

N.A.SHAH ASSOCIATES LLP
Chartered Accountants

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		
Daujee Abhushan Bhandar Pvt. Ltd. (Writ No. 78 of 2022)	<p>Whether digitally signing notice would automatically amount to issuance of notice?</p> <p>Whether notice emailed to the assessee after period of limitation is void ab initio and ought to be quashed?</p>	Hon'ble High Court observed that the actions of signing and issuing are exclusive from each other. Since the period of limitation as per provisions of Section 149 is based on the time of 'issuance' of notice, in case where the notice was signed before the period of limitation but was emailed to the assessee after expiry of the said period of limitation, the impugned notice ought to be quashed.
Perizad Zorabian Irani (Writ Tax No. 1333 of 2021) (Bombay High Court)	Whether remuneration received by partner from partnership firm to be treated as gross receipts for the purpose of Audit u/s section 44AB of the Act?	High Court observed that clause (a) deals with person carrying on business and clause (b) deals with person carrying on profession and therefore both the clauses are mutually exclusive and none of the clauses under Section 44AB envisage the situation where an assessee is carrying on both profession as well as business. It also placed

		reliance on ruling of Madras High Court where it was held that assessee was not carrying on business independently but as a partner in partnership firm and therefore was not allowed the benefit of section 44AD. Being contrary contentions of revenue, High Court held that remuneration from partnership firm could not be treated as gross receipt in profession.
INDIRECT TAX		
M/s. Narsing Ispat Limited [2022-TIOL-384-HC-JHARKHAND-GST]	<ul style="list-style-type: none"> • Whether interest u/s 50 of the GST Act, 2017 can be raised without initiating any adjudication process u/s 73/74 of the Act? • Whether recovery proceeding u/s 79 of the Act can be initiated for recovery of interest without conclusion of adjudication proceeding? 	<p>Order has been issued upon petitioner without following the principles of natural justice and are accordingly quashed.</p> <p>It was held that GST authorities are at liberty to issue proper show-cause notice ('SCN') with an opportunity to the petitioner to file response thereto before passing any order. Petitioner is open to raise question of levability of interest which should be considered by GST authorities in accordance with law.</p>
M/s. Forest Development Corporation of Maharashtra Limited	<ul style="list-style-type: none"> • Whether transfer of land held under lease by FDCM to Kolsapada Minor Irrigation Project is supply of service? 	Relinquishment of lease rights by applicant in favor of Irrigation department is a supply of service under Entry

[\[GST-ARA-18/2020-21/B-31\]](#)

- Whether exemption will be applicable on amount of compensation received by FDCM against transfer of land held under lease?

5(e) of Schedule II of CGST Act.

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

A. DIRECT TAX

CASE 1 – Daujee Abhushan Bhandar Pvt. Ltd. (Writ Tax No. 78 of 2022) (Allahabad High Court)

Facts in brief & Issue Involved	<ul style="list-style-type: none"> • The return of income for AY 2013-14 was filed by the taxpayer on 29.09.2013 and the assessment proceedings were completed. • The Assessing Officer ('AO') sought to initiate re-assessment proceedings u/s 148 of the Income-tax Act, 1961 ('the Act') by issue of notice digitally signed on 31.03.2021 but sent via email to the taxpayer only on 06.04.2021. • Upon raising an objection before the AO that the re-assessment proceedings were beyond the limitation period of 31.03.2021, the objections were rejected by the AO. • The taxpayer filed a writ petition before High Court
Contentions of Petitioner and Respondent	<ul style="list-style-type: none"> • The questions before the High Court were: <ul style="list-style-type: none"> ➤ Whether digitally signing notice would automatically amount to issuance of notice? ➤ Whether digitally signing a notice and issuing it are two different acts? ➤ Whether issuance of notice shall take place on the date and time when it is dispatched either electronically or through other mode? ➤ Whether merely generating notice from the Departmental Portal on 31.3.2021 and digitally signing it thereafter, would amount to issuance of notice. • The department argued that that issue of notice means, the date on which the notice is digitally signed by the Assessing Authority. Since the impugned notice under Section 148 of the Act has been signed by the Assessing Authority on 31.03.2021 i.e. well within the period of limitation, therefore, the impugned notice is wholly valid and the writ petition is not maintainable.
Observations & Decision of the High Court	<ul style="list-style-type: none"> • The High Court referred to Section 282 and Section 282A of the Act. Section 282 provides the mode or service of notices, whereas Section 282A provides for authentication of notices. By virtue of separate sections for both the actions, the High Court observed that

	<p>signing of notice and issuance or communication thereof have been recognised as different acts.</p> <ul style="list-style-type: none"> Also, as per Rule 127A(1) of the Income-tax Rules, 1962, the issuance of notice and other document would take place when the email is issued from the designated e-mail address of the concerned income tax authority. Referring to the meaning of word 'issue' in the Chamber's Twentieth Century Dictionary and relying on various judicial precedents, the High Court has held that mere digitally signing the notice is not the issuance of notice. Further, the High Court held that the dispatch of an electronic record occurs when it enters into computer resources outside the control of the originator. Since the impugned notice under Section 148 of the Act, 1961 was issued to the petitioner on 06.04.2021 through e-mail, therefore, it is held that the impugned notice under section 148 of the Act, 1961 is time barred. Consequently, the impugned notice is quashed.
NASA Comments	<ul style="list-style-type: none"> The present ruling will help many taxpayers to fight its case before various judicial authorities, wherein similar issue is involved.

CASE 2 – Perizad Zorabian Irani (Writ Tax No. 1333 of 2021) (Bombay High Court)

Facts in brief & Issue Involved	<ul style="list-style-type: none"> The petitioner was an actor and partner in partnership firms. She was deriving income in the form of remuneration from partnership firm and income from acting profession. The return of income for AY 2017-18 filed by the petitioner was treated as invalid by AO stating that she failed to get her accounts audited as her gross receipts of profession including remuneration from partnership firm was more than threshold. Aggrieved by the order of AO, petitioner filed revision application before CIT which was dismissed by the CIT and confirmed the order of AO. Aggrieved by the order of CIT, petitioner filed a writ petition before High Court
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Contentions of Petitioner and Respondent	<ul style="list-style-type: none"> • Petitioner highlighted the following reasons as why the accounts were not audited: <ul style="list-style-type: none"> ➤ Business was carried out by the partnership firm and not by assessee himself. ➤ Becoming partner cannot be treated as carrying on business. ➤ Remuneration received from partnership firm cannot be treated as gross receipts from business or from profession. ➤ Remuneration from partnership firm does not arise by carrying out profession. ➤ Section 44AB is not applicable where business and profession is carried simultaneously in different field. • Respondent relied on the order of CIT
Observations & Decision of the High Court	<ul style="list-style-type: none"> • Clause (a) of Section 44AB deals with the person carrying on business whereas clause (b) of Section 44AB deals with the person carrying on profession. Both the clauses are mutually exclusive. • Thus, partners remuneration cannot be held as from carrying on profession as well as business as both are carried on simultaneously in different fields. • The court also observed that the contention of revenue was contrary in case of Anandkumar versus Assistant Commissioner of Income Tax (2020) before Madras High Court where the AO did not allow presumptive taxation to the assessee on the ground that section 44AD is only available to eligible assessee engaged in eligible business and assessee was not carrying on business independently but only as partner in partnership firm. HC confirmed the order and held that remuneration from partnership firm cannot be treated as gross receipts for the purpose of Section 44AD. • Following the decision of Madras High Court, it was held by the HC that remuneration from partnership firm cannot be treated as gross receipts of assessee and hence tax audit u/s 44AB is not required.
NASA Comments	<ul style="list-style-type: none"> • The present ruling clarifies that remuneration of partner from partnership firm cannot be considered as gross receipts for the purpose of determining threshold for tax audit section 44AB.

B. INDIRECT TAX

CASE 1 – M/s Narsing Ispat Limited [2022-TIOL-384-HC-JHARKHAND-GST]

Facts in brief & Issue Involved	<ul style="list-style-type: none"> • Petitioner has adequate balance in Electronic cash ledger as on due date of filing of GST return. • There was a delay in filing of GSTR 3B for certain tax period by the petitioner. • GST Authorities have issued statement in Form GST DRC-01A intimating petitioner to pay the applicable interest for delayed period of return filing. • Petitioner filed a reply disputing the levibility of interest within stipulated period. • GST authorities did not issue any SCN u/s 73(1) but issued Order in Form GST DRC-07 raising demand for interest payable for the period for which returns were delayed.
Contentions of Petitioner	<ul style="list-style-type: none"> • Interest u/s 50(1) of the Act cannot be demanded for delay in filing monthly return in Form GSTR-3B, but for the delay in payment of the taxes. • Section 50 deals with the liability to pay interest on "unpaid" tax, when a person "fails to pay" tax. It does not speak anything when a person has paid tax in accordance with Section 49. • Proviso to Section 50(1) cannot travel beyond or be inconsistent with or make addition to the main provision. It must be limited to the subject matter of enacting clause. • Proviso to Section 50(1) merely says that ITC is as good as tax paid, hence, no interest is payable thereon. The word 'debiting' under section 50(1) is used for apportionment of an amount on which interest is payable if not paid in accordance with Section 49. This expression 'debiting' has to be read in the context of the word 'fails to pay' and 'unpaid' in sub-Section (1) and (2) of Section 50. • Impugned order issued in Form GST DRC-07 and impugned demand notice issued in Form GST DRC- 01A demands interest for the number of days of delay in filing GSTR-3B instead of number of days of delay in payment of tax which is wholly illegal and without authority of law.

	<ul style="list-style-type: none"> Interest u/s 50(1) is compensatory in nature. Therefore, once the amount is deposited / credited in Electronic Cash Ledger in accordance with Section 49, money goes to the Government Exchequer and therefore, no interest for the period thereafter can be demanded. If the money is being enjoyed by the Government, the amount cannot be said to be 'unpaid' or 'fails to pay' so as to attract Section 50(1).
Observations & Decision of High Court	<ul style="list-style-type: none"> GST Authorities have failed to follow the procedure prescribed in law i.e. issuance of SCN before issuing Order in Form GST DRC-07 demanding interest u/s 50(1) of the Act on late filing of GST returns. The order was quashed on the ground for not following principle of natural justice. GST authorities are at liberty to issue proper SCN in terms of Section 73(1) of GST Act with opportunity to the petitioner to file response thereto before passing any adjudication order. It is open to the petitioner to raise the question of leviability of interest on delayed filing of GSTR- 3B relying upon its plea that the amount of tax has been duly deposited in the Electronic Cash Ledger by the due date. The Adjudicating Authority shall consider such plea in accordance with law.
NASA Comments	<ul style="list-style-type: none"> Hon'ble High Court has refrained from deciding the issue on the merits whether interest is payable u/s 50 on delay in filing of GST returns where there is sufficient balance lying in electronic cash ledger as on the due date of filing GST returns. However, petitioner's contentions appears to be legally strong.

CASE 2 – M/s FOREST DEVELOPMENT CORPORATION OF MAHARASHTRA LIMITED
[Appeal Case No.: GST-ARA-18/2020-21/B-31 dated 15.03.2022]

Facts in brief & Issue Involved	<ul style="list-style-type: none"> Applicant is a wholly owned company of Maharashtra State Government established to undertake teak plantations on a large scale. To achieve the above purpose, land was leased to applicant by Maharashtra State Forest and Revenue Department (MSFR). Land allocated under lease has been transferred by applicant to Revenue & Forest department for various Government Projects.
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	<ul style="list-style-type: none"> • Applicant receives compensation from user agencies of land for the license to occupy land. • Land leased to the applicant was to be diverted for Kholapada Minor irrigation Project for compensation of Rs. 17,41,92,890/-. • Applicant has sought advance ruling in respect of following: <ul style="list-style-type: none"> ◦ Whether transfer of land held under lease by applicant towards Kholapada Minor Irrigation Project is supply of service? ◦ Whether exemption under entry no. 3 of Notification No. 12/2017 Central Tax (Rate) dated 28.06.2017 will be applicable in respect of compensation received by applicant against transfer of land held under lease?
Contentions of Applicant	<ul style="list-style-type: none"> • Entry 2 of Schedule II read with Section 7(1)(A) states that any activity which creates any lease, tenancy, easement or license to occupy the land shall be treated as supply of services. • Applicant is transferring the leased land back to Revenue & Forest department of Maharashtra for minor irrigation project. Any compensation received from Irrigation department will be against supply of service. • Entry No. 3 of Notification No. 12/2017 – CT(R) dated 28.06.2017 provides exemption in respect of services provided to State Government, Central Government or Local Authority or a Governmental authority by way of any activity in relation to any function covered under Article 243G or 243W of Constitution of India. • Activities entrusted to a Panchayat specifically covers Minor irrigation. Hence any supply towards Kholapada Minor irrigation Project under the Irrigation department of state of Maharashtra shall be exempt under above notification.
Observations & Decision of AAR	<ul style="list-style-type: none"> • The land belongs to MSFR. As an owner, MSFR department has leased the land to applicant. Applicant is not the owner of the land. • In present case, MSFR department has asked the applicant to hand over a part of land to the Irrigation department. • After the transfer, the Irrigation department will become the lessee and pay the lease rent to the MSFR department (Lessor).

	<ul style="list-style-type: none"> As per Entry 5(e) of Schedule II, agreeing to the obligation to do an act amounts to supply of service. In present case, applicant has agreed to relinquish its lease rights in favour of Irrigation department on directions of the MSFR department for a compensation. In view of non-submission of proof as to show that impugned services have been provided to MSFR department by way of any activity in relation to any function covered under Article 243G or 243W of Constitution of India, the second question relating to applicability of exemption cannot be answered.
NASA Comments	<ul style="list-style-type: none"> Advance ruling does not have binding precedence and hence one should take a considered call looking at the facts of the case and relevant provisions of law.

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

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