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TAX JURISPRUDENCE

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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		
Mansukh Dyeing and Printing Mills [TS-904-SC-2022]	Whether amount credited to Partners' Capital account on account of revaluation of partnership firm's assets is taxable u/s 45(4)(*), in the hands of partnership firm? (*) <i>section 45(4) as it stood before substitution vide Finance Act 2021</i>	Hon'ble Supreme Court held that credit of revalued assets to partner's capital account shall be construed as 'transfer', covered within in the ambit of 'or otherwise' u/s 45(4) of the Act. Section 45(4) of the Act is applicable not only in cases of dissolution but also in cases of subsisting partners of a partnership and transferring the assets in favour of a retiring partner.
Indirect Tax		
RSB Transmissions India Ltd vs. Union of India [2022-TIOL-1426-HC-JHARKHAND-GST]	Whether interest can be levied on delayed filing of GSTR 3B even if tax was deposited on or before the due date in Electronic Cash Ledger ('ECL')?	Honorable Jharkhand High Court held that ECL is only an e-wallet where cash is deposited any time by creating challans. Tax liability gets discharged only on filing of GSTR 3B return and hence, interest will be applicable on delayed filing even if tax is deposited before due date of GSTR 3B return.

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

Case 1 – Mansukh Dyeing and Printing Mills [TS-904-SC-2022]**Facts in brief & Issue Involved**

- ♦ During AY 1993-94, assets of the assessee firm, being land and building, were revalued and an amount of INR 17.34 crore was credited to the partners' account in their profit-sharing ratio.
- ♦ Prior to the said revaluation, three partners came to be inducted by introduction of small amounts of capital ranging between INR 2.5 lakhs to INR 4.5 lakhs and the said newly inducted partners had huge credits to their capital accounts immediately after joining the partnership, which was also withdrawable by them.
- ♦ In the reassessment, AO made addition of INR 17.34 crore towards short term capital gain u/s 45(4) of the Act.

Contentions of Revenue

- ♦ Revenue contended that the revaluing of the assets, and subsequently crediting it to the respective partners' capital accounts was in effect distribution of assets and can be said to be "transfer", which was liable to capital gains tax u/s 45(4) of the Act.
- ♦ Introduction of Section 45(4) of the Act was accompanied by the omission of clause (ii) of Section 47 of the Act, which exempted transfer by way of distribution of capital assets from the ambit of the definition of 'transfer'.
- ♦ Revenue relied on the decision of Hon'ble Bombay High Court in the case of A.N. Naik Associates and Ors wherein the Court had interpreted that the word "otherwise" used in Section 45(4) of the Income Tax Act takes into its sweep not only cases of dissolution but also cases of subsisting partners of a partnership, transferring assets in favour of a retiring partner.

Contentions of Assessee

- ◆ Assessee contended that Section 45(4) of the Act comes into play on dissolution of the firm and transfer of the amount on revaluation of assets to the capital accounts of the respective partners
- ◆ Further, there can be no income just due to revaluation of capital asset in the books of assessee firm, unless the capital asset themselves are transferred.
- ◆ Assessee placed reliance on decisions of Hon'ble SC in the case of Hind Construction Ltd. and Hon'ble Bombay High Court in case of Texspin Eng. and Mfg. Works, to support its arguments.

Observations & Decision of Honorable Supreme Court


- ◆ The object and purpose of introduction of Section 45(4), vide Finance Act 1987, was to pluck the loophole in Section 47(ii) of the Act, which exempted the transfer by way of distribution of capital assets from the ambit of the definition of "transfer", whereby the assessee were avoiding the levy of capital gains tax by revaluing the assets and then transferring and distributing the same at the time of dissolution.
- ◆ Further, court emphasized the importance of words "OR OTHERWISE" in Section 45(4) of the Act.
- ◆ Honorable Supreme Court held that the partners' capital accounts stood enhanced upon revaluation, which became available for withdrawal and in fact some of the partners had withdrawn such amounts subsequently from their capital accounts. Therefore, such revaluation could be said to be a "transfer", falling in the category of "or otherwise", in terms of old section 45(4) of the Act.
- ◆ Honorable Supreme Court affirmed the view taken by Hon'ble Bombay High Court in case of A.N. Naik Associates and Ors. and distinguished its earlier ruling in case of Hind Construction, as its earlier ruling dealt with pre-amended provisions where the term "or otherwise" was absent.

NASA Comments

- ◆ Present ruling will have an impact on assesseees who had taken shelter of earlier precedents by not treating such revaluation as capital gains. Honorable SC has made clear the intent of insertion of Section 45(4) (as it stood before substitution by Finance Act 2021) and no such transaction can now escape the ambit of capital gain.
- ◆ It may be noted that decision of Bombay High Court in the case of A N Naik was with reference to distribution of assets of the firm to the partners pursuant to family settlement. Following is the operative part of the decision of the Bombay High Court:

"In our opinion, therefore, when asset of the partnership is transferred to a retiring partner the partnership which is assessable to tax ceases to have a right or its right in the property stands extinguished in favour of partner to whom it is transferred. If so, read it will further the object and purpose and intent of amendment of Section 45. Once, that be the case, we will have to hold that the transfer of assets of the partnership to the retiring partners would amount to the transfer of the capital assets in the nature of capital gains and business profits which is chargeable to tax under Section 45(4) of the Income-tax Act. "

- ◆ However, decision of Supreme Court will have impact even when there is no distribution of assets amongst partners but mere revaluation in the books of the Firm. The capital gains will have to be computed by reducing the cost of the capital asset revalued. Based on the period of holding, the gains will be chargeable to income tax as long / short term capital gains. Also, cost will have to be indexed if the capital asset is long-term.
- ◆ Notwithstanding the above decision of the Supreme Court, where the land and building is held as stock-in-trade is revalued and thereafter there is reconstitution of the Firm, this decision may not have any impact.
- ◆ Income tax Act has been amended by Finance Act 2021 with effect from AY 2021-22 by introduction of section 9B and amendment to section 45(4). These amendments deal with revaluation of capital assets and distribution of capital assets



amongst partners. Many practical issues may arise in interpretation of these sections if mere revaluation of assets is held to be a transfer eligible to capital gains taxes.

Case 1 – M/s RSB Transmissions India Ltd vs Union of India [2022-TIOL-1426-HC-JHARKHAND-GST]

Facts in brief & Issue Involved

- ◆ Department served a notice on petitioner demanding interest on account of delay in filing of returns in Form GSTR 3B. Petitioner denied the said demand on the ground that amount of tax had already been deposited in e-cash ledger prior to due date of filing of returns in Form GSTR 3B.
- ◆ Petitioner has paid the interest demanded through Form DRC-03 and also informed the department that returns in Form GSTR-3B were filed belatedly due to the technical glitch on the GSTN portal.
- ◆ Subsequently, a writ petition is filed to seek consequential relief of refund for amount collected as interest u/s 50 of CGST Act.

Contentions of Petitioner

- ◆ Interest u/s 50 of CGST Act can be levied on delayed payment of Tax and late fees u/s 47 of CGST Act can be levied on delayed filing of a returns.
- ◆ Amount deposited in e-Cash Ledger is credited in e-Cash ledger and such deposit is debited from ECL upon filing of returns in Form GSTR 3B. This is merely a fictional entry which does not postulate any further movement of money.
- ◆ Interest u/s 50(1) of CGST Act can only be levied when Government is deprived of tax beyond the due date for payment of tax and no interest could be levied on tax, which was deposited prior to due date of payment of tax i.e., prior to due date of filing of returns in Form GSTR 3B.

- ♦ If tax is considered to be paid to the Government only upon filing of GSTR 3B then interest shall be levied on both i.e. amount of tax paid by debiting from e-Cash ledger as well as from e- Credit ledger. However, contrary to this, proviso to Section 50(1) of CGST Act provides to pay interest on delay in filing of returns on the portion of tax which is paid by debiting e-Cash ledger only.

Contentions of Respondent (department)

- ♦ Following provisions were referred by the respondent:
 - **Section 39(7)** of CGST Act provides that registered person shall pay to the Government the tax due as per return not later than the last date on which he is required to furnish such return;
 - **Section 49(1)** of CGST Act provides that any deposit made are mere deposits towards tax, interest, penalty, fee or any other amount by such person which is credited to the e- Cash Ledger;
 - **Section 50(1)** of CGST Act provides that interest shall be levied on that portion of the tax that is paid by debiting the electronic cash ledger;
 - **Rule 87(6)** of CGST Rules provides that on successful credit of the amount to the concerned government account, a Challan Identification Number shall be generated by the collecting bank and the same shall be indicated in the challan;
 - **Rule 87(7)** of CGST Rules provides that on receipt of the Challan Identification Number from the collecting bank, the said amount shall be credited to the electronic cash ledger of the person on whose behalf the deposit has been made and the common portal shall make available a receipt to this effect.
- ♦ A combined reading of Section 39(7), 49(1) and 50(1) of CGST Act along with Rule 87(6) and 87(7) of CGST Rules provides that mere deposit of amount in e-Cash ledger does not mean that amount is appropriated towards payment of tax. Tax liability gets discharged only upon filing of GSTR 3B return.

- ♦ Deposits made by challans reflected in their e-Cash ledger and rest in that ledger till GSTR 3B return is filed. Only then e-Cash ledger is debited and amount deposited in Government account.
- ♦ Registered person can also claim refund from balance in e-Cash ledger after following prescribed procedures under this Act or Rules.
- ♦ There is a difference between ITC in e-Credit ledger and cash in e-Cash ledger. Balance available in e-Credit ledger is a deposit, whereas ITC is available to Taxpayer is on account of tax already paid to the Government by his suppliers. Hence, interest is computed only on amount which is paid by debiting e-Cash ledger.

Observations & Decision of Honorable High Court


- ♦ Any deposit in the Electronic Cash Ledger prior to the due date of filing of GSTR 3B return does not amount to discharge of tax liability on the part of the registered person.
- ♦ Any registered person can pay the tax not later than the last date on which he is required to furnish such return. But on filing of GSTR-3B only, the amount lying in his e-Cash Ledger is debited towards payment of tax, interest or tax liability.
- ♦ Under the scheme of the GST Act, no person can make payment of tax prior to filing of GSTR 3B return, though such deposits may be made or are lying in his Electronic Cash Ledger.
- ♦ Tax liability gets discharged only upon filing of GSTR 3B return but mere deposit of amount in the e-Cash ledger on any date prior to filing of GSTR-3B return, does not amount to payment of tax due to its State exchequer.
- ♦ Revenue has rightly computed the interest on such delayed payment and requested the petitioner to pay the same. Since the petitioner has duly discharged his liability towards interest through Form DRC-03, no case of refund of such amount arises.

- ♦ Accordingly, Writ petition is dismissed.

NASA Comments

- ♦ The confusion arises because under erstwhile Indirect tax regime as well as Income Tax Act where there was no concept of e-cash ledger or e-credit ledger. The tax liability was discharged on the time of payment of self-assessed tax.
- ♦ The amount paid by the tax payer is at disposal of Government. The interest is compensation paid to Government for using its money. In given case, Taxpayer has not used the Government's money.
- ♦ The department contended that e-cash ledger is like e-wallet. This contention doesn't seem to be correct as taxpayers has to pay CGST, SGST, IGST, Interest, Fees, Penalty etc. separately and same are parked in different heads (core and non-core) of e-cash ledger. This itself shows that payment is made towards self-assessment tax. If e-cash ledger were to be e-wallet, the amount paid should not have been parked under the different heads of e-cash ledger.

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



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