



**N.A.SHAH ASSOCIATES LLP**  
Chartered Accountants

# **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
<b>Direct Tax</b>		
<a href="#">M/s Azim Premji Trustee Company Pvt. Ltd (TS-1003-HC-2022(KAR))</a>	Whether time limit of 4 years for re-opening of assessment u/s. 148 where there is no default made by the company in making full and true disclosure of all material facts necessary for the assessment is applicable under amended provisions as well?	Hon'ble High Court held that as per proviso to Section 149(1)(b) notice issued after expiry of 4 years from the end of the relevant assessment year under "amended provisions" to be time barred as there was no fault of the assessee in making full and true disclosure of all material facts necessary for the assessment.
<b>Indirect Tax</b>		
<a href="#">Rajasthan Housing Board [RAJ/AAR/2022-23/20]</a>	<p>Whether Rajasthan housing board is covered under the definition of "Governmental Authority"?</p> <p>Whether services provided by the board such as permission for building construction, approval of map, permission of additional Floor Area Ratio, leasing of land etc are exempt?</p>	<p>Yes, Rajasthan housing board is covered under the definition of "Governmental Authority".</p> <p>Yes, the services provided by the housing board in relation to any function entrusted to a municipality under article 243W of the Constitution are nil rated.</p>

<a href="#"><u>M/s Wipro India Limited [Writ Petition No 16175 of 2022(T-RES)</u></a>	Whether the petitioner shall be allowed access to the portal for rectifying the GSTR 1 uploaded between 2017-18 and 2018-19 to enable the recipient to take credit of tax paid by petitioner.	The GST Authorities are ordered to follow the procedure laid down in Circular no. 183/15/2022 for allowing ITC in case of any bonafide errors for the years 2017-18, 2018-19 and 2019-20 as well.
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The brief analysis of above referred decisions and rulings are given below.

**Case 1 - M/s Azim Premji Trustee Company Pvt. Ltd (TS-1003-HC-2022(KAR))****Facts in brief & Issue Involved:**

- ♦ The assessee was a private limited company and was the sole Trustee of a private discretionary Trust called Azim Premji Trust (APT). As a part of an inter se transfer within the promoter group, the APT received certain securities being listed shares of Wipro Ltd., from the settlor firms as a gift to be held as the corpus of APT and these transactions were duly disclosed contemporaneously to the stock exchanges and were duly disclosed in the audited financial statements of APT for the respective financial years.
- ♦ Further, in the course of assessment full information was submitted by the assessee about the gift of Wipro shares received by the petitioner as also there was sale thereof during the same year and the market value was known to the AO post which the assessment order was passed.
- ♦ Thereafter, on 30-6-2021, which was well beyond the stipulated period of four years from the end of assessment year 2014-15, the notice under section 148 (under amended provisions) was issued to the assessee alleging escapement of income on receipt of the Wipro's shares, stating that it is liable to be taxed under section 56(2)(vii)(c).
- ♦ Subsequently, as per Apex Court ruling in the case of Ashish Agarwal(Citation), show cause notice under section 148A(b) dated 31.05.2022 was issued to the Assessee against which submissions of the assessee were rejected and Order u/s. 148A(d) was passed. Against the said Order, the assessee has filed a Writ Petition.

### **Contentions of Taxpayer:**


- ♦ The Assessee contended that all the relevant and material facts had been stated and disclosed in its income tax returns as well as the reply to the queries put forth by the AO and the same having been accepted without any demur by the AO who had concluded the assessment proceedings and passed an assessment order u/s. 143(3).
- ♦ Notice u/s. 148 dated 30-06-2021 (under amended provisions) which was issued beyond the period of limitation of four years was illegal, arbitrary and without jurisdiction or authority of law.
- ♦ A perusal of income tax returns as well as the reply submitted on 13-6-2022 to the Show cause notice u/s. 148A dated 31-05-2022 issued by the AO will indicate that the face value/book value of the shares as well as total market value of all the quoted investments including the shares had been mentioned/stated in the returns in addition to other material particulars and details and consequently, there has been no failure on the part of assessee to disclose fully and truly all material facts necessary for assessment.
- ♦ It was further contended that notice issued after 4 years from the end of the relevant assessment year under amended provisions is time barred and does not entail jurisdiction to AO for initiating re-assessment simply by changing his mind on already concluded assessment.

### **Contentions of Revenue:**

- ♦ AO contended that apart from the fact that, the impugned order is correct, legal and proper and in accordance with the judgment of the Apex Court in Ashish Agarwal's case (supra).
- ♦ It was further submitted that AO has correctly invoked Section 56(2)(vii)(c) of the I.T. Act and the proceedings initiated by the AO are well within limitation, both under the pre-amended provisions as well as after amendment and the income of the petitioner having escaped assessment.

## Observations & Decision of the Hon'ble High Court

- ♦ The Hon'ble High Court held that limitation period for issuance of notice is extendable from 3 years to 10 years only where the AO has in his possession books of account or other documents or evidence which reveal that the income chargeable to tax, represented in the form of asset which has escaped assessment, amounts to or is likely to amount to Rs.50 lakhs more for that year.
- ♦ Whereas in the instant case, the allegation of escapement of income is based only on the disclosure expressly made by the assessee itself of the gift of Wipro shares received by it and the very same information was readily available with the A.O in the original assessment order dated 28.06.2016 was passed by him and hence, Hon'ble High Court clearly stated that as per facts of the present case limitation period of 10 years (under amended provisions) would not be applicable because of change of opinion.
- ♦ Hence, Section 149(1)(a) of the Act was applicable and consequently, the proceedings pursuant to the Notice dated 30.06.2021 issued beyond the period of limitation, which expired on 31.03.2018 (within 3 years as per amended provisions) are hopelessly barred by limitation and the impugned proceedings and order deserve to be quashed.
- ♦ The Hon'ble High Court observed that proviso to Section 149(1)(b) acts as safeguard for the assessee where revenue cannot take benefit of extended time limit of 10 years under amended provision of Section 149(1)(b), for re-assessing income which got time barred on or before 01-04-2021 (i.e., within 4 years of the relevant assessment year). In the present case, it had expired on or before 01-04-2021.
- ♦ Further, the Hon'ble High Court observed that AO had categorically in his notices, sought for and examined the assessee's share demat account furnishing all particulars regarding the Wipro shares. Also, the AO had complete and full knowledge of the subject shares and their value at the time of original assessment proceedings and on this score also, it cannot be said that the income of the assessee had escaped assessment due to failure on the part of the assessee to disclose fully



and truly all material facts necessary for assessment and consequently, the impugned order deserves to be quashed on this ground also.

- ♦ It was further observed that the mandatory requirements / conditions / ingredients contained in Section 147 (pre amended) have to be complied with by the AO to issue a notice.

**NASA Comments:**

- ♦ In the present decision, Hon'ble Karnataka High Court has given clear understanding so far as interpretation of section 147 is concerned and held that time limit of 4 years is applicable even under amended provisions of section 149 of the Act. Hence, an assessee can advance arguments before the court challenging the validity of notice issued u/s. 148 (under amended provisions) if the same could not have been issued under pre-amended provisions due to the time limitation of 4 years.

## INDIRECT TAX

### Case 1 – RAJASTHAN HOUSING BOARD [RAJ/AAR/2022-23 dated 14.12.2022]

#### Facts in brief & Issue Involved

- ♦ Rajasthan Housing board ('RHB') i.e. the Applicant, established on 24<sup>th</sup> February, 1970, is constituted with the objective of promoting affordable housing with inclusive facilities for economically weaker section, low and middle income groups and competitive price options for the other sections of the society.
- ♦ The applicant has raised the following questions in its application for advance ruling:
  - 1) Whether the Rajasthan Housing Board is covered under the definition of "Governmental Authority" as defined in clause (zf) Paragraph 2 vide notification no. 12/2017-Central Tax (Rate) dated 28.06.2017?
  - 2) Whether the services provided by the Rajasthan Housing Board as governmental authority such as permission for building construction, approval of map, permission of additional Floor Area Ratio, leasing of land etc. are exempt as per Notification no. 12/2017 CTR dated 28.06.2017 as amended from time to time, under entry specified at serial no. 4 of said notification?

#### Contentions of Applicant

- ♦ The Rajasthan Housing Board (RHB) was established on 24<sup>th</sup> February, 1970 vide Rajasthan Housing Board ordinance & later on notified under section 4 of the Rajasthan Housing Board Act 1970 (Act No. 4 of 1970). The RHB is constituted by the State Government and in light of section 5 of the Rajasthan Housing Board Act, 1970 ("RHB Act"), the Chairman and all the members of RHB are appointed by the State Government.
- ♦ Administrative cost of the RHB is borne by the state government by making grant as mentioned in RHB Act. Further, for Investment of Fund other than mode specified in the Act, RHB has to take approval of the State Government.



- ♦ That the RHB is directly controlled by the State Government and all acts of the RHB are under the supervisory control of the State Government. While exercising its powers and duties under the RHB Act, the RHB shall adhere to the policies and guidelines laid down by the State Government.
- ♦ The power to dissolve RHB is given in the RHB act which empowers state government to dissolve RHB by publishing a notification in official gazette.
- ♦ Thus, the RHB is the instrumentality of the State Government and has been discharging the statutory functions assigned to it under the statute or those entrusted to it by the State Government.
- ♦ Sr. No. 4 Notification no 12/2017 – Central Tax (Rate) dated 28<sup>th</sup> June 2017 (as amended), *Services by **governmental authority** by way of any activity in relation to **any function entrusted to a municipality under article 243W of the constitution**, is exempted under GST.*
- ♦ 100% control is of the state government which is one of the pre-condition of definition of "Governmental Authority" in the notification.
- ♦ Since it is established by the government and 90% or more control is of the government, it can be treated as Governmental Authority as per said notification.
- ♦ Also, RHB is performing a public function and all the activities undertaken by them are for the welfare of the public at large. The duties and functions of RHB are similar to functions performed under article 243W read with the 12<sup>th</sup> Schedule of the Constitution.
- ♦ Thus, as per submissions the applicant is of the view that the RHB is "Governmental Authority" and the services provided by the RHB as "Governmental Authority" are duly covered under the ambit of entry 4 of the exemption Notification no. 12/2017-CT(R) as both the conditions stipulated in the said entry stands satisfied and therefore, in view of applicant the services of granting permission for Building

construction, approval of Building Map, permission for additional Floor Area Ratio, Services of Leasing of Land are exempt from GST.

### **Observations & Decision of Advance Ruling Authority**

- ♦ As per submissions made and observations derived, RHB is constituted by State Government and fully controlled by it. Therefore, it is indeed a Governmental Authority.
- ♦ Certain services provided by RHB such as permission for building construction, approval of map, permission of additional floor area ratio, leasing of land by their very nature fall in the list of services given in the 12<sup>th</sup> schedule of article 243W of the Indian constitution.
- ♦ Therefore, the said services provided by the RHB qualify for exemption as per entry no.4 of notification no.12/2017-CT(Rate) dated 28.06.2017.

### **NASA Comments**

- ♦ Ruling by AAR is binding only on appellant and its jurisdictional officer. It does not have a general binding precedence value but it may have persuasive value.
- ♦ However, the ratio of this ruling may support the contention of builders and developers that payments such as FSI premium, Incentive FSI, Plan approval fees, permissions etc. made to the Municipal Corporations are covered under exemption notification no.12/2017 upto 26.07.2018 and thereafter such activities were not liable to tax vide notification no. 16/2018-CT(R)

## **Case 2 – M/s Wipro Limited India [Writ Petition No 16175 OF 2022(T-RES)]**

### **Facts in brief & Issue Involved**

- ♦ During the period from 2017-18 to 2019-20, M/s. Wipro limited India has made the supplies to M/s. ABB Global Industries and Services Private Limited. However, while issuing and uploading the invoices in GSTR-1, GSTIN mentioned in the invoices was incorrectly shown as that of ABB India Limited.
- ♦ Due to aforesaid error, M/s. ABB Global Industries and Services Private Limited was not able to avail the input tax credit as the invoices uploaded in GSTR-1 of the petitioner were reflecting GSTIN of ABB India Limited.
- ♦ Petitioner has preferred a Writ petition before the Karnataka High Court to allow the petitioner access to the GST portal to rectify form GSTR-1 uploaded between FY 2017-18 and 2018-19 so as to enable the recipient to take credit of the tax paid by the petitioner notwithstanding the time limit prescribed in section 16(4) of CGST Act.

### **Contentions of Taxpayer**

- ♦ The senior counsel of the petitioner invites attention of the honorable High Court to the circular bearing No. 183/15/2022-GST dated 27.12.2022 to point out that petitioner as well as M/s. ABB Global Industries and Services Private Limited would be entitled to benefit of the same and the petition should be disposed of in terms of the said circular.

### **Observations & Decision of the Karnataka High Court**

- ♦ The error committed by the petitioner by mentioning wrong GSTIN in the invoices and relevant forms as that of ABB India Limited instead of M/s. ABB Global Industries and Services Private Limited is a bonafide error which has occurred due to bonafide reasons, unavoidable circumstances, sufficient cause and consequently, the


aforesaid Circular would be directly and squarely applicable to the facts of the instant case.

- ♦ M/s. ABB Global Industries and Services Private Limited has also filed a statement of objections admitting, accepting and re-enforcing the claim of the petitioner with regard to the discrepancies / mismatch in mentioning of the GSTIN Number.
- ♦ Honorable High Court opined that it would be just and proper to dispose the petition directing revenue to follow the procedure prescribed in Circular No.183/15/2022-GST. Although the Circular refers only to the years 2017-18 and 2018-19, since identical errors are committed in FY 2019-20, the Circular should also be applied for the year 2019-20 by adopting a justice-oriented approach.

### **NASA Comments**

- ♦ Taxpayers during the initial period of GST regime have faced difficulties due to technical glitches and procedural compliances stipulated in the law. Circular No 183/15/2022-GST has provided the taxpayers relief from disallowance of ITC due to such unintentional errors. Extending benefits of the Circular to FY 2019-20 is a bold and welcome step that will provide further relief to the taxpayers. One may take benefit of ratio laid down by Honorable High Court till 31.12.2021. It will be a difficult proposition for claiming of the ITC on or after 01.01.2022 due to insertion of section 16(2)(aa) of the CGST Act.

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



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B 21-25, Paragon Centre,  
Pandurang Budhkar Marg, Mumbai – 400013  
Tel: 91-022-4073 3000, Fax: 91-022-4073 3090  
E-mail Id: [info@nashah.com](mailto:info@nashah.com)

