



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

# **TAX JURISPRUDENCE**

---

CASE LAW ALERT – OCTOBER 2022  
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
<b>Direct Tax</b>		
<a href="#">Heidelberg Cement AG</a> <a href="#">[TS-751-ITAT-2022(DEL)]</a>	Whether rupee denominated Non-Convertible Debentures (NCDs) and bonds are different and cannot be treated as same for the application of section 115A / 194LD of the Income Tax Act, 1961 ("the Act") in absence of any definition of debenture under the Act?	Hon'ble Delhi ITAT following the jurisdictional High Court ruling in the case of Shree Visheshwar Nath Memorial Public Charitable Trust has held that meaning of term 'Debenture - includes bond of a company' thus deciding the issue in favor of the tax payer over Revenue's interpretation.
<b>Indirect Tax</b>		
<a href="#">Myntra Designs Private Limited</a> <a href="#">[2022-TIOL-111-AAR-GST]</a>	Whether ITC is eligible on the vouchers and subscription packages procured by applicant from third party vendors and are made available to eligible customers participating in loyalty program?	Applicant is not eligible to avail ITC as same is blocked under Section 17(5)(h) of the CGST Act 2017.

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

## DIRECT TAX

### Case 1 – Heidelberg Cement AG [TS-751-ITAT-2022(DEL)]

#### Facts in brief & Issue Involved

- ♦ Taxpayer, a Germany based company, has invested in rupee denominated Non-Convertible Debentures ('NCDs') of Indian companies (namely Zuari Cement Limited and Heidelberg Cement India Limited).
- ♦ During the relevant year under consideration, it had accrued interest income of INR 47,69,72,539 from the said NCDs.
- ♦ It had offered the said interest income to tax at 5% in accordance with section 115A read with section 194LD of the Act.
- ♦ Department took a view that the concessional rate of tax at 5% on interest income earned as mentioned in section 194LD is applicable only in case of interest earned from Rupee Denominated Bonds ('RDBs') of Indian company or a Government security whereas the tax payer has earned interest from NCDs and therefore, the said interest income should be taxed at 10% applying India-Germany Double Tax Avoidance Agreement (DTAA).

#### Contentions of Appellant

- ♦ Taxpayer placed reliance on a letter issued by the Hon'ble PCCIT to CCIT / CIT of various International Tax jurisdiction (including CIT having jurisdiction over the taxpayer) stating that in the absence of specific definition of bonds under the Act, the term 'bonds' used in section 194LD of the Act should be considered as including NCDs and accordingly the concessional rate of tax of 5% should be allowed to the tax payer.

## Observations & Decision of Tribunal

- ♦ Hon'ble Delhi ITAT referring to the decision of Hon'ble Delhi High Court in case of DIT Vs. Shree Visheshwar Nath Memorial Public Charitable Trust [(2010) 194 taxman 280 (Delhi)] observed as under:
  - In absence of any definition of term 'debenture' in the Act, reliance can be placed on the definition given in the Companies Act which provides that 'bond' is covered under the expression 'debenture'.
  - Kerala High Court in case of CIT v. Cochin Refineries Ltd. [[1983] 142 ITR 441/ [1982] 11 Taxman 135] held that in the absence of any definition of 'debenture' in the Act, reliance can be placed upon the definition given in Companies Act and common parlance meaning in which this term is understood.
  - In case where specific provision in the Act is made in respect of investment in particular kinds of bonds, restrictive meaning should not be given to the term 'debenture', more particularly when this term is not defined under the Act. It is a trite principle of interpretation that in case of absence of any definition given to a particular term in a statute, the meaning which is to be given to the said term is the meaning which is understood in common parlance.
  - As per new German dictionary, the term 'debenture' includes bond of a company or a corporation.
- ♦ Hon'ble Delhi Tribunal thereby set aside the orders of the revenue and decided the issue in favor of the taxpayer.

## NASA Comments

- ♦ The present ruling clarifies that the non-convertible debentures will be considered as bonds and interest earned on the same shall be taxed at the beneficial rate of 5% as per section 115A read with section 194LD of the Act.

## INDIRECT TAX

### Case 1 – Myntra Designs Private Limited [2022-TIOL-111-AAR-GST]

#### Facts in brief & Issue Involved

- ♦ Applicant is a major Indian fashion e-commerce company and owns an e-commerce portal (www.myntra.com). Applicant is engaged in the business of selling fashion and lifestyle products through the said portal. The suppliers of such products, intending to sell their products through the applicant's portal, list them on the portal and sell them to customers who place their order using the applicant's portal.
- ♦ Applicant, in order to incentivise the customers visiting the portal / e-commerce platform, proposes to run a loyalty program, by way of issuing points to the customers on the basis of purchases effected by the customers from various sellers on the said platform. Participation in the proposed loyalty program will be based on meeting pre-defined eligibility criteria laid down by the applicant and the same will be subject to acceptance of the applicant's terms and conditions.
- ♦ The loyalty program will lead to increased footfall and sales through the said platform and thus, will directly impact and enhance the amount of commission earned by the applicant in the course of its business.
- ♦ Applicant has sought an advance ruling as to whether it would be eligible to avail input tax credit ('ITC') on the vouchers and subscription packages procured from third party vendors that are made available to the eligible customers participating in the loyalty program against the loyalty points earned / accumulated by the said customers?

#### Contentions of the Applicant

- ♦ The loyalty program operates in a specified manner and the applicant does not give the vouchers and subscription packages to every customer but is restricted only to the eligible customers participating in the said loyalty program.

- ◆ Applicant procures the vouchers and subscription packages from third party vendors upon payment of GST. Applicant itself is not in the business of supplying the said vouchers and subscription packages. The vendors raise invoices on the applicant by classifying their outward supply under SAC 9983 as "other professional, technical and business services".
- ◆ The expenditure incurred by the applicant in running the loyalty program and procuring the said vouchers and subscription packages is wholly and exclusively for the purpose of business of the applicant and the same is allowed under Section 37 (1) of the Income Tax Act in computing the income chargeable under the head "Profits and gains of business or profession".
- ◆ Applicant made further submissions stating that:
  - Eligibilities / conditions as specified u/s 16 of CGST Act for claiming input ITC is fulfilled;
  - Procurement of voucher and subscription packages is for 'business' of the applicant;
  - ITC is neither restricted nor blocked under Section 17 of the Act;
  - Even the bar under Section 17(5)(h) of the CGST Act 2017 is also not applicable as the supply of vouchers & subscription packages by the third party vendors has been classified as 'service' but not as 'goods';
  - Vouchers, irrespective of being goods or not, will be offered only under contractual obligation for which consideration may not be explicitly specified by the applicant as the same will not be given free of charge and hence can't be termed as 'gift' to the customers;
  - Credit of input tax paid on such purchases for business was available under the erstwhile regime as well; and
  - Beneficial interpretation is required to be applied to the present case.

## Observations & Ruling of Advance Ruling Authority

- ♦ Section 17(5)(h) of CGST Act blocks ITC in respect of goods lost, stolen, destroyed, written off or disposed of by way of gift or free samples. The issue, therefore, is whether the inward supply i.e. the vouchers merits classification as 'goods' or 'service' and if they are goods, whether they were disposed of by way of gift or otherwise.
- ♦ Subscription packages procured by the applicant from third party vendors and supplied to customers against loyalty points is a 'voucher' defined u/s 2(118) of CGST Act as it places an obligation on the potential supplier to accept it as consideration for supply of goods or services to the holder of the instrument or the customer. Thus the subscription package has all the required qualities to qualify as a voucher.
- ♦ Section 2(52) of CGST Act defines 'goods' to mean every kind of movable property other than money and securities but includes actionable claim.
- ♦ From the above definition it is seen that the term 'goods' is not restricted to tangible property, instead refers to every kind of movable property which is capable of being transmitted or supplied. Vouchers are a movable property, capable of being transmitted electronically or supplied physically, thus they qualify as 'goods'. Further Schedule II to Section 7 of the CGST Act 2017 stipulates any transfer of the title in goods is supply of goods. The transaction of supply of vouchers in the instant case involves transfer of the title and hence they are covered under supply of goods.
- ♦ Applicant, in a particular transaction, recovers the full amount from the customer for such transaction and gives the loyalty points free of cost. The loyalty points do not have any monetary value, are non-transferable and cannot be converted to cash. The redemption of loyalty points, admittedly, involves no flow of consideration from the customer.
- ♦ Thus, it is implied that vouchers are issued free of cost to the customer and amounts to the disposal of vouchers (goods) by way of gift and is squarely covered under clause (h) of Section 17(5).


- ♦ Applicant is, therefore, not eligible to avail ITC on vouchers and subscription packages u/s 17(5)(h) of CGST Act.

### **NASA Comments**

- ♦ View can be taken that vouchers and subscription packages are distributed pursuant to the declared loyalty program. The distribution of such vouchers and subscription packages pursuant to declared loyalty program is a contractual obligation. It is not a gratuitous and voluntary transaction amounting to 'gift'. Hence, ITC should not be blocked u/s 17(5)(h) of CGST Act.
- ♦ Ruling by AAR is binding only on applicant and its jurisdictional officer. It does not have a general binding precedence value.

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





The contents provided in this newsletter are for information purpose only and are intended, but not promised or guaranteed, to be correct, complete and up-to-date. The firm hereby disclaims any and all liability to any person for any loss or damage caused by errors or omissions, whether such errors or omissions result from negligence, accident or any other cause.

B 21-25 & B41-45, Paragon Centre,  
Pandurang Budhakar Marg, Mumbai – 400013  
Tel: 91-022-4073 3000, Fax: 91-022-4073 3090  
E-mail Id: [info@nashah.com](mailto:info@nashah.com)

