaking, superseded in light of circular dated 17.21.2021 which was issued by the CBIC pursuant to passing of the orders; (ii) remands matter back to the original authority for reconsideration in light of the circular.



Matters Argued by us

3. Whether non-allowance of additional submissions is in violation of principle of natural justice or not?

Mumbai Port Trust v Union of India & Ors – WP No. 1098 of 2024 (Bom HC)

Decision: Yes.

The petitioner is the Mumbai Port Trust Authority. A notice was issued proposing demand of over Rs.100 crores. The petitioner filed a reply. The petitioner purported to file a letter seeking time for further submissions and hearing. The said letter was not accepted by the authorities on the ground that physical receipt of documents is not possible. An order came to be passed confirming demand along with interest and equivalent penalty. The said order was challenged in a writ petition.

The High Court set aside the order and allowed the writ petition. It held: (i) there was specific averment in the petition that the petitioner attempted to file a letter and the same has not been denied/disputed in the affidavit in reply; (ii) on such being pointed out, the Ld. State Counsel; on instructions from the officer who was summoned to remain present in court; states that the order be set aside; (iii) accordingly, matter is remanded to pass a speaking order after granting an opportunity of hearing to the petitioner.

4. Whether notification no. 56/2023 which extends the time limit for passing order u/s 73 of the CGST Act is constitutionally valid or not?

Hindustan Construction Company Limited v. Union of India & Ors.-WPMB No. 548 of 2024 (Uttarakhand High Court)

Decision: Stay granted.

The petitioner undertakes works contracts. An order came to be passed for financial year 2018-2019. It demanded CGST and UGST. It was challenged in writ petition. There was also a challenge to notification no.56/2023 which extends the time limit for passing of orders under section 73 of the CGST Act. It was contended that Gauhati High Court has struck down the notification as ultra vires. Revenue relied upon judgment of the Division Bench of Allahabad High Court and Patna High Court.

The Hon'ble Uttarakhand High Court stays the operation of the said Notification No.56/2023 and stays the impugned order.

5. Whether refund can be rejected on the grounds of non-production of evidence of payment of stamp duty on agreement?

Rare Townships Private Limited v. Commissioner of CGST & Central Excise, Navi Mumbai - STA No. 87419/2019 (CESTAT, Mumbai)

Decision: No.

The appellant is a works contractor. It was undertaking construction of building for the State Government. Works contract services provided to State Government were exempt in terms of Notification No.25/2012. The said exemption was withdrawn, only to be reinstated (vide notification no.9/2016 dated 01.03.2016) retrospectively. In terms thereof, the appellant filed refund claim for period from April, 2015 to September, 2015. It was rejected on the ground that the appellant had not produced evidence of payment of stamp duty on such agreement. Hence, appeal.

CESTAT, Mumbai set aside the orders and allowed the appeal. It held: (i) the appellant has not issued invoices to the State Government and hence, the bar of unjust enrichment under section 11B of the Central Excise Act would not apply; (ii) the agreement was admittedly entered into prior to 01.04.2015; then condition for payment of stamp duty would not be applicable as the agreement was with the State of Maharashtra, through the Governor; (iii) the condition imposed by Union of India in the notification regarding payment of stamp duty is to only verify that the agreement has been entered into prior to 01.04.2015 and no other; (iv) directs sanction of refund with consequential relief.

Matters Argued by us

6. Whether additional duty being a customs duty is exempt in terms of Notification no.43/2002-Cus dated 19.04.2002?

FlexiTuff International Limited v. Commissioner of Customs, Kandla -Custom Appeal No. 185/201-SM (CESTAT-Ahd.)

Decision: **Yes.**

The appellant is a manufacturer of bags and sacks. It exports the said final products. It imports the raw material under advance authorisation. Notification no.43/2002-Cus exempts customs duties and additional duties levied on imported goods, subject to certain conditions. An additional duty was levied on import of HSD. Accordingly, it was held that the appellant is not entitled for benefit of exemption. Demands were confirmed. Hence, appeal.

CESTAT, Ahmedabad set aside the orders and allowed the appeal. It held: (i) in terms of section 116(3) of the Finance Act, additional duty being a customs duty is exempt in terms of the above notification; ii) follows decision of co-ordinate Bench in Atlantic Shipping Private Limited.

7. Whether sourcing of services for group companies can be considered as "business support service" in absence of any consideration for such service or not?

Hindustan Construction Company Limited v. Commisoner of Central Goods and Service Tax, Navi Mumbai - STA No. 87430/2019 (CESTAT, Mumbai)

Decision: No.

The appellant undertakes works contracts. It has group entities. As part of the group policy, for maximising cost effectiveness, it incurs expenditure and gets reimbursement based on debit notes issued. This act was construed as provision of "business support service" by the department. Tax demand was confirmed along with interest and penalties. Hence, appeal.

CESTAT, Mumbai set aside the order confirming the demands and allowed the appeal. It held: (i) for earlier period, in the case of the appellant, the tribunal had allowed the appeal following decision of the Supreme Court in the case of _Intercontinental Consultants_; however; the period involved is post 2015; (ii) as per explanation to section 67; reimbursements would form a part of consideration; if there is a taxable supply; (iii) reimbursement of costs from group companies, at actual, is not provision of any taxable service; (iv) sourcing of services for group companies cannot be considered as "business support service" in absence of any consideration for such service.

Matters Argued by us

8. Whether rejection of appeal on ground of delay in filing the appeal without issuance of deficiency memo is correct or not?

Princecare Homes LLP v Commissioner of Central Goods and Service Tax, Mumbai East – ST Appeal No. 86086 of 2024 (CESTAT, Mumbai)

Decision: No.

The appellant is a developer. An order confirming demand of service tax came to be passed. It filed an appeal under section 85 of the Finance Act before the appellate authority. The appellate authority authority heard the petitioner on merits. However, it rejected the appeal on the ground that there was a delay (of 12 days) in filing the appeal. Hence, appeal was dismissed as time barred. Therefore, appeal.

Hon'ble CESTAT, Mumbai set aside the order and allowed the appeal. It held: (i) the early hearing application has to be allowed as the appeal lies in a narrow compass; (ii) as per the appeal memo the date of receipt of the order is not disputed; (iii) the appellate authority has not issued any notice about delay to the appellant; (iv) remands matter back to commissioner appeals to decide the matter on merits.

9. Whether breach of order passed by higher judicial for a by the lower authority amounts to contemptuous act or not?

CEAT Limited v. Commissioner of CGST, Navi Mumbai – E/Misc/86917/2024 in Appeal No. E/85035/2022(CESTAT, Mumbai)

Decision: Yes.

The appellant is a leading manufacturer of tyres. It opted for provisional assessment under Rule 7 of the Central Excise Rules. On finalization, it was entitled to refund of duty paid. However, the matter traveled upto CESTAT. CESTAT allows the appeal on merits holding that the discount was passed on to the consumers. However, in second round, again, show cause notice was issued seeking to deny refund on the ground of unjust enrichment. Again, through the appellate authority, the matter travelled to CESTAT.

CESTAT, Mumbai set aside the order and allowed the appeal. It held: (i) the deputy commissioner had overlooked the documents produced by the appellant; (ii) if the authorities below overreach higher judicial fora, it amounts to contemptuous act; (iii) directs refund with interest; (iv) does not impose costs but issues warning to Deputy Commissioner (by name).

10. Whether GST is applicable on transfer/assignment of leasehold rights in industrial plots or not?

Gujarat Chamber of Commerce and Industry & Ors v Union of India & Ors – R/SCA No. 11345 of 2023 [Guj HC]

Decision: No.

GIDC develops estates and leases plots for 99 years to industrial estates. These leases allows the lessee to transfer leasehold rights to third parties, subject to GIDC's approval. The dispute arose after the enactment of GST Act, wherein authorities began to levy GST at the rate of 18% on transactions involving the assignment of leasehold rights considering the same as 'supply of services'. Several petitioners challenged the same before the High Court.

The High Court held that assignment of leasehold rights in industrial plots is not leviable to GST.

The High Court held:

a)Nature of Transaction: The court noted that assignment of leasehold rights extinguishes the assignor's interest and confer absolute rights to assignee. Thus, bear similarities to property transfers rather than service provision;

b)Distinction from Renting Service: The court clarified that while renting of immovable property is taxable under GST, the outright assignment of leasehold right is not;

c)Scope of Supply: The court emphasized that Schedule III of CGST Act excludes the sale of land and building and assignment of leasehold rights fall under this exclusion. While the GST Act defines services broadly, the court emphasized the necessity of distinguishing services from property transfer, including immovable property transactions within 'services' stretches the term beyond its reasonable interpretation.

11. Whether the levying 200% Penalty u/s 129 of GST Act merely on non-disclosure of full details of supplier in e-way bills is justified or not?

Truth Udyog Metal and Steel Private Limited & Anr. vs The Deputy Commissioner-(M.A.T. 2312 of 2024)-(Calcutta HC)

Decision: No.

Petitioner purchased goods from supplier and subsequently facilitated the movement of goods from the supplier's premises to the recipient (end customer) by issuing tax invoice and E-way Bill under Bill-to-Ship model. In accordance with the dispatch arrangement, the e-way bill mentioned the first supplier's location as the "dispatch from" address and recipient details in "ship to" address. While the full address of the recipient was disclosed under the "ship to" details, the name of the first supplier was not explicitly mentioned. E-way bill contained only abbreviated dispatch details, indicating "dispatch from" details as "West Bengal, 713212." The invoice and the e-way bill correctly reflected the vehicle details. The consignment was intercepted and penalty of 200% was levied u/s129(1) (a) for non-disclosure of the first supplier's name in the e-way bill. The first appellate authority upheld the penalty order. Aggrieved by this decision, the petitioner filed a writ petition before the Single Bench of Hon'ble Calcutta High Court, which declined interim relief but directed exchange of affidavits. The petitioner thereafter preferred an intra-court appeal before the Division Bench.

The High Court held that failure to disclose the original supplier's full details in the E-way bill does not automatically imply an intent to evade payment of tax. The court emphasized that for a 200% penalty to be imposed, there must be clear evidence of tax evasion, not just a procedural lapse. In a "Bill-to-Ship-to" transaction, the movement of goods often involves multiple parties, and minor errors in documentation should not be treated as tax fraud. The court ruled that imposing a 200% penalty was harsh and unwarranted in this case, as there was no deliberate attempt to evade tax. The court directed the tax authorities to reconsider the case and set aside the excessive penalty imposed.

12. Whether the customs department can run parallel proceedings by passing penalty order while challenge to Show Cause Notice is pending before High Court or not?

Vijay Enterprises & Anr. Vs Principal Commissioner of Customs & Anr. - (W.P.(C) 5809/2024)-(Delhi High Court)

Decision: No.

DRI issued a show cause notice to the petitioners in May 2008, alleging undervaluation of imported paper products and demanding differential duty under Section 28(1) of the Customs Act, 1962. However, the matter was not adjudicated and the same was placed in 'Call Book' multiple times leading to non-adjudication of SCN for approximately 15 years. Petitioner challenged the same before High Court. The department passed the order imposing penalties and confiscation of goods.

The High Court held that passing of order while the SCN was under challenged before this court would amount to initiation of parallel proceedings rendering the scrutiny of the Court as 'infructuous". The delay in adjudication of SCN for nearly 15 years violates the principle of natural justice. The court emphasized that administrative reasons such repeated placement of the case in 'call book' cannot be an excuse for indefinite deferment of adjudication. The High Court relying on the decision of the Bombay High Court in Parle International Ltd. v. Union of India (2020) **(argued by us)** quashed the penalty order as well as the show cause notice.

13. Whether the validity of GST show cause notices (SCNs) that merely replicate content from pre-SCN intimations (e.g., DRC-01A) and summarily reject taxpayers' replies as "unsatisfactory" without specific reasoning?

Jyoti Tar Products Private Limited & Anr. v. Union of India.- [2025 (1) TMI 1144]-(Calcutta High Court).

Decision: No.

A pre-SCN intimation in Form DRC-01A was issued to the petitioner alleging that the petitioner had claimed input tax credit (ITC) on inward supplies from non-existent entities whose registrations had been cancelled. Petitioner filed detailed reply supported with relevant documents and various judicial precedents. However, without considering the reply respondent issued a show cause notice. The SCN was a replica of pre-show cause notice. Aggrieved by such non-consideration petitioner challenged the show cause notice before the High Court.

The court noted that the assessing officer did not properly evaluate the petitioners' response to the pre-show cause notice before issuing the final Show Cause Notice under Section 74(1) of the CGST/WBGST Act. The High Court observed that the Show Cause Notice was merely a reproduction of the earlier intimation in Form GST DRC-01A, indicating a lack of independent application of mind by the tax authorities. The High Court acknowledged that the petitioners had valid tax invoices and had received the goods, emphasizing that retrospective cancellation of suppliers' GST registrations should not automatically invalidate the ITC claimed by the buyers. The High Court ruled that issuing a demand notice without addressing the petitioners' detailed objections was unfair and contrary to natural justice. The High Court quashed the Show Cause Notice and remanded the matter back to the tax authorities, directing them to properly examine the petitioners' submissions before proceeding further.

14. Whether the Supply of solar-generating power stations is composite supply or works contract?

JSterling And Wilson Private Limited Vs Joint Commissioner and Others -Writ Petition No. 20096/2020 (Andhra Pradesh HC)

Decision: Composite Supply.

The petitioner is engaged in the business of setting up of Solar Power Plants and was paying GST @ 5% of its turnover. As the rate of GST on the inputs, obtained by the petitioner, was higher than the GST rate of finished goods, the petitioner, under Section 54 of the A.P. Goods and Services Tax Act, 2017, claimed refund. Refund application was rejected. Assessing authority issued SCN imposing 18% GST on the ground that the transactions undertaken by the assessee are Works Contract, as defined under Section 2(119) of the GST Act. Petitioner filed reply. Order in Original was passed considering the transactions as works contract. Aggrieved by the order petitioner filed an appeal. Appeal was rejected.

The High Court held that the supply of solar generating power station is a composite supply and it would not amount to a works contract. It is a moveable property and attracted 5% GST. The High Court clarified that while all works contracts are composite supplies, not all composite supplies qualify as works contracts. The key difference lies in whether the end product is movable or immovable property. The property, which is attached to a structure embedded in the earth, would also become immoveable property only when such attachment is for the permanent beneficial enjoyment of the structure, which is embedded in the earth. In this case, the civil foundation is embedded in the earth."

The High Court further observed that solar power generating systems are movable assets. Although these systems are attached to civil foundations embedded in the earth, such attachment is intended to support the system's operation rather than for the beneficial enjoyment of the structure itself.

The court cited the Supreme Court's decision in Commissioner of Central Excise, Ahmedabad v. Solid and Correct Engineering Works, emphasizing that property not permanently embedded in the earth does not constitute immovable property. Once it is held not to be embedded, the question of whether it is a permanent embedment or not, would not arise. Thus, supply of the Solar generating Power Station, is a composite supply, it would not amount to a works contract.

15. Whether the reduction in Share Capital by a Company Constitutes a "Transfer" Under Section 2(47) of The Income Tax Act, 1961 or not?

PCIT v Jupiter Capital Private Limited – SLP No. 63/2025 (SC)

Decision: Yes.

Petitioner holds share (99.88%) in Asianet News Network Private Limited. Due to significant losses, Asianet's net worth eroded, leading it to seek approval from the Bombay High Court for a reduction in its share capital. The High Court sanctioned the reduction. Consequently, petitioner received approximately ₹3.17 crore as consideration for this reduction and subsequently claimed a long-term capital loss of around ₹164 crore in its tax filings. AO disallowed the claimed capital loss, arguing that the reduction did not constitute a 'transfer' under Section 2(47) of the Income Tax Act. Petitioner filed appeal before CIT(A) and ITAT, Bengaluru. ITAT reversed the earlier decisions. Department filed appeal before Karnataka High Court. The Karnataka High Court affirmed the ITAT's ruling, leading the Revenue to appeal to the Supreme Court.

The Supreme Court ruled in favor of the Revenue, holding that the reduction in share capital resulted in the extinguishment of shareholder rights which falls within the definition of "transfer" under Section 2(47). Since shareholders relinquished their rights in the process, the Court held that it constituted a taxable event under the provisions governing capital gains. The company was consequently held liable to pay capital gains tax on the share capital reduction.

16. Whether department can issue a notice u/s 148 for re-opening of the case of non-existent entity post-merger is legal or not?

City Corporation Limited v ACIT, Circle 1(1), Pune – WP No. 6081 of 2023 (Bom HC)

Decision: No.

The petitioner is engaged in constructing and developing infrastructure facilities. The petitioner got merged with its wholly owned subsidiary “Amanora Future Tower Pvt. Ltd.” (AFTPL). Petitioner informed the authority about the merger. Respondent issued notice u/s 148 of the act seeking to reopen the case. Petitioner has challenged the notice before the High Court.

The High Court held that notice issued to a non-existing entity post-merger is a substantive illegality and not some procedural violation. The High Court observed that we cannot condone the fundamental error in issuing the impugned notices against a non-existing company despite full knowledge of the merger. The impugned notices, which are non-est cannot be treated as “good” as urged on behalf of the department. As of the date of the issue of the impugned notices, the noticee 'AFTPL' could not have been regarded as a 'person' under Section 2(31) of the IT Act. In fact, that was a non-existent entity. The bench referred to the case of Principal Commissioner of Income Tax, New Delhi vs Maruti Suzuki India Ltd. where the Supreme Court held that the merged company had no independent existence after the merger. Even though the Assessing Officer was informed of the merged company having ceased to exist due to the approved merger scheme, the jurisdictional notice was issued only in its name. The bench further clarified that the impugned notices have been quashed only because they were issued to a non-existing company or entity despite the department's knowledge of its non-existence but with a clarification that the department can issue a fresh notice to CCL for reassessment.

17. Whether co-owner of property not receiving income from it be held liable to pay tax on Income from such property or not?

Shivani Madan v. Pr. Commissioner of Income Tax, Delhi-01 & Anr. – ITA/573/2023 (Delhi HC)

Decision: No.

A search was conducted at the premises of a third party including the premises of the appellant. Notice u/s 153A was issued to appellant. Appellant filed its return. Search revealed that the appellant has purchased a house in joint ownership with the husband of the appellant. A notice was issued to appellant to explain why the income from such house property should not be chargeable to tax in the hands of the Appellant. Appellant filed reply. Without considering the reply the AO passed the order. Aggrieved by the said order appellant filed an appeal. Aggrieved by such order appellant filed an appeal before ITAT. Aggrieved by such order, the appellant challenged the order before High Court.

The court emphasized that under Section 22 of the Income Tax Act, 1961, tax liability concerning income from house property should be affixed to the person who actually derives the income or is entitled to receive it, rather than merely based on legal ownership as indicated in the property title. The court noted that the Income Tax Act does not presume that income necessarily arises or is liable to be assessed in an individual's hands merely because they are a signatory to a conveyance deed. The court highlighted the distinction in the Income Tax Act between income derived from house property and an interest in property, indicating that legal title alone does not determine tax liability. The high court allowed the appeal and held that the appellant is not liable to pay income tax from the property in question, as there was no evidence of her receiving or being entitled to such income.

18. Whether Section 115JB of The Income Tax Act, 1961, which Imposes Minimum Alternate Tax (Mat), was Applicable to Electricity Generation and Distribution Companies Prior to its Amendment By The Finance Act, 2012?

Pr. Commissioner of Income Tax-9 v. Tata Power Delhi Distribution Ltd - ITA 687/2019 (Delhi High Court)

Decision: Tata Power Delhi Distribution Ltd. (formerly North Delhi Power Limited), a joint venture between Tata Power and the Government of Delhi, was responsible for electricity generation and distribution. For the assessment years 2006-07 and 2007-08, the company filed its tax returns under regular provisions without considering Minimum Alternate Tax (MAT) under Section 115JB. The Assessing Officer (AO) argued that MAT should apply, as the company's tax liability under regular provisions was less than 10% of its book profits. The revenue contended that Section 115JB applied to all companies, including electricity companies, since there was no specific exclusion in the provision.

Tata Power Delhi Distribution Ltd. opposed the application of MAT, arguing that prior to the 2012 amendment, electricity companies were excluded from MAT, as Section 115JB required accounts to be prepared under Schedule VI of the Companies Act, 1956, whereas electricity companies followed the Electricity Act, 2003. The Delhi High Court examined the matter and ruled that before the Finance Act, 2012, Section 115JB was inapplicable to electricity companies due to the inconsistency in financial reporting requirements. The court held that the 2012 amendment to MAT provisions was prospective, applicable only from the Assessment Year 2013-14 onwards.

This judgment clarifies that electricity generation and distribution companies were not subject to MAT before the 2012 amendment. It highlights the principle that tax provisions should align with industry-specific regulations and practices, ensuring that companies in regulated sectors like electricity are not subject to provisions that conflict with their statutory financial reporting requirements.

19. Whether the Reopening of Assessment Under Section 148 of The Income Tax Act, 1961, was valid in the absence of compliance with procedural requirements and the presence of new material evidence?

Sonash Creations Private Limited v. ACIT – W.P. (C) No. 12316/2022 (Delhi HC)

Decision: No.

The company, engaged in textile manufacturing and export, filed its return for Assessment Year 2018-19, declaring an income of ₹2.5 crores. The return was processed under Section 143(1), and no issues were raised initially. However, in March 2022, the Assistant Commissioner of Income Tax (ACIT) issued a notice under Section 148, alleging that certain transactions had not been fully disclosed, prompting the reopening of the assessment. The company challenged the reopening on several grounds, including non-compliance with Section 148A, arguing that no prior inquiry or opportunity to be heard was given before the notice was issued.

The petitioner also argued that no new material evidence existed to justify the reopening, asserting that the reassessment was based solely on facts that had already been examined during the original assessment. The company further contended that the reopening was based on a mere change of opinion, which is impermissible under the law. The revenue defended the reopening, claiming that credible information suggested income had escaped assessment and that procedural requirements had been substantially followed.

The High Court ruled that the reopening of the assessment was invalid due to the violation of Section 148A, as the tax authorities failed to provide the company with an opportunity to be heard before issuing the notice. The court also held that the reassessment was not supported by new material evidence, and therefore, the reassessment based on a mere change of opinion could not be justified. As a result, the court quashed the Section 148 notice and the reassessment proceedings.

20. Whether an Arbitrator can decide on Disputes Beyond the specific issue referred to the tribunal by the parties?

Bhageertha Engineering Limited v State of Kerala – Arb Appeal No. 56 of 2012 [Kerala HC]

Decision: No.

Appellant entered into a contract with the State of Kerala for road maintenance under the Kerala State Transport Project. Disputes arose during execution between the appellant and State. Appellant refer the matter to an adjudicator, who issued a decision partially in favor of the appellant. Neither party sought arbitration within the stipulated 28-day period post-adjudication. However, the State decided to condone the period and persuaded the appellant to go for arbitration in respect of dispute No. (1). Both parties selected their choice of arbitrators. Before the arbitrator, the appellant sought reference of all the disputes and certain disputes beyond the disputes which were referred to the adjudicator. The State, on the other hand, raised objection to the above course suggested by the appellant. The arbitral tribunal went into the core of the disputes between the parties, answered all four disputes in favour of the appellant and overturned the decision of the adjudicator.

Aggrieved by the award, the State invoked the jurisdiction of the District Court under Section 34 of Arbitration and Reconciliation Act, 1996 and the District Judge set aside the award passed by the Arbitral Tribunal and restored the award of the adjudicator. Hence, the appellant filed an appeal challenging the order passed by the District Court.

The High Court held that if the parties choose to refer to a singular point for arbitration, then the arbitral tribunal cannot proceed to decide on all disputes. On the contrary, if the parties agree to arbitrate on the entire disputes, then the arbitral tribunal shall have jurisdiction to decide the entire dispute and not a specific dispute. On the other hand, if both parties expressly agree to refer the entire dispute to arbitration, then the tribunal has jurisdiction over all claims and counterclaims. The court analysed Section 28(b) of the Indian Contract Act, 1872, which states that an agreement that extinguishes a party's right to enforce a contract after a specific period is void to that extent. The court also examined Grasim Industries Ltd. v. State of Kerala (2018), wherein a similar contractual clause was declared void as it restricted a party from initiating a dispute after a certain period.

21. Whether the prior approval of the Competition Commission of India (CCI) is mandatory before CoC examination of resolution plans involving combination?

Independent Sugar Corporation Ltd. vs. Girish Sriram Juneja & Ors. – Civil Appeal No. 6071 of 2023 (SC).

Decision: Yes.

The appellant had submitted a resolution plan for the corporate debtor namely, Hindustan National Glass and Industries Ltd. (HNGIL). One of the respondent namely AGI Greenpac Ltd. also submitted a resolution plan. As per the statutory requirement, the respondent submitted an application to the CCI, informing about a combination between the respondent and the corporate debtor. The combination was declared invalid by the CCI. The respondent AGI Greenpac Ltd. had submitted a final resolution plan. The final resolution plan submitted by the Respondent was approved by the CoC and the resolution plan of the appellant was not approved. In the meantime, the respondent filed another application with the CCI after making certain divestment changes and the combination proposal of the corporate debtor and the respondent was subsequently approved by the CCI. The appellant challenged the approval of the resolution plan before the NCLT but the approval was upheld. The appellant challenged the decision of the NCLT before the NCLAT. However, the appeal was dismissed. The appellant approached the Hon'ble Supreme Court.

The Supreme Court held that a resolution plan under the IBC containing a proposed combination should mandatorily be approved by the CCI before the same is put to voting before the CoC. In the present case, the CoC had approved the resolution plan before the proposed combination got an approval by the CCI. The approval by the CCI was subsequently received by the respondent after making certain amends. The Bench while allowing the appeal and rejecting the resolution plan relied on the proviso of Section 31(4) of the IBC, 2016. The proviso explicitly states that where the resolution plan contains a proposed combination, the resolution applicant shall obtain approval of the CCI prior to the approval of such resolution plan by the CoC. The Court held that use of the word 'prior' clearly states the intent of the legislature to create an exception. The Hon'ble Court relied on the judgment in the case of ESI Corpn. v. KEY DEE Cold Storage Pvt. Ltd., (2022) 17 SCC 379 and held that the Court should proceed with the assumption that no word has been used in vain or in an inapposite manner, by the legislature.

22. Whether the claims arising under Section 11E of the Central Excise Act, 1944 can be treated as secured debt?

Assistant Commissioner of CGST & C.Ex. Kadi Division vs. Pradeep Kabra, RP of Cengres Tiles Ltd. – Company Appeal (AT) (Insolvency) No. 844 of 2024 (NCLAT Delhi)

Decision: No.

The National Company Law Appellate Tribunal (NCLAT), Principal Bench, New Delhi while dismissing the appeal filed by the Ld. Assistant Commissioner, has held that the claims arising under the provisions of Section 11E of the Central Excise Act, 1944 cannot be treated as a secured debt. The NCLAT held that secured interest as defined in IBC, excludes charges created by operation of law. Section 11E of the Central Excise Act, 1944 are distinct from the provisions of the Gujarat VAT Act, 2003. Hence, the decision in the matter of State Tax Officer vs. Rainbow Papers Ltd. cannot be applied. It was further held that the provisions of Section 11E of the Central Excise Act, 1944 and Section 82 of the Central Goods and Services Tax Act, 2017 clearly carves an exception with regard to provisions of Insolvency and Bankruptcy Code, 2016. The Hon'ble Tribunal held that the NCLT had correctly treated the claim of the appellant as operational debt and hence, the operational creditor is entitled for payment as per Section 30(2)(b) of the IBC, 2016. The NCLAT relied upon their own judgment in the case of The Assistant Commissioner of Central Tax, CGST Division vs. Mr. Sreenivasa Rao Ravinuthala- CA(AT)(CH)(Ins.) No. 346 of 2021 and in the case of Department of State Tax, Through the Dy. Commissioner of State Tax vs. Zicom Saas Pvt. Ltd. & Anr- CA (AT) (Ins.) No.246 of 2022.

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New Delhi

Chambers: A1/18, Basement,
Safdarjung Enclave,
New Delhi - 110029
T: +91 11 45730565

Ahmedabad

Chambers: A/609, The Capital,
Science City Road, Off. S.G Highway,
Ahmedabad- 380060
T: +91 79 4892 8571

Bengaluru

Chambers: 116, Level I,
Prestige Center Point,
Cunningham Road,
Bengaluru - 560052
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Vapi

Chambers: 88, Dimple Estate,
Near Suraj Kiran Building,
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