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# **TAX JURISPRUDENCE**

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CASE LAW ALERT – OCT 2024 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="#">ACIT vs. Vallabh Roopchand Bhansali (2024) 166 taxmann.com 488</a>	The sole issue under consideration is whether the 'off-market' sale of listed shares by the assessee to a sister concern was a legitimate tax planning exercise or a colourable device designed to evade tax by creating artificial losses to offset long-term capital gains?	The ITAT held in favour of the revenue, restoring the Assessing Officer's (AO) decision that the off-market sale of shares constituted a colourable device for tax evasion thereby rejecting the assessee's claim that the transaction was part of legitimate tax planning.
<b>Indirect Tax</b>		
<a href="#">M/s. Little Brain Works Private Limited vs Union of India and Others. (Andhra Pradesh High Court W.P. No.14108/2020 decided on 1.5.2024)</a>	Whether the petitioner shall be allowed to file refund application manually, where deficiency memo was issued on account of non-submission of LUT on portal within designated period while filing the refund application?	The Hon'ble High Court of Andhra Pradesh observed that the rules and procedures are for effective and timely redressal of the grievance and not for destroying the rights or to defeat the legitimate claims, thereby allowed the petitioner to file the requisite documents manually.
<a href="#">Santosh Kumar N.S. Vs the Assistant Commissioner of Customs (High Court of Kerala WP(C) No.21645 of 2024).</a>	Refund application of export with payment of tax has been rejected on the grounds that the appellant had neither made application within two years from the date of export nor tax has been paid at the time of export?	The Kerala High Court held that as per rule 96 of CGST Rules, the shipping bill filed by the applicant at the time of export of goods will be considered as application of refund for IGST.

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

**Facts in brief & issues involved:**

- ♦ The assessee was an individual with income from various sources, including income from investments in shares and mutual funds, director's remuneration, house property, interest, and dividends. The return of income for A.Y. 2017-18 was filed declaring total income of Rs. 4.10 crore.
- ♦ The assessee sold shares of two listed companies, Ansal Properties and Welspun Enterprises, to his sister concern (M/s Everfresh Enterprises, where the assessee held 60% stake, and his son held 40%). These sales were conducted through an off-market transaction.
- ♦ The assessee declared long-term capital gains (LTCG) of Rs. 49.59 crore, which were exempt under Section 10(38) of the Income Tax Act. Simultaneously, the assessee declared long-term capital losses (LTCL) of Rs. 16.15 crore from the off-market sale of shares, seeking to set off these losses against other gains.
- ♦ The AO deemed this arrangement as a tax evasion scheme. The off-market sale of shares was considered a colourable device as the assessee retained control over the shares through his sister concern and artificially created losses to offset gains.
- ♦ The Commissioner of Appeals overturned the AO's decision, holding that the sale was part of permissible tax planning and should be allowed, against which the Revenue challenged it before Hon'ble ITAT.

**Contention of the Assessee:**

- ♦ The assessee contended that the off-market sale of shares was a part of legitimate tax planning. He argued that such transactions, whether on-market or off-market, were allowed by law and that there was no requirement for transactions to be conducted exclusively through stock exchanges.
- ♦ The assessee claimed that the shares were sold at the prevailing market prices, and the off-market sale did not result in any violation of the legal provisions. Therefore, the sale price was appropriate, and the method of sale should not affect the tax treatment of the transaction.

- ◆ Further, the right to adopt tax planning measures to minimize his tax liability is within the legal framework. The off-market sale, according to the assessee, was a commercial decision driven by legitimate tax planning considerations.
- ◆ Based on these arguments, the assessee insisted that the long-term capital losses (LTCL) resulting from the off-market sale should be allowed to be set off against long-term capital gains (LTCG) for the current year and future years.

### **Contentions of the Respondent:**

- ◆ The AO argued that the off-market sale was not a legitimate transaction but a colourable device a scheme deliberately designed to evade taxes. The transaction was artificial and lacked any real commercial substance.
- ◆ The Revenue highlighted that despite the off-market sale of shares, the assessee retained effective control over the shares. The sister concern to which the shares were transferred was controlled by the assessee (holding 60% ownership) and his son (holding the remaining 40%). Therefore, there was no real transfer of ownership or risk, making the transaction a sham.
- ◆ The main contention of the Revenue was that the sole purpose of the transaction was to create artificial capital losses to offset taxable gains. The Revenue emphasized that such artificial losses, generated solely for the purpose of tax avoidance, could not be allowed under the tax laws.
- ◆ The Revenue cited the Supreme Court judgments (*McDowell & Co. Ltd. v. CTO and Vodafone International Holdings BV v. Union of India*), which clearly state that while tax planning within the law is acceptable, using dubious methods to evade taxes is impermissible. The Revenue contended that the assessee's transaction violated the spirit of these rulings.

### **Observation and Decision of the Tribunal:**

- ◆ The Hon'ble ITAT observed that the off-market sale lacked commercial substance. While the legal form of the transaction appeared to comply with certain provisions, the actual substance indicated that the assessee retained control over the assets, and the transaction was primarily aimed at reducing taxable income artificially.
- ◆ It was noted that the transfer of shares to the sister concern was done without any real economic loss. The assessee maintained control over both the shares and the consideration, and this artificial transfer of assets was used to generate losses for offsetting gains hence, it appeared to be a clear case of tax avoidance.

- ♦ The ITAT reinforced the application of the “substance over form” doctrine in tax matters. The essence of the transaction, rather than its form, was scrutinized. The ITAT found that the substance of the transaction was an arrangement aimed at tax evasion, not a legitimate business or investment decision.
- ♦ Although GAAR (General Anti-Avoidance Rule) was not applicable in this assessment year, the tribunal referred to anti-avoidance principles, which emphasize that transactions lacking real commercial substance designed for tax avoidance should not be allowed. This reinforced the view that the transaction was structured solely to reduce taxable income.
- ♦ In light of the above findings, it set aside the decision of the Commissioner (Appeals) and restored the original decision of the Assessing Officer (AO), which disallowed the set-off of artificial long-term capital losses thereby ruling it in favour of the Revenue, stating that the entire arrangement was aimed at tax evasion.

#### **NASA Comments:**

- ♦ The ruling underscores the importance of maintaining commercial substance in transactions involving related entities. Taxpayers should be cautious when engaging in tax planning strategies, ensuring that such transactions are not merely structured to artificially reduce taxable income.
- ♦ Taxpayers engaging in related-party transactions, especially involving off-market dealings, must ensure that these transactions align with the principles of fairness and do not contravene provisions of the Act.
- ♦ Taxpayers must ensure that their tax planning activities are within the legal framework, and any arrangements that appear artificial or devoid of real commercial intent may attract adverse rulings.

## INDIRECT TAX

### **Case 1 - M/s. Little Brain Works Private Limited vs Union of India and Others, (Andhra Pradesh High Court W.P. No.14108/2020 decided on 1.5.2024)**

#### **Facts in brief & issues involved:**

- ♦ M/s Little Brain Works Private Limited [hereinafter referred to as 'Petitioner'] was engaged in the business of providing services of extra-curricular activities to schools.
- ♦ Petitioner filed an application for refund for FY 2018-19. However, failed to submit the LUT for FY 2018-19 on portal within stipulated time.
- ♦ A deficiency memo dated 31.12.2019 against refund application was issued with the remark that no supporting documents were attached.
- ♦ Since the portal was closed, deficiencies pointed out could not be addressed and hence, petitioner was not able to file the fresh application.
- ♦ Petitioner filed the writ petition before the High Court and requested a directive for the department to either process the existing refund application or permit the manual submission of the requisite documents.

#### **Contention of the Petitioner:**

- ♦ The Petitioner argued that the portal's closure hindered their ability to adhere the directives of deficiency memo and hence to not able to file fresh application.

#### **Observation and Decision of High Court:**

- ♦ The Hon'ble High Court of Andhra Pradesh ruled that the petitioner's right to refund should not be denied due to unavailability of filing of LUT on online portal. The rules or procedures made are for effective and timely redressal of the grievance and not for destroying the rights or to defeat the legitimate claims.
- ♦ Consequently, the Court allowed the petitioner to submit the refund application along with requisite documents manually within the period of two weeks along with the copy of this order before the Competent Authority.
- ♦ Further instructing the authority to evaluate the refund claim and render the decision within a six-week period, ensuring that the manual filing would not constitute grounds for rejection.

### **NASA Comments:**

- ♦ The ruling by Hon'ble high court carves out an important guide for the instances where procedural hurdles obstruct the course of justice.
- ♦ Although relief was eventually granted by the High Court, it is crucial for vigilant taxpayers to methodically follow all the prescribed procedures.

### **Case 2 - Santosh Kumar N.S. Vs the Assistant Commissioner of Customs (High Court of Kerala WP(C) No.21645 of 2024).**

#### **Facts in brief & issues involved:**

- ♦ Santosh Kumar [hereinafter referred to as 'Petitioner'] has exported certain goods in March 2021 and paid the tax amounting to Rs. 2,66,400/- IGST on 13.01.2023.
- ♦ According to the petitioner IGST was paid however no refund has been granted by the department in respect of the goods exported on the grounds that the refund application was not filed within a period of two years from the date of export,
- ♦ Petitioner claims that filing of shipping bill in case for export of goods itself is application for refund, as per Rule 96 of CGST Rules.

#### **Contention of the Petitioner:**

- ♦ The petitioner argued that the shipping bill is itself an application for refund in case of export with payment of tax as per rule 96 of CGST Rules and since the tax has been paid by the petitioner within a period of two years from the date of export, he is entitled to a refund of IGST paid and the claim must be considered by the competent authority

#### **Contention of the Respondent:**

- ♦ The petitioner has not made the payment of IGST, which is sought to be refunded, either at the time of filing shipping bill or during the monthly returns for the relevant period.
- ♦ The petitioner has not made any application for refund of IGST within a period of two years from the date of export and the tax on such supply is also paid late by the petitioner.



### **Observation and Decision of High Court:**

- ♦ The Hon'ble High Court of Kerala held that, as the provision of Rule 96 of CGST Rules, the department shall consider the shipping bill filed for export of goods as an application of refund for IGST.
- ♦ Further the department to pass orders after taking into consideration the fact and circumstances of the case.

### **NASA Comments:**

- ♦ Even though the GST rules are amply clear that the shipping bill filed by the exporter of goods shall be deemed to be an application of refund of IGST paid on the goods exported, this ruling by Hon'ble high court would help taxpayers in cases where department denies the refund application merely on the ground the application is time barred i.e. not filed within a time of two years from the date of export.



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