N. A. SHAH ASSOCIATES LLP
Chartered Accountants

TAX JURISPRUDENCE

CASE LAW ALERT – NOVEMBER 2022
VOL-2

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		
DSV Solutions Private Limited [TS-869-ITAT-2022(Mum)]	Whether draft assessment order not forwarded at address stipulated under Rule 127 of Income-tax Rules, 1962 ("the Rules") is barred by limitation?	Hon'ble Mumbai ITAT held that draft assessment order is barred by limitation as the Revenue failed to forward the draft assessment order to the Assessee within the prescribed time at the address stipulated under Rule 127 of Rules.
Indirect Tax		
Bambino Pasta Food Industries Pvt Ltd. [TS-581-AAR(TEL)-2022-GST]	Whether ITC is available on CSR expenditure spent by the company?	The expenditure towards corporate responsibility under section 135 of the Companies Act, 2013, is an expenditure made in the furtherance of the business. Hence the tax paid on purchases made to meet the obligations under corporate social responsibility is eligible for input tax credit under GST
M/s. Mahavir Nagar Shiv Shrushti Co-op Housing Society Limited [[TS-576-AAAR(MAH)-2022-GST]	Whether a society can avail ITC on inputs and input services for repairs, renovations & rehabilitation works carried out by them?	Society cannot be said to be providing works contract services to their members and therefore ITC on the same is not eligible.

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

DIRECT TAX

DSV Solutions Private Limited [TS-869-ITAT-2022(Mum)]

Facts in brief & Issue Involved:

- During the year under consideration, the returned income of the taxpayer was proposed to be subjected to variations prejudicial to its interests as a consequence of the order passed under section 92CA(3) of the Income-tax Act, 1961 ("the Act").

- Accordingly, the Assessing Officer was required to "forward" a draft assessment order to the taxpayer within the time prescribed under section 153 read with section 144C of the Act which in present case was 31.12.2018.

- There was a change of address which was intimated to the Assessing Officer vide letter dated 25.05.2018. Consequently, notice under section 142(1) of the Act dated 25.10.2018 was sent at the new address.

- The Assessing Officer passed two draft assessment orders dated 10.12.2018 and the same were not "forwarded" at the new address. Rather one was said to be served to Mr. G R Apte, Manager Taxation of the taxpayer on 04.01.2019 and other was said to be served on 12.02.2019.

- However, none of these draft assessment orders were forwarded by the Assessing Officer to the taxpayer within the permissible time limits and hence were time barred as argued by the taxpayer.

Contentions of Revenue:

- The Revenue contended that the address was taken as in the PAN database as on the date of order and and the tax payer could not be aggrieved of the use of old address as the taxpayer had updated the PAN database only on 02.01.2019.

Observations & Decision of the Mumbai Tribunal

- The Tribunal observed as under:

  - Proviso to rule 127(2) of the Rules specifically provides that the address given in database ceases to be applicable when an assessee "furnishes in writing any other address for the purposes of communication to the income-tax authority or any person authorised by such authority issuing the communication".

  - Change of address was intimated to the Assessing Officer vide letter dated 25.05.2018.

  - The notice dated 25.10.2018 issued under section 142(1) of the Act was on the new address and the address on the assessment order is not a system generated order. The mere fact of non-updation of database does not result in being used as the default address.

  - The last income tax return filed by the taxpayer had the new address.

  - The taxpayer has given a copy of the challan bearing SRN G8988103, evidencing the updation of the MCA database for the new address on 14.06.2018.

  - In the report dated 10.03.2022, the Assessing Officer takes the stand that "due to time barring pressures, the old address might have been mentioned due to oversight".

  - The speed post which was sent by the Assessing Officer on 10.12.2018 appears to have been returned by the postal department.

  - There is nothing to show that the Assessing Officer complied with the requirement of the second proviso to rule 127(2) of the Rules.

  - Notes that Revenue attempted sending the draft assessment order multiple times, but to old address, opines that unless there were lapses in the actions of

the Assessing officer, there was not even a need of multiple efforts to forward the draft assessment order to the taxpayer.

- Based on the above observations, the Tribunal held the draft assessment order to be barred by limitation.

NASA Comments:

The present ruling lays down a fundamental principle that draft assessment order is to be forwarded at the address stipulated under Rule 127 of the Rules within prescribed time limit. It is also important for the taxpayer to immediately intimate the Assessing Officer in writing about change in their communication addresses so that any communication from revenue authorities is received without any delay and same is complied with.

INDIRECT TAX

Case 1 –Bambino Pasta Food Industries Pvt Ltd. [TS-581-AAR(TEL)-2022-GST] - TELANGANA STATE AUTHORITY FOR ADVANCE RULING

Facts in brief & Issue Involved

- The applicant Bambino Pasta Food Industries is a manufacturer of Vermicelli and pasta products.

- During Covid time, Applicant has donated oxygen plant to AIIMS hospital Bibinagar, Yadadri Bhongir District, for the benefit of patients who were suffering with low oxygen levels. For this purpose, the applicant has purchased PSA oxygen plant for Rs. 62,74,200 which includes IGST paid of Rs 9,16,200. The Applicant has filed an advance ruling application seeking the admissibility of ITC on the Corporate Social Responsibility (CSR) expenditure done by it.

- The applicant is of the view that the expenditure incurred for CSR is mandatory under sec.135 of the Companies Act, 2013 to run its business and becomes an essential part of its business process. CSR expenditure does not fall under sec 17(5)(h) of CGST Act'2017 which restricts credit in respect of goods lost, stolen, destroyed, written off or disposed of by way of gift or free samples as the CSR expenditure is obligatory in nature whereas gift is a voluntary transfer of property without any consideration or compensation there for and hence, eligible for ITC u/s 16(1).

- It is also the contention of the applicant that CSR expenditure is in connection or incidental to business as it is such an expenditure that is not incurred for earning immediate profits but is necessary for maintaining its profit-making ability.

Observations & Decision of AAR

- As per the statutory provisions of the Companies Act, 2013, the Companies with a specified net worth or net profit are obliged to incur a minimum of 2 % of their net profit towards their corporate social responsibility and failure to do so attracts penalty under sub section 7 of sec.135 of the said Act which may go upto a maximum

of Rs.1 Cr. Thus, the running of the business of a company will be substantially impaired if they do not incur the said expenditure. Therefore, the expenditure made towards corporate responsibility under section 135 of the Companies Act, 2013, is an expenditure made in the furtherance of the business. Hence the tax paid on purchases made to meet the obligations under corporate social responsibility will be eligible for input tax credit under CGST and SGST Acts.

NASA Comments

- CESTAT Mumbai in Essel Propack has allowed CENVAT in respect of CSR expenses as it has a direct bearing on smooth functioning of a Company.

- There are different views taken by advance ruling authorities in respect of ITC eligibility of CSR expenses:

    - Gujarat AAR in Adama India Pvt. Ltd. [TS-505-AAR(GUJ)-2021-GST] – held that ITC is not eligible

    - UP AAR in Dwarikesh Sugar Industries Ltd [TS-1238-AAR(UP)-2020-GST] – held that ITC is eligible

    - Telangana AAR (as discussed in this alert) held that ITC is eligible

- Ruling by AAR (favorable or otherwise) is binding only on appellant and its jurisdictional officer. It does not have general binding precedence value.

- There are contrary decisions of Advance ruling authorities on the ITC eligibility on CSR expenses. We are of the considered view that ruling of Telangana Advance Ruling Authorities allowing ITC in respect of CSR expenses is a well-reasoned ruling on the subject.

Case 2 – M/s. Mahavir Nagar Shiv Shrushti Co-op Housing Society Limited [[TS-576-AAAR(MAH)-2022-GST]

Facts in brief & Issue Involved

- The appellant is a registered co-operative housing society having bye laws (amongst others) with the following objects:
  - To manage, maintain and administer the property of the society;
  - To raise funds for achieving the objects of the society;
  - To undertake and provide for, on its own account or jointly with a co-operative institution, social, cultural or recreative activities.

- The Appellant in order to comply with its bye-laws had further appointed a contractor for carrying out major repairs, renovations and rehabilitations works for the society.

- The appellant had sought an advance ruling before Maharashtra Authority for Advance Ruling (MAAR) as to whether the appellant is eligible to claim the ITC on inputs and inputs services for repairs, renovations & rehabilitation works carried out by the Appellant. MAAR held that appellant is not eligible to claim such ITC.

- Aggrieved by the adverse order of MAAR, the appellant has filed an appeal.

Contentions of the Appellant:

- The Appellant stated that the classification of the services and the applicability of the rate will be determined as per notification No. 11/2017-CT (R) dated 28.06.2017 and the Explanatory notes to the Scheme of Classification of services.

The appellant is receiving works contract service and further providing works contract service without altering its characteristics in addition to the regular membership services provided to its members.

- The Appellant is the main contractor for providing works contract services to its members and therefore restrictions imposed under sec. 17(5)(c) of CGST Act are not applicable.

Observations & Ruling:

- The AAAR authority observed that although the appellant has not mentioned on their invoices SAC of the services being provided, they will be covered under the heading 9995 having description "services of membership organization", as all the underlying services provided by the appellant are under the capacity of the co-operative society only, which is nothing but a membership organization.

- A society provides many services such as security, cleaning, etc. under the same head as "maintenance charges" whereby the appellant is not claiming to be the provider of the aforesaid services. Similarly, the appellant is not a works contract service provider, although it claims to be, but a provider of services of membership organization.

- The AAAR authority upholds the ruling passed by the MAAR and disallows the ITC of the tax paid on works contract services received.

NASA Comments:

- Ruling by AAR is binding only on appellant and its jurisdictional officer. It does not have general binding precedence value.

- It is unclear from the facts of the case whether the Applicant has raised a contention that blockage of credit u/s sec. 17(5)(c) and (d) applies only when the expenditure is capitalized to immovable property. Usually, the repairs and maintenance expenses are not capitalized to the immovable property but routed through Income and Expenditure account of the society. If repairs and renovation expenditure is debited to Income and Expenditure account, the blockage u/s 17(5)(c) and (d) does not trigger.

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