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# **TAX JURISPRUDENCE**

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CASE LAW ALERT – AUGUST 2022

VOL- 1

## EXECUTIVE SUMMARY OF 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.

Case & Citation	Issue Involved	Decision
<b>Direct Tax</b>		
<a href="#">Era Infrastructure (India) Ltd</a> <a href="#">[ITA 204/2022 &amp; CM APPL. 31445/2022 - Delhi High Court]</a>	Whether the amendment made by Finance Act, 2022 made to section 14A of the Act is applicable prospectively or retrospectively wherein no exempt income is accrued / received during the previous year?	Insertion of word "for removal of doubts" cannot be presumed to be retrospective even where such language is used if it alters or changes the law as it earlier stood. Further, relying on Jurisdictional High Court ruling in case of IL & FS Energy Development Company Ltd (supra) and Cheminvest Limited vs. Commissioner of Income Tax-VI, (2015) 378 ITR 33, Court held that no disallowance u/s. 14A of the Act is warranted in absence of exempt income.
<b>Indirect Tax</b>		
<a href="#">Union of India vs Filco Trade Centre Private Limited and Others</a> <a href="#">[2022-TIOL-57-SC-GST]</a>	Revenue filed SLP before Honourable Supreme Court as various High Courts had allowed writ petitions filed by the taxpayers seeking directions to avail Transitional Credit beyond statutory time limit in favour of the assesses.	Supreme Court has directed the Government to open GST portal (GSTN) for settling claims of transitional credit for all assesseees including those who are yet to file their claim or those who want to revise their claim.

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

**Case 1 – Era Infrastructure (India) Ltd [ITA 204/2022 & CM APPL. 31445/2022 – Delhi High Court]**

**Facts in brief & Issue Involved:**

- ◆ Taxpayer is in business of developing infrastructure facilities. During AY 2013-14 and AY 2014-15, the Assessing Officer ('AO') made an addition of INR 3,61,53,268 and INR 4,46,76,162 respectively by invoking the provisions u/s 14A of the Income Tax Act, 1961 read with Rule 8D of the Income Tax Rules, 1962.
- ◆ Learned CIT(A) relying upon Hon'ble jurisdictional High Court ruling in the case of Cheminvest Ltd vs. CIT [(2015) 378 ITR 33 (Delhi)] and decision in Holcim India Private Limited [ITA No. 486/2014] wherein it was held that no disallowance u/s. 14A is maintainable where no exempt income is earned during the relevant assessment year, deleted the addition so made.
- ◆ Subsequently, the Hon'ble ITAT upheld the findings of the Learned CIT(A) and dismissed the appeal filed by Revenue relying on the decision in case of Hon'ble Jurisdictional High Court in PCIT vs. IL & FS Energy Development Company Ltd. [(2017) 99 CCH 0190].
- ◆ Being aggrieved, the Revenue filed an appeal before the Hon'ble High Court.
- ◆ Issue before the Hon'ble court was that whether disallowance u/s. 14A read with Rule 8D could be made even if no exempt income is accrued/received during the previous year by holding that amendment made by Finance Act, 2022 is retroactive.

**Contentions of Petitioner (i.e. revenue):**

- ◆ It was submitted by the Revenue that since SLP against the ruling of PCIT vs. IL & FS Energy Development Company Ltd has been preferred, reliance placed by the Hon'ble ITAT on this decision is not a good law.

- ◆ Further, in view of the amendment made by the Finance Act, 2022 to Section 14A of the Act by inserting a non obstante clause and an explanation after the proviso, a change in law has been brought about and consequently, the judgments relied upon by the authorities below including PCIT vs. IL & FS Energy Development Company Ltd (supra) are no longer good law.

### **Observations & Decision of the High Court**

- ◆ Supreme Court in case of Sedco Forex International Drill. Inc. v. CIT, (2005) 12 SCC 717 held that a retrospective provision in a tax act which is “for the removal of doubts” cannot be presumed to be retrospective, even where such language is used, if it alters or changes the law as it earlier stood.
- ◆ Further, the above proposition of law has been reiterated in series of High Court and Supreme Court ruling including the case of M.M Aqua Technologies Ltd. V. Commissioner of Income Tax, Delhi-III [2021 SCC Online SC 575].
- ◆ High Court, based on above proposition of law and relying on the Jurisdictional High Court ruling in case of PCIT vs. IL & FS Energy Development Company Ltd (subject to final outcome of SLP filed in Supreme Court), held no disallowance u/s. 14A of the Act r.w. Rule 8D is warranted in absence of exempt income.

### **NASA Comments:**

- ◆ The present ruling has made the intention of the legislature clear that where the amendment is carried out to alter the provisions as it stood earlier, the provisions shall be applicable prospectively and not retrospectively even where such language is used.
- ◆ Further, it may be pertinent to note that in Finance Act, 2021 there was an amendment made to section 43B & 36(1)(va) of the Act where similar language i.e “for removal of doubts” was used and various courts have held that the same is prospective and hence, the same analogy may be followed.

### **Case 1 – Union of India vs Filco Trade Centre Private Limited and Others [2022-TIOL-57-SC-GST]**

#### **Facts in brief & Issue Involved**

- ◆ After the introduction of Goods & Services Tax (GST), a special provision was made to transit the credit accumulated under VAT, excise duty or service tax to GST within a stipulated time period.
- ◆ Due to technical glitches and other reasons, many assesseees were unable to transit their tax credits of earlier regime to GST regime.
- ◆ This led to various writ petitions being filed before the High courts. Most of such writs were ruled in favor of the assesseees while some were rejected on the ground that there was no technical glitch.
- ◆ Aggrieved by favorable decisions of High Courts in favor of assesseees, the Revenue filed a Special Leave Petition in the Supreme Court.

#### **Directions issued by Supreme Court**

- ◆ Goods and Service Tax Network (GSTN) is directed to open common portal for filing concerned forms for availing Transitional Credit through TRAN-1 and TRAN-2 for two months i.e. with effect from 1<sup>st</sup> September 2022 to 31<sup>st</sup> October 2022.
- ◆ Considering the judgments of the High Courts on the then prevailing peculiar circumstances, any aggrieved registered assessee is directed to file the relevant form or revise the already filed form irrespective of whether the taxpayer has filed writ petition before the High court or whether Information Technology Grievance Redressal Committee (ITGRC) have decided the case of the taxpayer.
- ◆ GSTN must ensure that there is no technical glitch during the said time frame.

- ◆ The concerned officers are given 90 days thereafter to verify the veracity of the claim / transitional credit and pass appropriate orders thereon on merits after granting appropriate reasonable opportunity to the parties concerned and to allow Transitional credit to be reflected in the Electronic Credit Ledger.
- ◆ If required, GST Council may also issue appropriate guidelines to the field formations in scrutinizing the claims.

### **NASA Comments**

- ◆ Honorable Supreme Court has given due credence to settled principle that input tax credit is a vested right of the taxpayers and cannot be taken away on account of procedural lapses or technical glitches on the Government portal. This is indeed a very fair and welcoming judgement.
- ◆ Assesseees who could not file Form Tran-1 and Tran-2 before prescribed due date for transiting their tax credits of earlier regime to GST regime will get an opportunity to file such forms during the period 1<sup>st</sup> September 2022 to 31<sup>st</sup> October 2022. Further, assesseees who have filed Form Tran-1 or Tran-2 incorrectly will also get an opportunity to revise their claims for transition credit.

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

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