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TAX JURISPRUDENCE

CASE LAW ALERT – DECEMBER 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		
Capgemini Technology Services India Limited [TS-918-ITAT-2022(Pun)]	Whether assessee is entitled to claim set-off of brought forward long-term capital loss of the company which amalgamated with the assessee?	Referring to Section 72A and Section 74 of the Act, Honorable Pune ITAT held that assessee would be entitled to claim set-off of brought forward long-term capital loss of the amalgamated company. Further Honorable Pune ITAT, referring to Supreme Court ruling in case of T. Veerabhadra Rao, also observed that successor steps into shoes of predecessor's shoes on amalgamation.
Indirect Tax		
Yokohama India Private Limited vs The State of Telangana [(2022) 145 taxmann.com 130]	Whether GSTR-1 filed for various months of FY 2018 be rectified after expiry of prescribed time period for seeking such rectification?	Returns cannot be rectified beyond prescribed period.

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

DIRECT TAX

Case 1 – Capgemini Technology Services India Limited [TS-918-ITAT-2022(Pun)]

Facts in brief & Issue Involved

- Assessee is engaged in the business of providing software development services and IT enabled services.
- iGate Computer Systems Limited (ICSL) ('amalgamating company' / 'erstwhile company') got amalgamated with the assessee w.e.f. 1st April 2012.
- Assessee while computing total income of AY 2013-14 claimed set-off of brought long term capital loss of erstwhile company amounting to INR 109.86 crore.
- AO, referring to the provision of section 72A of the Act which allows for set-off and carry forward of only brought forward loss and unabsorbed depreciation under the head 'Profits and Gains from Business or Profession' and not 'Long term capital loss', did not accept assessee's claim.
- CIT(A) also upheld the view as canvassed by the AO.

Contentions of Taxpayer

- Assessee contended that the aforesaid scheme of amalgamation is duly approved by the Jurisdictional High Court and para 10(f) of the scheme provides that with effect from the appointed date, any exemption from or any assessment with respect to any tax which has been granted or made, or any benefit by way of set-off or carry forward, as the case may be, of any unabsorbed depreciation or other allowance or loss which has been extended to or is available to the transferor company under the Income Tax Act, 1961 should be made available to the transferee company.

Observations & Decision of the Tribunal

- On perusal of the Scheme, it is apparent that any loss which is available to the amalgamating company shall become available to the amalgamated company for necessary set-off.

- Even otherwise the law of succession puts the successor into shoes of predecessor because of which all assets and liabilities of the predecessor become assets and liabilities of the successor.

- Honorable Supreme Court in case of CIT Vs. T. Veerabhadra Rao [(1985) 155 ITR 152 (SC)] held that successor shall be eligible to claim deduction of bad debts of amount which is due to predecessor if the same is considered as income by predecessor. Further, it successor is eligible for all entitlements and deductions subject to any specific restriction given under the Act.

- Section 72A exclusively deals with set off and carry forward of brought forward losses and unabsorbed depreciation under the head Profits and Gains from Business or Profession.

- Further, section 74 of the Act deals with Losses under head Capital Gains. Section 74(1)(c) of the Act provides that "if the loss cannot be wholly set off, the amount of loss not so set off shall be carried forward to the following assessment year and so on.

- Upon clear reading of section 74, Honorable ITAT held that loss to the extent not set-off shall be carried forward and be allowed to set-off as business of the amalgamating company continues uninterruptedly by the amalgamated company and clause 10(f) of the scheme of amalgamation also allows assessee to be entitled for all benefits and allowances.

NASA Comments

- In the present decision, Pune Tribunal has allowed benefit of brought forward losses of amalgamating company to amalgamated company on the principle that after amalgamation, amalgamated company becomes successor-in-interest and accordingly assessee would be entitled to set-off brought forward capital losses. However, earlier decision of Mumbai Tribunal had decided the matter against the assessee citing that section 72A of the Act only deals with brought forward business loss and depreciation allowance and in absence of any other specific provision allowing such set-off, brought forward capital loss of amalgamating company is not allowed to be set-off in the hands of amalgamated company.

- The above decision of Pune Tribunal has taken view in favor of assessee without considering earlier decision of Mumbai Tribunal which was against the assessee. These decisions have created controversy and uncertainty for taxpayers and would only get settled when the Honorable Bombay High Court would confirm either of the views. Mumbai Tribunal decision will be binding to all those assessees under Mumbai jurisdiction.

- There is no specific provision in the Act which deals with provisions relating to carry forward and set off of capital loss in the case of amalgamation and hence in view of principles laid by the Pune ITAT the same can be carried forward and set-off to the extent of unexpired years out of eight years. It may be pertinent to note that Mumbai Tribunal in case of Supreme Industries Ltd. vs. DCIT [2008] 115 ITD 225 (Mum. Trib.) keeping in view language of section 72A has held "meaning thereby the amalgamated company would get the original period for its carry forward and set off", which justifies the view that section 72A is a beneficial provision and accordingly should not be interpreted to prohibit the carry of forward of other losses on the principles of successor-in-interest."

INDIRECT TAX

Case 1 – Yokohama India Private Limited vs The State of Telangana [(2022) 145 taxmann.com 130]

Facts in brief & Issue Involved

- Petitioner is engaged in manufacture and sale of passenger car tyres. During the period January 2018 to August 2018, petitioner supplied goods to one of its distributors M/s. Bade Miyan Wheels. However, while filing GSTR-1 for the said period, the details of distributor were wrongly mentioned i.e. details of M/s. Hyderabad Service Station were mentioned instead of M/s. Bade Miyan Wheels.

- Because of the aforesaid error, M/s. Bade Miyan Wheels was not able to avail and utilize the input tax credit as the same was not reflected in its GSTR-2A.

- Petitioner, in order to rectify its mistake, made a representation before GST authorities vide its letter dated 15.03.2021. No decision was taken by GST authorities as the time prescribed under the provisions of CGST Act for rectification of errors for the returns covering the period January 2018 to March 2018 had expired on 31st March 2019 and for the months of April 2018 to August 2018 on 30th September 2019.

- Petitioner, thus, preferred a writ petition before Honorable Telangana High Court.

Contentions of Respondent (Revenue)

- As per proviso to Section 39(9) of the CGST Act, rectification of any omission or incorrect particulars cannot be allowed after due date for furnishing of the return for the month of September or the second quarter following the end of the financial year.

- Legislature has consciously prescribed limitation period to enable taxable person to claim rectification of any omission / incorrect particulars. Once the limitation period

is over, it is not open for the taxable person to continue seeking rectification of omission / incorrect particulars.

- Reliance was placed on the decision of Honorable Supreme Court in case of Union of India vs. Bharti Airtel Ltd. (2021 (54) G.S.T.L. 257 (S.C)) wherein Supreme Court has negatived a similar request on the ground that acceding to such a request would be contrary to the statutory mandate.

Contentions of Petitioner

- Petitioner distinguished the decision of Supreme Court in Bharti Airtel Ltd. (supra) and instead submitted that the case is squarely covered by the decision of the Gujarat High Court in Siddharth Enterprises v. Nodal Officer [2019 (29) G.S.T.L. 664 (Guj.)].

- Petitioner also placed reliance on Single Bench decision of the Madras High Court in M/s. SUN DYE CHEM v. The Assistant Commissioner (ST) (W.P.No.29676 of 2019, decided on 06.10.2020) wherein Court has allowed rectification of inadvertent human error.

Observations & Decision of Honorable High Court

- The moot question is whether petitioner at this stage is entitled to claim rectification of omission / incorrect particulars in GSTR-1 filed by the petitioner for the period January 2018 to August 2018.

- Section 39(1) of CGST Act provides that every registered person for every calendar month or part thereof, furnish a return electronically of inward and outward supplies, input tax credit availed, tax payable, tax paid and such other particulars, in such form and manner, and within such time, as may be prescribed.

- Section 39(9) of CGST Act provides that if after furnishing such return, registered person discovers any omission or incorrect particulars other than as a result of scrutiny, audit etc., he shall rectify such omission or incorrect particulars in such form and in such manner as may be prescribed, subject to payment of interest etc.

- The proviso says that no such rectification of any omission or incorrect particulars shall be allowed after due date for furnishing of return for the month of September or second quarter following the end of financial year to which such details pertain.

- In other words, such rectification could be carried out after the due date for furnishing of return up to the following month of September.

- Insofar decision of the Madras High Court in M/s. SUN DYE CHEM (supra) is concerned, learned Single Judge of the Madras High Court did not examine the limitation introduced by the statute under sub-section (9) of Section 39 of the CGST Act to rectify omission/errors in GSTR-1 form.

- Supreme Cout in case of Union of India vs. Bharti Airtel Ltd. observed that law provides for rectification of errors and omissions in specified manner. Beyond the statutorily prescribed period, an assessee cannot be permitted to carry out rectification which would inevitably affect obligations and liabilities of other stakeholders because of the cascading effect in electronic records. Allowing assessee to carry out rectification of errors and omissions beyond the statutorily prescribed period would lead to complete uncertainty and collapse of the tax administration.

- Accordingly, Court dismissed the writ filed by the petitioner.

NASA Comments

- Allowing amendments in GST returns has been a pending demand from the trade since inception of GST. There have been lot of technical, procedural and unintentional errors in the initial period of GST. Government / GST council should take this matter up on priority and come out with clear guidelines / procedures to be followed in case of such common procedural and unintentional errors.

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

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