

April 2022 – Volume 2

JUDGEMENTS / ADVANCE RULINGS UNDER DIRECT AND 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.

EXECUTIVE SUMMARY

CASE & CITATION	ISSUE INVOLVED	DECISION
DIRECT TAX		
Caterpillar Global Mining Europe GMBH [TS-210-ITAT-2022 (HYD)]	Whether draft order issued u/s 144C(1) along with notice of demand and penalty notice amounts to final assessment order? Whether the actual final assessment order issued thereafter can be quashed on account of non-compliance with Section 144C(1) i.e. non-issuance of draft order?	The draft order issued along with notice of demand and penalty notice continue to hold the status of draft order in light of section 144C(1) of the Act.
INDIRECT TAX		
M/s Shanmuga Durai [2022-TIOL-31-AAR-GST]	Whether GST liability arises in respect of property of partner used by Partnership Firm free of rent to carry out the firm's business?	GST is to be paid in respect of properties of the applicant used by partnership firm free of rent as the said activity is in furtherance of business and amounts to supply as per Section 7(1)(a) read with Schedule I of the CGST Act and is liable to tax.
Hyderabad Metropolitan Water Supply and Sewerage Board [2022-TIOL-38-AAR-GST]	Whether interest component included in Equated Yearly Installment (including Principal and Interest) payable by	Interest is a part of consideration as per Section 15(2)(d) of CGST Act, 2017 and thereby liable to tax.

	<p>applicant to contractor is liable to GST?</p> <p>Whether payment of interest, being a pure service, is exempted under Entry No. 3 of Notification Number 12/2017 – Central Tax (Rate)?</p>	
--	---	--

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

A. DIRECT TAX

CASE 1 – CATERPILLAR GLOBAL MINING EUROPE GMBH [TS-210-ITAT-2022 (HYD)]

Facts in brief & Issue Involved	<ul style="list-style-type: none"> • There are multiple issues covered under this case, however, this alert covers issue in relation to compliance with section 144C(1). • For the AY 2010-11 and 2011-12, the taxpayer has received draft assessment orders dated 28.03.2013 and 14.03.2013. These orders were accompanied by demand notice under section 156 and initiation of penalty proceedings on the same date. • The assessee filed statutory objections before the Dispute Resolution Panel against the above orders. • The DRP issued directions on 26.12.2013 and 31.12.2014, on the basis of which final assessment orders were passed on 28.01.2014 and 20.02.2015 respectively.
Contentions of Taxpayer	<ul style="list-style-type: none"> • The assessee contended that the assessment should be cancelled on account of non-issuance of draft order to the assessee as required u/s 144C(1) of the Act. • The draft order issued on the said dates amount to final assessment orders only since the order was followed by the issuance of demand notice under section 156 and initiation of penalty proceedings on the very same date.
Observations & Decision of ITAT	<ul style="list-style-type: none"> • The assessee filed its statutory objections against the draft orders before the Dispute Resolution Panel, after which the DRP issued necessary directions to the assessing officer for issuing final assessment orders. • There is no draft assessment proforma prescribed in the legislature which needs to be followed for issuing a draft order. • Hon'ble ITAT rejected assessee's arguments based on Andhra Pradesh High court decision in the case of Zuari Cement Limited , Vijay Television (P) Limited Vs DRP (Bombay High Court) and SHL (India) Private Limited Vs DCIT (Bombay High Court) wherein it was held that an assessment framed under section 143(3) r.w. section 144C of the Act without a draft assessment order is not sustainable in law.

	<ul style="list-style-type: none"> ITAT distinguished Supreme court decision in case of Kalyan Kumar Ray wherein it was held that an “assessment” is an integrated process not only involving computation of income but also determination of the tax and observed that it is not applicable to the circumstances and facts of the case. Thus, it concluded that the order subsequently issued in accordance with the directions of the DRP, is the final assessment order. There has been no non-compliance of Section 144C(1) merely because the draft order was accompanied with notice of demand and initiation of penalty proceedings.
NASA Comments	<ul style="list-style-type: none"> The present ruling clarifies that since there is no standard format prescribed for draft order under section 144C(1), merely on the fact that the order was accompanied with demand and penalty notice, it cannot amount to final assessment order.

B. INDIRECT TAX

CASE 1 – M/s SHANMUGA DURAI [2022-TIOL-31-AAR-GST]

Facts in brief & Issue Involved	<ul style="list-style-type: none"> Applicant is the managing partner of a partnership firm and owns certain properties. The said properties are used free of rent by the partnership firm to carry out its business. Applicant sought advance ruling in respect of following: <ul style="list-style-type: none"> Whether GST liability arises if the property of the partner used by the partnership firm free of rent to carry out its business? If so, what is the relevant section or rule or provision under which the partner is required to pay GST on notional rent? What is the valuation rule when the consideration is not been set and not obtained by the partner?
Contentions of Applicant	<ul style="list-style-type: none"> Under Income Tax Act, it is clear that when the partner uses his property for business carried out by the firm, then question of deemed rent does not arise. Applicant has not rented out properties to partnership firm in course of furtherance of his or partnership firm’s business and hence it cannot be treated as Supply u/s 7 of CGST Act.

	<ul style="list-style-type: none"> Applicant drew analogy from CBIC press release wherein old gold sold by an individual to a seller has been held not to be in course or furtherance of business.
Observations & Decisions of AAR	<ul style="list-style-type: none"> For any service to qualify as being carried out in the course of business, it should be provided with the intention of deriving economic benefits. If the economic benefit accrues directly or indirectly, then the activity would be treated as supply for consideration under GST law. The properties rented free to the firm eases the burden of rent to be paid by the firm and thereby reduces the expenditure to be borne by the firm and consequently increases the firm's profit. Therefore, the rent-free accommodation provided by the applicant indirectly accrues as a profit for the firm which is enjoyed by the applicant as a partner. Thus, renting of immovable properties provided by the partner to the partnership firm free of rent is a supply in course of or in furtherance of business u/s 7 of CGST Act liable to GST. Further, as per Schedule 1 of the CGST Act, supply of goods or services between related person is treated as supply under GST even if it is made without consideration. Applicant and the partnership firm are 'related parties' under CGST Act and therefore, supply of service between them is taxable even if rendered without consideration. Valuation of such supply shall be done in accordance with Rule 28 of CGST Act which provides for open market value of the supply. If the open market value is unavailable, the applicant shall consider the value of supply of like kind and quality.
NASA Comments	<ul style="list-style-type: none"> This ruling clearly lays down the principle that any activity carried out between related parties without consideration shall be treated as supply and consequently liable to GST. It is advisable for promoters, partners, etc. to examine transactions (without consideration) between them and the entities. It is advisable to take conservative position in this regard especially where recipient is entitled to claim ITC.

- Ruling by AAR is binding only on applicant and its jurisdictional officer. It does not have general binding precedence value.

**CASE 2 – HYDERABAD METROPOLITAN WATER SUPPLY AND SEWERAGE BOARD
[2022-TIOL-38-AAR-GST]**

Facts in brief & Issue Involved	<ul style="list-style-type: none"> • Applicant is a local authority and is making payments to the contractors in equated yearly instalment manner wherein such instalment consists of both principal amount and interest on delayed payment. • Applicant sought advance ruling in respect of following: <ul style="list-style-type: none"> ◦ Whether interest component included in Equated Yearly Instalment (including Principal and Interest) payable by applicant to contractor is liable to GST? ◦ Whether payment of interest, being pure services, is exempted under Entry No. 3 of Notification Number 12/2017 – Central Tax (Rate)?
Observations & Decision of AAR	<ul style="list-style-type: none"> • Clause (d) of sub section 2 of Section 15 clearly provides that the value of supply shall include interest or late fee or penalty for delayed payment of any consideration for any supply. • Therefore, all the monies paid to the contractor by the applicant including the interest on delayed payments is liable to tax under CGST Act, 2017 under this provision.
NASA Comments	<ul style="list-style-type: none"> • This ruling makes it abundantly clear that GST is payable on entire value of supply which includes interest on delayed payment. • Ruling by AAR is binding only on applicant and its jurisdictional officer. It does not have general binding precedence value.

We will be glad to provide any elaboration or elucidation you may need in this regard.

N. A. Shah Associates LLP
Chartered Accountants

Address: B 21-25 / 41-45, Paragon Centre,
Pandurang Budhkar Marg, Mumbai – 400013.
Tel: 91-022-4073 3000, Fax: 91-022-4073 3090
E-mail Id: info@nashah.com

This alert is prepared for educational purpose and general guidance of the clients. N.A. Shah Associates LLP is not responsible for any action taken by anyone based on this alert. Views / Comments expressed herein should not be treated as professional advice or legal opinion in the matter. It is advisable to seek professional advice in the matter before acting based on this alert.