



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

# **TAX JURISPRUDENCE**

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CASE LAW ALERT – JULY 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
<b>Direct Tax</b>		
<a href="#">BLP Vayu (Project – 1) Pvt. Ltd. vs. PCIT [2023] 151 taxmann.com 47 (Delhi Trib.)</a>	Whether PCIT can assume jurisdiction u/s 263 of the Act for prejudice caused to Revenue due to non-verification of FMV of shares and failure by AO to examine genuineness of transaction and creditworthiness, in respect of shares issued at premium by wholly owned subsidiary to its holding company?	Issue of shares by wholly owned subsidiary to its holding company does not lead to accrual of any income in the hands of the ultimate beneficiary i.e. the holding company and hence, provisions of Sec. 56(2)(viib) would be inapplicable for such transactions. Accordingly, since no prejudice could possibly result to Revenue, exercise of supervisory jurisdiction by PCIT u/s 263 would be completely unjustified.
<b>Indirect Tax</b>		
<a href="#">Profisolutions Private Limited [2023-TIOL-68-AAR-GST]</a>	Whether services provided by branch office to head office through employees who are common of the company constitute a supply of service and thereby liable to GST?	Services, including the services of common employees of a person, provided by branch office to head office and vice versa, each having separate GST registration, will attract GST liability.
<a href="#">Godrej Properties Limited [2023-TIOL-77-AAR-GST]</a>	Whether applicant is liable to discharge GST liability on sale of plot, development charges and amenities charges in case where the booking of plot, receipt of	Applicant is not liable to charge GST on plot of land and on basic infrastructure development.  Applicant is liable to charge GST

	<p>consideration and agreement for sale is-</p> <ul style="list-style-type: none"> <li>i. entered as well as sale deed is executed after the release certificate; and</li> <li>ii. entered prior to release certificate and sale deed is executed after receipt of release certificate.</li> </ul> <p>What is the applicability of GST if the sale price is a consolidated price towards land cost, basic infra development charges and other common amenities and facilities charges?</p>	<p>on other common amenities and facilities charges.</p> <p>If the sale price is a consolidated price, then charges proportionate to common amenities and facilities charges are applicable to GST.</p>
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The brief analysis of above referred decisions and rulings are given below.

**Case 1 – BLP Vayu (Project – 1) Pvt. Ltd. vs. PCIT [2023] 151 taxmann.com 47 (Delhi – Trib.)****Facts in brief & Issue Involved**

- ♦ BLP Vayu (Project – 1) Pvt. Ltd. ("taxpayer") was a company engaged in the business of generating and dealing in electricity and all forms of energy and power generated by wind and other conventional and non-conventional methods.
- ♦ The return filed by the taxpayer for AY 2014-15 at Rs. Nil was accepted by the AO, without any modifications, during the course of assessment proceedings.
- ♦ During FY 2012-13, the taxpayer had received an amount of Rs. 6 crores from BLP Energy Pvt. Ltd., the 100% holding company of the taxpayer.
- ♦ Against the said amount, the taxpayer issued 5,13,978 shares of Rs. 10 each @ Rs. 1,284.10 per share, to its holding company.
- ♦ During the course of assessment proceedings, the AO had accepted the fair market value of shares as submitted by the taxpayer, based on valuation report and finalized the assessment without making any modifications.
- ♦ However, the PCIT observed that the AO had not carried out an independent examination of the justification of share premium. Further, the AO had also failed to examine the genuineness of the transaction and creditworthiness of the persons from whom share premium had been received thereby rendering the assessment order, erroneous and prejudicial to interest of Revenue.

**Contentions of Taxpayer**

- ♦ The taxpayer contended that the compliance of Sec. 56(2)(viib) was duly verified by AO during the course of assessment for AY 2014-15 and hence, the concern expressed by the PCIT was thus totally unfounded.

- ♦ Further, shares were allotted to 100% holding company and none else and therefore, there was no warrant to invoke the deeming fiction of Section 56(2)(viib), in the context of the instant case.
- ♦ Also, the allotment of shares was carried out in accordance with valuation report towards calculation of FMV as per Rule 11UA(2)(b).

### **Contentions of Revenue**

- ♦ The Revenue contended that AO was required to examine the justification of huge share premium with regard to FMV, genuineness of the transaction and the creditworthiness of the subscriber.
- ♦ Failure of AO to discharge his quasi-judicial functions and thereby, perfunctorily accepting the position taken by the assessee without any meaningful enquiry had caused grave prejudice to the Revenue and hence, the action of PCIT was within the wide amplitude of revisional powers.

### **Observations & Decision of the Hon'ble Delhi ITAT:**

- ♦ The Tribunal observed that the instant transaction, when seen holistically, did not confer any benefit on the assessee. Instinctively, it is a transaction between the self, if so to say.
- ♦ The Tribunal further observed that the objective behind the provisions of Section 56(2)(viib) is to prevent unlawful gains by issuing company in the garb of capital receipts. In the instant case, not only the FMV is supported by an independent valuer report but allotment has been made to existing shareholder holding 100% equity and therefore, there is no change in the interest or control over the money by issuance of such shares.
- ♦ Accordingly, the Tribunal held that the object of deeming unjustified premium charged on issue of shares u/s 56(2)(viib) is wholly inapplicable in the instant transaction where no income can be said accrue to the ultimate beneficiary i.e. holding company.

## **NASA Comments**

- ♦ The said ruling establishes a principle that when shares are issued by wholly owned subsidiary to its 100% holding company, no benefit is derived by such subsidiary since on a holistic view, the transaction is between self and control over the money does not change as a result of such issuance of shares.
- ♦ Accordingly, provisions of deeming unjustified share premium u/s 56(2)(viib) do not get attracted in such cases.
- ♦ As a corollary, no prejudice can be caused to Revenue due to non-verification of share premium in such cases and hence, PCIT cannot exercise revisionary jurisdiction u/s 263 of the Act.

### Case 1 – Profisolutions Pvt Ltd [2023-TIOL-68-AAR-GST]

#### Facts in brief & Issue Involved

- ♦ The applicant has its registered office in Bengaluru and a branch office in Chennai, both of which are separately registered under GST legislation.
- ♦ The branch office provides support services like engineering services, design services, accounting services, etc. to the registered office in Bangalore.
- ♦ Applicant had sought a ruling as to whether services provided by branch office in one State to head office in another state through common of the company constitute a supply of service in terms of Section 7 the Act and thereby liable to GST?

#### Contentions of Applicant

- ♦ Common employees, through which services are provided by the branch office to its head office, are appointed and work for the company as whole and not for a particular branch office.
- ♦ Though head office and branch office are treated as distinct person, services provided by employees to their employer are covered under Schedule III to CGST Act and hence, not liable to GST.

#### Observations & Decision of AAR

- ♦ Applicant from branch office has supplied, apart from accounting services, various technical services to head office in other state where their factory is located, to fulfil the product design requirement of the customers.
- ♦ Applicant stated that employees are appointed and working for company as whole and not employed for head office or branch specifically, while recognizing the legal position that head office and branch office are distinct person under GST legislation. It is obvious that the service of an employee working in a branch flow only through the branch to the head office or customer. If the employee is

deployed in a branch of an entity, his services that are rendered directly to head office will be in his representative capacity as an employee of the branch.

- ♦ Entry 2 to Schedule I of CGST Act specifically provides that supply of goods or services or both between related persons or between distinct persons as specified in section 25 shall be treated as supply even if made without consideration.
- ♦ Section 25(4) of CGST Act provides that a person who has obtained GST registration in more than one State shall, in respect of each such registration, be treated as distinct persons. Hence, the branch office and the head office will be treated as distinct persons for GST legislation.
- ♦ Any supply of service between two registrations of the same person in the same state or in different States attract the provisions of Section 25(4) and Section 7 read with Schedule I entry 2.
- ♦ Even the services of employees deployed in a registered place of business to another registered premises of the same person will attract the provisions discussed above, as the employees are treated as related person in terms of explanation to Section 15 and treated as supply by virtue of entry 2 of Schedule I to CGST Act, 2017.

### **NASA Comments**

- ♦ Ruling by AAR is binding only on applicant and its jurisdictional officer. It does not have a general binding precedence value, but it may have persuasive value.

### **Case 2 – Godrej Properties Limited [2023-TIOL-77-AAR-GST]**

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

- ♦ Applicant owns non-agricultural undeveloped immovable property and is now developing the Property III to be registered as "Godrej Woodland-Phase III" which shall comprise of 266 residential plots.
- ♦ Sale consideration of the plots includes consideration towards plot of land, development of basic infrastructure prescribed by authorities in the approved plan



as well as cost for providing all other specified common facilities and amenities in the project.

- ◆ Further, the cost of electrical connectivity to the common amenities, water line and plumbing till the plot, etc. is included in the sale consideration.
- ◆ Upon receipt of release certificate from the competent authority, applicant shall offer the purchasers to take the possession of the plot within two months from the date of issue of such release certificate.
- ◆ Applicant has sought advance ruling in respect of the following questions:
  - Whether applicant is liable to discharge GST liability on sale of plot; development charges; and amenities charges in case where the booking of plot, receipt of consideration and agreement for sale is:
    - entered as well as sale deed is executed after the release certificate; and
    - entered prior to release certificate and sale deed is executed after receipt of release certificate.
  - What is the applicability of GST if the sale price is a consolidated price towards land cost, basic infra development charges and other common amenities and facilities charges?

### **Contentions of Applicant**

- ◆ Applicant contends that sale of land is neither a supply of goods nor supply of service as per Entry 5 of Schedule III to CGST Act. Since the sale of land is neither a supply of goods nor supply of service, it would not matter whether the land is developed or undeveloped. Both kinds of land would neither be a supply of goods nor services.
- ◆ Where booking of plot, agreement of sale and sale deed are entered into after receipt of release certificate from the competent authorities, then the entire consideration would be towards sale of developed land and hence, would not be liable to GST due to Entry 5 of Schedule III to CGST Act. Accordingly, consideration received towards plot of land, basic infrastructure development and other common amenities and facilities received after release certificate would not be liable to GST.

- ♦ Further, para 14 of Circular No. 177/09/2022 TRU dated 03.08.2022, clarifies that sale of developed land is covered by Entry 5 of Schedule III of CGST Act and hence, not liable to GST.
- ♦ Thus, based on the above analysis, applicant was of the view that sale of plot, basic infrastructure development charges and other common amenities & facilities charges is not liable for GST.
- ♦ Further, where booking of plots and / or agreement of sale is entered and / or advances from customers are received prior to receipt of release certificate by applicant from competent authority, then the amount attributable to transfer of title in land would not be liable to GST being covered under Entry 5 of Schedule III of CGST Act.
- ♦ Applicant relies on the decision of the Advance Ruling No. KAR ADRG 31/2022 in the case of M/s. Rabia Khanum wherein it was ruled that advances received sale of plot was not liable to GST.
- ♦ In case where single price is charged for sale of plot, basic infrastructure development charges and other common amenities and facilities charges in the agreement for sale, it is not liable for GST considering the above-mentioned ruling in case of M/s. Rabia Khanum and Circular No. 177/09/2022-TRU dated 03.08.2022.

### **Observations & Decision of AAR**


- ♦ Applicant is launching the project first by calling for application and booking the plots collecting advance money and then taking up the development activities.
- ♦ Further, the development project involves three activities:
  - Sale/Transfer of plots to the prospective plot owners
  - Transfer of basic infrastructure to the local authorities by relinquishment of title of roads, drains, park, etc.
  - Transfer of other common amenities and facilities like club house etc. to the common association or apex body, as the case may be.

- ♦ AAR verified various clauses of draft agreement of sale as produced by the applicant and stated that the applicant has separately collected the consideration towards the following:
  - Plot area;
  - Basic infrastructure development charges; and
  - Other common amenities and facilities.
- ♦ AAR opined that as far as consideration towards the plot area is concerned, it is clear that the same is covered under entry 5 of Schedule III, and hence the transaction shall be treated neither as a supply of goods nor a supply of services.
- ♦ Basic infrastructure charges are collected to provide the basic infrastructure facilities like electricity access up to the plot, water and sewerage access up to the plot and roads, etc. These are mandatory requirements for release of plots and the plots become the saleable plots only after the provision of these basic infrastructure and facilities. They are a part and parcel of the consideration for the plot though collected and shown separately. Hence the consideration collected towards basic infrastructure development is part of the consideration towards the plot and is not a consideration for a separate supply.
- ♦ Club house and other common amenities / facilities are provided as a service with no transfer of title to land or buildings and hence would not be covered under entry 5 of Schedule III of the CGST Act. What is provided is only a service of access to the service facilities and hence is liable to tax and does not form part of the consideration for the land or building.

These are also not mandatory facilities to be provided as per any law. The ownership rights on the above facilities are found to be still remaining with the promoter and the promoter can assign these facilities to anyone of his choice and the purchaser is only provided with access rights.

Hence, this provision of access rights for a separate consideration would definitely form a separate supply under the provisions of Section 7(1) of the CGST Act, 2017


- ♦ In case of consolidated amount charged for land cost, basic infrastructure development charges and other common amenities and facilities charges, there is only service of access to club house and common amenities which is considered as



a supply as explained above and hence, the value proportionate to club house and common amenities will be liable to GST.

### **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.



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