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TAX JURISPRUDENCE

CASE LAW ALERT – SEPTEMBER 2022

VOL- 3

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
Direct Tax		
Aditya Birla Money Mart Limited vs. DCIT [TA No.4256/Mum/ 2016 dated 19th September 2022]	Whether exceptional losses of INR 95 crores absorbed by the assessee company in relation to clients referred by it can be allowed as a deduction?	Hon'ble ITAT disallowed the claim of the assessee company as the losses incurred on the transaction shall have to be borne by the clients or have to be indemnified by ABML but in no case the losses can be shifted to the assessee company.
Indirect Tax		
Malabar Cements Ltd. [2022-TIOL-103-AAR-GST]	Whether ITC is eligible on GST charged by service provider on hiring of bus/motor vehicle having approved seating capacity of more than 13 persons for transportation of passengers? Whether ITC would be restricted to the extent of cost borne by the applicant?	Applicant would be eligible to avail ITC of GST charged by the service provider to the extent of the cost of transportation borne by the applicant.

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

DIRECT TAX

Case 1 – Aditya Birla Money Mart Limited vs. DCIT [TA No.4256/Mum/ 2016 dated 19th September 2022]

Facts in brief & Issue Involved

- Assessee company entered into a business partner agreement with its group company Aditya Birla Money Ltd. (ABML). As part of the business agreement, it had referred its existing customers as clients for the options maxima scheme offered by ABML.

- ABML introduced options maxima scheme and offered it to various customers (i.e. its own clients as well as the clients referred by assessee company) and Risk disclosure document was signed between clients and ABML which stated that losses incurred under the options maxima scheme offered by ABML would have to be borne by the clients.

- As per Clause 2.1A of business partner agreement it was agreed that assessee company would absorb all the losses or defaults, amounts due and payable by clients serviced by it to ABML.

- The loss amounting to INR 95 crores incurred by clients under the options maxima scheme offered by ABML has been absorbed by the assessee company and this was claimed as an exceptional loss by the assessee company as a deduction in the return of income.

Contentions of Assessee

- As per the business partner agreement, the assessee company was solely liable for all losses, defaults, amounts due and payable by clients serviced by it.

- The decision of absorbing losses incurred by the clients under the "Options Maxima Scheme" offered by ABML was taken in order to keep the clients in good humour

and also to maintain the goodwill of Aditya Birla group including the assessee company.

- The decision to bear the loss of the clients by the assessee company was taken as a measure of commercial expediency. On the ground of commercial expediency, the assessee relied on various decisions of the Hon'ble High Courts and Hon'ble Supreme Court before the Ld. CIT(A).

- If the assessee which carries on business finds that it is commercially expedient to incur certain expenditure directly or indirectly, it would be open to such an assessee to do so, notwithstanding the fact that a formal deed does not warrant the incurring of such expenditure.

- Heavy reliance was placed on clause 2.1A of agreement.

Contentions of Revenue

- Assessee company had got no linkage with the said transaction and there is absolutely no risk that could be fastened on the assessee company as the risk disclosure document for making investment in options maxima scheme offered by ABML has been entered only between the clients and ABML. Hence, the clients were very much aware about the possible risk that would arise in this investment transaction.

- If at all the clients are to be retained by the Aditya Birla group, then ABML should have come forward to absorb loss on behalf of the clients.

- Merely by way of business partner agreement entered into between ABML and assessee company would not make the assessee company legally liable to take over the losses of some other company for a particular transaction to which it is not at all connected with.

Observations & Decision of Tribunal

- The risk disclosure document has been signed with the concerned client by ABML wherein the risk associated with the capital market is clearly informed to the clients, the clients had clearly understood the terms and conditions of the document while making the investment in scheme. Hence any loss that had occurred to the clients in the scheme would only be the loss of the clients. In case if ABML wants to indemnify those losses to its clients, then it is for ABML to bear the said loss. But in no case, this loss could be shifted on the assessee company, which has got absolutely no role to play except introducing some of its clients to ABML to make investment in the scheme.

- The relationship between assessee company and ABML would have to be construed only as Agent and Principal relationship, wherein ABML being Principal and assessee company being the agent of ABML. The work of the agent assessee company is only to source the clients to ABML, thereafter the transaction is purely between ABML and the clients.

- There is no business conducted by the assessee company herein as far as Options Maxima Scheme is concerned. The entire activities were carried out only by ABML with its clients as well as the clients sourced by the assessee company.

- It was held that reliance placed on Clause 2.1A of Business Partner Agreement is thoroughly misplaced and devoid of merits and totally against human probabilities. It is trite law that the substance of the transaction is to be recognized than its form.

- The clients had incurred losses due to neglect of ABML, hence it is the goodwill of ABML that would be ruined and there is no question of retention of goodwill for which the assessee company absorbed this loss. Even assuming if the goodwill of the assessee company is to be retained by keeping its clients in good humour by absorbing their losses, the assessee company should have recovered the said loss from ABML as admittedly the loss had been incurred only due to neglect of ABML.

- ABML is only the main broker who had developed scheme and offered it to its clients pursuant to Risk Disclosure Document signed by the clients in favour of ABML. Hence, if there is any loss incurred on the said transaction, the same shall have to be borne only by the clients and even if the clients losses are to be indemnified, it is for ABML to absorb those losses. Hence, INR 95 crores claimed as exceptional loss representing loss under Options Maxima Scheme claimed is not allowable.

NASA Comments

- Exceptional losses on account of certain trades of referred clients cannot be allowed as deduction as there is no justification in absorbing the losses incurred by the clients referred to its group company when the assessee has merely referred its clients and was never a party to the transaction.

INDIRECT TAX

Case 1 – Malabar Cements Ltd [2022-TIOL-103-AAR-GST]

Facts in brief & Issue Involved

- Applicant is engaged in manufacturing of cement. Their factory and mines are located in remote areas which are not so easily accessible. Further, no public conveyances are available for commuting to and from factory.

- Applicant has taken on hire non-airconditioned bus with an approved seating capacity of more than 13 passengers for commuting to and from factory.

- Applicant has issued passes to employees and recovered a minimal amount from them every month. The difference between hire charges paid to vendor and nominal recovery made from the employees is borne by the applicant.

- Applicant had sought an advance ruling as to whether applicant would be eligible to avail ITC on GST paid to vendor for hiring buses. If yes, whether the same would be restricted to the extent of cost borne by the applicant?

Contentions of the Applicant

- As per amended section 17(5)(b)(i) of CGST Act, ITC is restricted in respect of leasing, renting or hiring of motor vehicles having approved seating capacity of not more than 13 persons.

- In given case, applicant is taking services of hiring of bus which has an approved seating capacity of more than 13 persons (including the driver) and it is used for purpose specified in clause (a) of Section 17(5) i.e. transportation of passengers.

- The transportation service does not constitute a supply in the hands of the applicant as it is merely a non-monetary consideration for services rendered by the employee.

- Applicant placed reliance on decision of Hon'ble Bombay High Court in case of CCE Nagpur Vs. Ultratech Cements Ltd [2010 (260) ELT 369 Bom] wherein it was held that ITC would be restricted to the extent of cost borne by the applicant.

- Maharashtra AAR in case of M/s. Tata Motors Ltd [2020-TIOL-245-AAR-GST held that ITC is available in respect of GST charged by service provider on hiring of bus having seating capacity of more than thirteen persons for transportation of employees to and from the workplace to the extent of the cost borne by applicant.

Observations & Ruling of Advance Ruling Authority

- On plain reading of Section 17(5)(a) of CGST Act, it is evident that only the tax paid on motor vehicles for transportation of persons having approved seating capacity of not more than thirteen persons (including the driver) is not available as input tax credit.

- There is no restriction in availing input tax credit of the tax paid on motor vehicles or hiring or renting of motor vehicles having approved seating capacity of more than thirteen persons.

- In the instant case, applicant has engaged the service provider to provide transportation facilities to the employees in non-airconditioned buses having an approved seating capacity of more than thirteen persons (including the driver). Further, applicant has issued passes only to their employees, so that such employees can use the transportation facility alone. Hence, applicant is eligible to avail ITC of the tax paid for hiring of bus/motor vehicle.

- Applicant cannot avail of the input tax credit of tax paid corresponding / attributable to the cost of transportation recovered from the employees.

NASA Comments

- AAR ruling appears to be in consonance with the law.

- 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.

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