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TAX JURISPRUDENCE

CASE LAW ALERT - MAY 2026

VOL -2

EXECUTIVE SUMMARY OF JUDGEMENTS / ADVANCE RULINGS UNDER INDIRECT TAXES

We are pleased to draw your attention to following important decisions which might be useful for you to take call on tax position.

Case & Citation	Issue Involved	Decision
Direct Tax		
Nikesh Bhagwandas Mehta [TS-645-ITAT-2026(Mum)]	Whether Long-Term Capital Loss ("LTCL") incurred on sale of certain long-term capital assets is required to be first adjusted against Long-Term Capital Gain ("LTCG") under section 70(3) of the Income Tax Act, 1961 ("the Act") before claiming exemption under section 54F, or whether exemption under section 54F should first be granted first allowing the LTCL to be carried forward separately.	The Hon'ble ITAT held that the exemption under section 54F is part of the computation mechanism under sections 45 to 55A and must be given effect prior to the application of section 70(3). Since exempt gains "exit" the charging section 45, they cannot be compulsorily adjusted against losses. The appeal was allowed, permitting the carry forward of the LTCL

Case & Citation	Issue Involved	Decision
Indirect Tax		
[Case 1 - SNS Minerals Pvt Ltd vs Assistant Commissioner & Others [Writ Petition No. 9413 of 2023]]	Whether a writ petition filed before the High Court during the period when the GST Appellate Tribunal was non-functional can still be continued now after the GST Tribunal has become operational?	The Hon'ble Madhya Pradesh High Court dismissed the writ petition filed by the taxpayer and granted liberty to avail the statutory appellate remedy by filing an appeal before the GST Appellate Tribunal ("GSTAT").
[Case 2 - Ncdex E Markets Ltd. v. Union of India [Writ Petition No. 3121 of 2024] Bombay High Court]	Whether tax amounts already paid under protest can be counted toward the mandatory deposit required to appeal a tax demand?	The Bombay High Court held that such prior deposits cannot be ignored unless expressly barred by statute and accordingly adjusted against requirement of pre-deposit.

The brief analysis of above referred decisions and rulings are given below.

Case 1 - Nikesh Bhagwandas Mehta, ITA No. 8246/Mum/2025 Assessment Year: 2022-23 [TS-645-ITAT-2026(Mum)]

Facts in brief & Issue Involved

- The taxpayer, Nikesh Bhagwandas Mehta, an individual filed his return of income for AY 2022-23 declaring total income of Rs. 49,53,740/-. During the relevant previous year, the assessee earned Long-Term Capital Gain ("LTCG") amounting to Rs. 69,84,283/- on sale of certain equity shares and claimed exemption under section 54F of the Act against the said capital gains on account of investment in a residential house property.

- During the same year, the taxpayer also incurred Long-Term Capital Loss ("LTCL") amounting to Rs. 37,72,601/- on sale of another set of long-term equity shares and carry forward such LTCL in the return of income.

- While processing the return under section 143(1), the Central Processing Centre ("CPC") denied the carry forward of LTCL by first adjusting the LTCL against LTCG under section 70(3) and thereafter allowing exemption under section 54F only on the resultant net LTCG of Rs. 32,11,682/-.

- The issue before the Hon'ble ITAT was whether exemption under section 54F should be granted before applying section 70(3), thereby permitting carry forward of LTCL, or whether LTCL must first be compulsorily adjusted against LTCG before granting exemption under section 54F.

Contentions of taxpayer

- The taxpayer contended that section 45 itself provides that chargeability of capital gains is subject to exemptions available under sections 54 to 54H, including section 54F. Accordingly, exemption under section 54F must be given effect prior to invoking section 70(3) of the Act.

- It was submitted that once the conditions prescribed under section 54F are fulfilled, the capital gain eligible for exemption exits the charging mechanism under section 45 and therefore no taxable LTCG remains against which LTCL could be adjusted.

- The taxpayer argued that section 70(3) comes into operation only after computation of capital gains under sections 45 to 55A is completed, which necessarily includes giving effect to exemption under section 54F. Accordingly, it was contended that section 54F, being part of the capital gains computation mechanism, prevails over the intra-head set-off provisions of section 70(3) of the Act.

Contention of the Revenue

- The Revenue supported the action of CPC and the order of the CIT(A) in denying carry forward of LTCL claimed by the taxpayer.

Observations & Decision of the Hon'ble ITAT

- The Hon'ble ITAT observed that section 45 expressly provides that chargeability of capital gains is subject to exemptions contained in sections 54 to 54H, including section 54F. Therefore, exemption provisions forms part of the computation mechanism itself.

- The Hon'ble ITAT noted that section 54F specifically provides that where the prescribed conditions are satisfied, the whole or proportionate capital gain "shall not be charged under section 45". Accordingly, eligible capital gains effectively exit the charging provisions of section 45 itself.

- The Hon'ble ITAT further observed that section 70(3) applies only after capital gains are computed in accordance with sections 45 to 55A. Since computation under sections 45 to 55A necessarily incorporates exemptions under section 54F, the exemption provision must prevail prior to invoking section 70(3).

- The Hon'ble ITAT accordingly held that the taxpayer was entitled to claim exemption under section 54F on LTCG of Rs. 69,84,283/- and simultaneously entitled to carry forward LTCL of Rs. 37,72,601/- incurred on sale of another set of equity shares.

- Relying upon the decision of the Madras High Court in CIT vs. Vijay M. Mahtaney and coordinate bench ruling in Naresh Jain vs. ACIT, the Hon'ble ITAT allowed the taxpayers appeal and allowed the carry forward of LTCL as claimed by the taxpayer in the return of income.

- Accordingly, the appeal of the assessee was allowed.

NASA Comments

- This decision provides significant clarity on the interplay between exemption provisions under the section 54 and the intra-head set-off provisions contained in section 70 of the Act. The Hon'ble ITAT has reiterated that the exemptions available under sections 54/54F form an integral part of the computation mechanism of capital gains and, accordingly, such exemptions are required to be allowed prior to the application of the loss set-off provisions prescribed under section 70 of the Act.

- The ruling is particularly beneficial for taxpayers who, during the same assessment year, have earned Long-Term Capital Gains eligible for exemption under sections 54/54F and have simultaneously incurred Long-Term Capital Loss on transfer of other capital assets.

INDIRECT TAX

Case 1 - SNS Minerals Pvt Ltd vs Assistant Commissioner & Others [Writ Petition No. 9413 of 2023]

Facts in brief & Issue Involved:

- SNS Minerals Pvt. Ltd. ('the Applicant'), is engaged in business of mining & supply of limestone.
- The company had originally claimed a GST refund, which was initially granted but later challenged after the department filed an appeal against it.
- The Applicant challenged an unfavourable tax order issued by filing a writ petition before the Hon'ble Madhya Pradesh High Court.

Contentions of Applicant

- The applicant contended that the impugned order was illegal, arbitrary, and without jurisdiction, as the Appellate Authority had effectively reviewed its own earlier Order-in-Appeal which had already attained finality.
- Further argued that since the GSTAT wasn't around back then, the tax department's only legal option to challenge their refund was to go straight to the High Court. Because the department failed to do that at the time, the matter should be considered closed. The department cannot now try back-door legal methods to reopen a settled issue.

Contentions of Respondents

- The respondents contended that the refund granted to the petitioner was erroneous and against the provisions of law and, therefore, the department was justified in filing appeal against the refund sanction order.

- It was further submitted that the CGST Act permits the department to examine and challenge erroneous orders passed by subordinate authorities.

- The respondents argued that the earlier appellate order and subsequent refund proceedings were separate proceedings and, therefore, challenge to the refund order was legally valid.

- Further, recovery proceedings for erroneous refund are independent proceedings under the CGST Act.

- The respondents also submitted that sufficient opportunity of hearing was provided to the petitioner and hence there was no violation of principles of natural justice.

Observations & Decision of Court

- The High Court observed that the basic purpose of a writ petition is to offer relief when no other specialized or effective legal remedy exists for the taxpayer.

- The Hon'ble High Court observed that although the writ petition was maintainable in 2023 due to non-functioning of GSTAT, the appellant should now avail the statutory remedy before the Appellate Tribunal.

- Once the special statutory forum has been established, High Court should not entertain the petition and relegate the parties to avail the forum, especially constituted to address their grievances.

- Relying on the decision of *Whirlpool Corporation*, the Court reiterated that ordinarily writ jurisdiction under Article 226 should not be exercised when an effective alternate remedy is available.

- The High Court dismissed the pending writ petition, ruling that it will not bypass the specialized forum and directed the taxpayer to file their appeal before the newly functional GST Tribunal.

NASA Comments

- This judgment makes it abundantly clear that the newly operational GST Tribunal has now become the mandatory and final fact-finding forum for adjudication of all pending as well as future GST disputes.

- In view of the operationalisation of the GST Appellate Tribunal (GSTAT), companies should ordinarily approach the Tribunal as the primary appellate forum before invoking the writ jurisdiction of the High Courts, except in cases involving constitutional challenges, jurisdictional defects, or violation of principles of natural justice.

Case 2 - Ncdex E Markets Ltd. v. Union of India [Writ Petition No. 3121 of 2024] Bombay High Court

Facts in brief & issues of Applicant

- M/s Ncdex E Markets Ltd ('the applicant') filed a petition against a tax demand order issued by the authorities.

- The court had previously granted them temporary relief but conditioned it on the applicant depositing 10% of the disputed tax amount, as typically required by tax laws when filing an appeal.

- The applicant realized it had missed pointing out an important detail to the court and filed an application highlighting that they had already paid a substantial amount of the tax under protest during previous transaction periods

- Therefore, instead of making a fresh payment again, those earlier deposits should be considered and adjusted towards the mandatory 10% pre-deposit requirement.

Contentions of Applicant

- The applicant argued that the court should completely waive the 10% deposit requirement because they had already paid an equivalent or greater amount under protest.
- They claimed that ignoring these past payments would force them to pay double for the same dispute, creating unnecessary financial hardship.
- They cited Supreme Court precedents stating that money deposited prior to or during a dispute must be counted toward the mandatory appeal deposit

Contentions of Respondents

- The Respondents contended that the past payments made by the company from a certain period onward amounted to an admission of their tax liability rather than a temporary deposit.
- It was further contended that GST law does not recognize payments made "under protest," and therefore such amounts cannot be adjusted against the mandatory pre-deposit requirement.
- They asserted that the mandatory 10% appeal deposit is a strict statutory requirement that must be paid freshly in cash to keep the litigation alive. Accordingly, the fresh pre-deposit needs to be made.

Observations & Decision of Court

- The Court noted that based on plain language and higher court rulings, any money deposited by a business before the final order cannot be ignored during appeals.
- The High Court ultimately refused to fully waive the deposit requirement but ordered that the past payments be verified and adjusted against the 10% obligation, preventing the business from paying twice

NASA Comments

- It highlights a critical grey area in GST law, showing that even though the statute doesn't explicitly talk about "paying under protest," courts will rely on fairness and equity to protect business capital.

- This case provides great relief to businesses by ensuring that tax departments cannot demand fresh cash for appeals if a portion of the tax has already been deposited under protest.

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