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TAX JURISPRUDENCE

CASE LAW ALERT – JANUARY 2023

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
Direct Tax		
Deputy Commissioner of Income Tax Vs Deval D. Thakkar [TS-958-ITAT-2022(Mum)]	Whether assessment can be reopened u/s 148 of the Income Tax Act, 1961 ("Act") for years wherein the time to reopen the case had already expired; in the light of the amendment to section 149 by Finance Act, 2012?	Hon'ble Mumbai ITAT has held that assessment cannot be reopened for years wherein the period of limitation had already expired under existing law before the amendment was brought in by Finance Act, 2012 to section 149(1)(c).
Indirect Tax		
Eden Real Estates Private Limited [19/WBAAR/2022-23 dated 22.12.2022]	Whether granting right to use car parking space along with residential units be considered as composite supply of construction services?	Granting right to use car parking space along with residential units shall not be considered as composite supply of construction services. It is liable to GST at 18%.

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

DIRECT TAX

Case 1 – Deputy Commissioner of Income Tax Vs Deval D. Thakkar [TS-958-ITAT-2022(Mum)]

Facts in brief & Issue Involved

- The case of the taxpayer was reopened u/s 148 of the Act for AY 1999-2000 on 27th March 2015 stating that certain incriminating material was found during search of the taxpayer's father which led the Assessing Officer ("AO") to believe that taxpayer had undisclosed foreign asset income.

- As per the provision of section 149 of the Act as applicable at the relevant time, the time limit to reopen the assessment (i.e. 6 years from the end of the end of the relevant assessment year) had already expired. However, Finance Act 2012 had amended the section 149(1) whereby clause (c) has been inserted to extend the time limit to reopen the assessment upto 16 years wherein the income in relation to any asset (including financial interest in any entity) located outside India, chargeable to tax, has escaped assessment.

- The AO, referring to the amended provisions of section 149(1)(c) of the Act, reopened the case for AY 1999-2000 by applying the period of limitation to issue notice as it is within the period 16 years from the end of the relevant AY & made addition on account of undisclosed foreign asset income.

- Aggrieved by the order of AO, the taxpayer filed an appeal before Commissioner of Income-tax (Appeal) ("CIT(A)"). The CIT (A) held that as per the erstwhile provision, the time limit for issue of notice u/s 148 expired on 31st March 2006, whereas the notice was issued on 27th March 2015. The CIT (A) following decision of Delhi High Court in the case of Brahm Datta (100 Taxmann.com 324 [Delhi]), quashed the reopening as it is barred by limitation. In the case of Brahm Datta, Delhi High Court has held that if the time limit for issue of notice u/s 148, under erstwhile provisions, is already expired as on the date of amendment to section 149(1)(c) (i.e. 1st July 2012)

then assessment cannot be reopened under amended provision even though it is within the period of 16 years.

- Aggrieved by the order of the CIT(A), Department has filed an appeal before Hon'ble Tribunal.

Contentions of Taxpayer

- Taxpayer had relied on the Delhi High Court judgement in case of Brahm Datta (Supra).

Observations & Decision of the Tribunal

- The Hon'ble Tribunal while dismissing the appeal of department held that, CIT(A) has rightly decided the legal issue raised by the taxpayer in accordance to the ratio laid by the Hon'ble Delhi High Court in Brahma Datt Vs. ACIT (supra). It was also observed that Hon'ble Supreme Court has dismissed the SLP filed against the High Court order.

- The tribunal also relied on the decision of Hon'ble Calcutta High Court in the case of Jayashree Jayakar Mohankar (ITA. (SS) Nos. 37 & 38/Kol/2018) which also concurred with the legal position as laid in the case of Brahm Datta (supra).

NASA Comments

- The view taken in the above decision is contrary to view taken by Mumbai Tribunal in case of father of the taxpayer Shri Dilip J Thakkar [TS-81-ITAT-2022(Mum)], wherein the reopening of AY 1999-2000 was upheld. However, the view taken in the aforesaid decision is identical in case of Smt. Indira D. Thakkar [ITA No. 969/M.2020]. Considering the contrary decisions of Mumbai Tribunal, controversy would only get settled by the Hon'ble Bombay High Court, however, in the meantime taxpayers can rely on the decision of Non-jurisdictional High Court.

INDIRECT TAX

Case 1 – Eden Real Estates Private Limited [19/WBAAR/2022-23 dated 22.12.2022]

Facts in brief & Issue Involved

- Applicant is engaged in construction and sale of residential apartments in the project named 'Eden City Mahestalla' wherein customers are given an option to opt for car parking space along with apartment being booked for an additional consideration.

- Applicant is treating 'right to use car parking area' as composite supply of construction services and avails rebate towards land value.

- Applicant has sought advance ruling on whether granting right to use car parking area be considered as composite supply of construction services and hence rebate towards land value is available.

Contentions of Applicant

- Granting right to use car parking area is naturally bundled with sale of apartments and hence is composite supply of supplying construction services.

- Press release of the 47th GST Council meeting clarified that preferential location charges are a part of consideration charged for long term lease of land and shall get the same GST treatment as that of long-term lease of land.

Contentions of Jurisdictional officer

- Car parking space is granted only to those customers who have opted for such facility and it is apparent that a customer can opt for such right only after purchasing the property. Hence, granting right to use car parking space cannot be considered as composite supply.

Observations & Decision of Advance Ruling Authority

- Construction services are entitled for rebate towards land value as prescribed under paragraph 2 of Notification No. 11/2017 – Central Tax (Rate) dated 28.06.2017.

- Price of the apartment and consideration charged for right to use parking space have been separately mentioned in the allotment letters. Payment schedule for the aforesaid services have also been specified in a separate manner.

- Prospective buyers of apartments are given option to avail right to use parking space for a separate consideration. The said fact delineates that such supply is altogether a separate service and cannot be treated as naturally bundled with construction service.

- Further the press release of 47th GST council meeting provides clarification only in respect of preferential location charges collected in addition to long term lease premium. The said clarification cannot be applied to facts of the applicant who provides car parking space along with sale of residential apartment.

- Granting right to use car parking space cannot be considered as composite supply of construction services and hence will be liable to GST at 18%.

- GST is payable even if right to use car parking is granted after receipt of completion certificate.

NASA Comments

- Ruling by AAR is binding only on appellant 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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