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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
Direct Tax		
Shelf Drilling Ron Tappmeyer Limited vs. ACIT, PCIT and UOI [TS-431-HC-2023(BOM)]	Whether the time limit given under Section 153 (3) of the Act would be in addition to the time prescribed under Section 144C of the Act? Whether the period of time limit prescribed under Section 144C of the Act get subsumed in the time limit prescribed under Section 153(3) of the Act?	The time limit prescribed under Section 153 of the Act would prevail over and above the assessment time limit prescribed under Section 144C of the Act. This is because the Assessing Officer may follow the procedure prescribed under Section 144C of the Act, if he deems fit necessary but then the entire procedure has to be commenced and concluded in time limit provided under Section 153 of the Act.
Indirect Tax		
Suncraft Energy Private Limited Vs. Assistant Commissioner of State Tax. [MAT No. 1218 of 2023 with I.A. No.CAN 1 of 2023]	Whether denial of Input Tax credit (ITC) to the recipient without conducting a proper investigation of the supplier is justified?	Hon'ble Calcutta High Court held that the demand notice issued to appellant for reversing ITC could not be sustained without proper inquiry into the supplier's actions.
Bitumix India LLP vs Dy. Commissioner of Revenue, State Tax (MAT No. 1011 of 2023 with I.A. No. CAN 1 of 2023)	Whether goods transported by same vehicle after generating a new e-way bill can be detained on ground that first e-way bill was not renewed and whether order imposing penalty of 200 % can be passed?	Hon'ble Calcutta High Court set aside the order imposing penalty @ 200 % on the grounds that violation was not grave enough, and petitioner were directed to pay a penalty of Rs. 50,000/-.

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

Case 1 – Shelf Drilling Ron Tappmeyer Limited vs. ACIT, PCIT and UOI [TS-431-HC-2023(BOM)]

Facts in brief & Issue Involved:

- ♦ The Petitioner's Return of Income for Assessment Year 2014-15 was selected for scrutiny by issue of notice u/s 143(2). The AO (ACIT) passed draft assessment order against which the petitioner filed its objections before the DRP in accordance with section 144C of the act. DRP did not accept Petitioner's case and by an order gave its direction. Based on that, the AO passed a final assessment order under section 143(3) r.w.s 144C of the act.
- ♦ Aggrieved by the said final assessment order, Petitioner filed an Appeal before the Income Tax Appellate Tribunal (ITAT). The ITAT passed order dated 4th October 2019, disposing the appeal, remanded the matter to the AO for fresh adjudication.
- ♦ During the course of the proceedings, various allegations were imposed against the petitioner against which the petitioner duly filed its response. Thereafter the AO passed draft assessment order dated 28th September 2021.
- ♦ Petitioner has filed its objections on 27th October 2021 before the DRP. In the meanwhile, Petitioner also filed this petition challenging the impugned order dated 28th September 2021 on various grounds, the preliminary ground being that the limitation period has expired on 30th September 2021 under Section 153(3) of the Act read with the provisions of the Taxation and other laws (Relaxation and Amendment of Certain Provisions) Act, 2020 and the Notification issued thereunder.
- ♦ Therefore, no final assessment order can be passed in the present case as the same is time barred. In view thereof, the Return of Income as filed by Petitioner should be accepted.

Contentions of Taxpayer:

- ♦ In the present case, date of ITAT's order was 4th October 2019 when it was remanded to the AO for denovo consideration. The due date as per Section 153(3) read with proviso thereto provided that the limitation to pass fresh order pursuant to the order of ITAT would expire on 31st March 2021, i.e., 12 months from the end of the financial year in which the order was received by the specified authority. In view of the Notification no.10/2021 dated 27th February 2021 issued by the CBDT the time to pass the assessment order was extended to 30th September 2021.
- ♦ The date on which the draft assessment order has been passed is 28th September 2021. Therefore, there was no possibility of passing any final assessment order in the present case as the matter got time barred on 30th September 2021. As the final

assessment order has not been passed before the said date the proceedings are rendered to be now barred by limitation. In view thereof, the Return as filed by Petitioner should be accepted.

Contentions of Revenue:

- ♦ The time limit given under Section 153 (3) of the Act would be in addition to the time prescribed under Section 144C of the Act. The period of time limit prescribed under Section 144C of the Act does not get subsumed in the time limit prescribed under Section 153(3) of the Act.
- ♦ The provision of Section 144C of the Act with a non obstante clause was inserted later than the incorporation of the non obstante clause in Section 153 of the Act. The later non obstante clause shall prevail over the already existing one.
- ♦ Section 153 of the Act is a general provision dealing with all assessees and all types of orders as compared to Section 144C of the Act which deals only with regard to matters pertaining to 'eligible assessee' and orders are passed wherein assessee has choice to file objections before the DRP. Long established jurisprudence holds, for matters covered by special provisions, the overlapping general provisions must yield ground to the special provisions.
- ♦ As per the decision of Hon'ble Madras High Court in Roca Bathroom that the time limit under Section 153 of the Act would not refer to passing of draft order but to passing of the final order. The consistent understanding of officers of the Revenue as also of the Bar and assessee before this decision was that the limit applied to draft orders and not the final orders. Thus such an interpretation that makes key machinery provisions become unworkable should be rejected as assessee do not have any vested right in procedural aspects of ongoing assessments.
- ♦ Section 144C of the Act was held to be a self-contained code by the earlier decision of the **Hon'ble Madras High Court in the case of CIT vs Sanmina SCI India (P.) Ltd.** Once 144C of the Act is held to be a complete code then for all things dealt by it, it would prevail over other provisions including Section 153 of the Act. Hence the decision of the **Hon'ble High Court in Roca Bathroom (SB) (Supra)** that the time limit given under Section 153 of the Act would prevail over and subsume the time limit prescribed under Section 144C of the Act is per incuriam.

Observations and Decision of the Hon'ble High Court of Bombay:

- ♦ Section 144C(13) specifically excludes the provisions of Section 153 stating that the Assessing Officer shall pass a final order of assessment even without hearing the assessee, in conformity with the directions issued by the DRP within one month from the end of the month when such directions were received by him. The exclusion of Section 153/153B is specific to, and kicks in only at the stage of passing of final

assessment order after directions are received from the DRP, and not at any other stage of the proceedings under Section 144C and hence, the entire proceedings would have to be concluded within the time limits prescribed.

- ♦ In present case, the ITAT has remanded back the matter to AO by passing order on 4th October 2019, the time limit for passing the fresh assessment order will be twelve months from the end of the financial year in which the order under Section 254 was received as per section 153(3) of the Act.
- ♦ Section 144C of the Act is a self contained code of assessment and time limits are inbuilt at each stage of the procedure contemplated. Section 144C envisions a special assessment. The purpose of this section is to fast-track a special type of assessment. That cannot be considered to mean that overall time limits prescribed have been given a go by in the process.
- ♦ Moreover, Explanation-1 below Section 153 of the Act also provides for the periods which have to be excluded while computing the twelve months period mentioned in Section 153 (3) of the Act. There is no mention anywhere about Section 144C of the Act.
- ♦ Having considered the language of Section 144C and 153, we cannot accept that the provisions of Section 153 are excluded to the operation of Section 144C. The AO may follow the procedure prescribed under Section 144C of the Act, if he deems fit necessary but then the entire procedure has to be commenced and concluded within the twelve months period provided under Section 153 (3) of the Act.
- ♦ We find support for this view in Roca Bathroom (SB) (Supra) and Roca Bathroom (DB) (Supra). In the circumstances, since no final assessment order can be passed in the present case as the same is time barred, the Return of Income as filed by Petitioner be accepted.
- ♦ Writ petition filed by petitioner for AY 2018-19 is also allowed on the similar ground directing to accept the income as per return of income filed as no final assessment order can be passed after 30th September 2021 under section 153(1) of the Act.
- ♦ This would however, not preclude the Revenue from taking any other steps in accordance with law.

NASA Comments:

- ♦ Bombay High Court has confirmed that time limit prescribed u/s 153 is outer time limit and it overrides section 144C also which is self-contained code.
- ♦ This will be relevant wherever the AO has passed draft order before the expiry of time limit prescribed under section 153 and final order was passed after expiry of such time limit. Additional ground can be taken for all the pending appeals. However, there are internal instructions for the departments to seek adjournments where grounds of appeals are filed on this issue.

- ♦ Further, the AO may reopen such cases where the final assessment order has not been passed within the time limit prescribed u/s 153 if it falls within the timeframe (3 years/ 10 years) of section 147 of the Act.

INDIRECT TAX

Case 1 – M/s Suncraft Energy Private Limited [MAT No. 1218 of 2023 with I.A. No.CAN 1 of 2023]

Facts in brief & Issue Involved

- ♦ During the course of the business, appellant has affected the inward supplies from the various vendors and full payment was made against the said inward supplies.
- ♦ One of the vendors had not reported some invoices in its GSTR-1 which results in non-reflection of such invoices in the GSTR-2A of the appellant.
- ♦ A Show Cause Notice (SCN) was issued for recovery of the ITC availed by the appellant without conducting any enquiry on the supplier and without effecting any recovery from the supplier.
- ♦ SCN was adjudicated and a demand for payment of tax along with applicable interest and penalty was confirmed under section 73(10) of the Act.
- ♦ Aggrieved by the impugned order, the appellant had first preferred the writ petition. However, the said writ petition was disposed by directing the appellant to prefer a statutory appeal before the appellate authority.

Contention of the Appellant

- ♦ All the conditions as stipulated under Sub-section (2) of Section 16 were fulfilled and a valid tax invoice has been issued by the supplier against which payment was made within the time stipulated under the provisions of the Act
- ♦ The GST authorities have erred in reversing the ITC availed and directing the appellant to deposit the tax which has already been paid to the supplier at the time of availing the goods/services.
- ♦ Appellant has relied upon the press release dated 18.10.2018 and 04.05.2018 to substantiate their argument that the ground on which the first respondent had passed the impugned order of recovery of tax is wholly unsustainable.

- ♦ The appellant is in possession of a valid tax invoice and payment details to the supplier have been substantiated by producing the tax invoice and the bank statement. Despite all the conditions fulfilled by the appellant for availing ITC.

Observations & Decision of High Court

- ♦ The Bench referred to press release dated 18/10/18 wherein a clarification was issued stating that furnishing of outward details in Form GSTR-1 by the corresponding supplier(s) and the facility to view the same in Form GSTR-2A by the recipient is in the nature of taxpayer facilitation and does not impact the ability of the taxpayer to avail ITC on self-assessment basis in consonance with the provisions of Section 16 of the Act.
- ♦ The bench observed that the GST authorities has not conducted any enquiry on the on the supplier more particularly when clarification has been issued where furnishing of outward details in Form GSTR 1 by a corresponding supplier and the facility to view the same in Form GSTR 2A by the recipient is in the nature of tax payer facilitation and does not impact the ability of the tax payers to avail input tax credit on self-assessment basis in consonance with the provisions of Section 16 of the Act. Furthermore, it was clarified that there shall not be any automatic reversal of input tax credit from buyer on non-payment of tax by seller.
- ♦ The appeal is allowed with a direction to the appropriate authorities to first proceed against the supplier and only under exceptional circumstance as clarified in the press release issued by CBIC, then only proceedings can be initiated against the appellant.

NASA Comments

- ♦ The Calcutta High Court has given great relief to the taxpayers who have been receiving demand notices on account of non-reporting or non-payment of GST by the suppliers.
- ♦ This judgement also provides clarity on the issue of disallowance of ITC without proper investigation by the GST Authority and emphasis to conduct thorough inquiries into supplier actions before acting against recipients.

Case 2 – BITUMIX INDIA LLP [MAT No. 1011 of 2023 with I.A. No. CAN 1 of 2023]

Facts in brief & Issue Involved


- ♦ The goods were being transported by the petitioner to Assam under the e-way Bill which was valid up to 18-3-2022. The vehicle broke down and the goods were stationed at Dankuni (WB) on 18-3-2022.
- ♦ The consignee in the meantime sold the goods which were in transit to another purchaser in Assam and the goods were transported by the same vehicle after generating a new e-way Bill on 22-3-2022.
- ♦ The vehicle was detained on 25-3-2022 and order for penalty has been passed on the ground that first e-way Bill on 18-3-2022 had not been renewed/extended.
- ♦ A charge under Section 129 of the CGST Act and WBGST Act has been led against the petitioner resulting in an imposition of 200 % penalty.

Observations & Decision of High Court

- ♦ There is no dispute about the date and time. The goods were intercepted on 25-3-2022 and the petitioner had a valid e-way bill.
- ♦ The only mistake committed by the petitioner is not renewing the first e-way bill since the goods were sold in transit.
- ♦ It is held that there is a violation committed by the petitioner, but the violation is not as grave enough for imposition of penalty at 200% as on 25-3-2022 the requirements under section 129 of the Act are satisfied.
- ♦ The order imposing penalty @ 200 % was set aside and modified with the direction to pay liability of Rs. 50,000/-.

NASA Comments

This order provides relief for minor errors in documentation however taxpayer should also be more careful about documentation for movement of goods to avoid any issues during the transportation.



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