N. A. SHAH ASSOCIATES LLP
Chartered Accountants

TAX JURISPRUDENCE

CASE LAW ALERT – DECEMBER 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
Direct Tax		
Hasmukh Dipchand Gardi Vs. Asstt. Commissioner of Income Tax, Central Circle –5(2) [Mumbai Tribunal] [(TS-887-ITAT-2024 (MUM)]	i. Whether it is mandatory for the AO to pass a Draft Assessment Order ("DAO") in case of Non-resident assessee in accordance with the procedure laid down under section 144C? ii. Whether failure to pass a DAO in case of non-resident is a curable defect under section 292B? iii. Whether the procedural irregularity in non-passing of DAO can be remedied by restoring the case back to the AO for fresh adjudication?	The Hon'ble Mumbai Tribunal has held that Non-resident has been included in the definition of eligible assessee under section 144(C) by Finance Act 2020; accordingly, it is mandatory to pass a DAO before passing the final assessment order. Non-passing of DAO is a jurisdictional error and not merely procedural error or irregularity. Hence, it is not a curable defect under section 292B and cannot be remedied by restoring back to the AO.
M/s. IDFC Financial Holdings Co. Ltd Vs. The DCIT, Corporate Circle – 2(2), Chennai. (ITA No. 241/CHNY/2024) (04.12.2024)	Whether advance tax in respect of Capital Gains arising after 15th March of the financial year be deemed as income arising in 4th quarter and whether payment of same within 31st March considered as advance tax paid within due date?	The Hon'ble Chennai Tribunal has held that the liability to pay advance tax in respect of transactions resulting in capital gains after 15th March then advance tax liability should be discharged by 31st March of the financial year.

Indirect Tax		
Rejimon Padickapparambil Alex vs Union of India & Ors [TS-781-HC(KER)-2024-GST]	Whether IGST reflected in GSTR 2A of the petitioner which is claimed in GSTR 3B as CGST and SGST can be considered as excess claim of ITC warranting reversal in CGST/SGST?	The Hon'ble High Court of Kerala held that there is no wrong availment of credit and the mistake committed by the petitioner was inadvertent. The High Court declared that there is no excess availment of credit for the purpose of initiating proceeds under Sec 73 of GST Act.

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

DIRECT TAX
Hasmukh Dipchand Gardi Vs. Assistant Commissioner of Income Tax, Central Circle –5(2) [Mumbai Tribunal] [(TS-887-ITAT-2024 (MUM)]

Facts in brief & issues involved:

- The taxpayer is an individual aged 80 years, residing in the UK since 1973 and moved to Dubai in 1991 and therefore is a Non-resident.

- A search was conducted at the taxpayer's premises, and notices were issued under Section 153A of the Act. The taxpayer filed returns in response to the notices but failed to comply with subsequent notices during the assessment proceedings. As a result, AO completed the assessment under Sections 153A/143(3) with various additions. However, the AO bypassed the mandatory draft assessment process under Section 144C, applicable to the taxpayer as an eligible assessee (non-resident) per the Finance Act, 2020.

- The taxpayer appealed to the CIT(A), but the appeal was dismissed, with the CIT(A) ruling that procedural irregularities did not justify quashing the assessment, especially given the taxpayer's non-compliance despite adequate opportunities.

- Aggrieved by the CIT(A) order, the taxpayer preferred an appeal before the Hon'ble ITAT.

Contentions of the Assessee:

- The taxpayer is an eligible assessee as per the amendment to section 144C. The amended provisions will apply to all assessment orders to be passed on or after the amendment even for AY's prior to the date of amendment. Further, section 144C of the Act is a non-obstante provision over-rides section 153A, whereas section 153A is also a non-obstante clause but overrides only specific sections dealing with assessment/re-assessment; thus, before passing the final assessment orders pursuant to the search proceedings, the AO ought to have passed draft assessment orders.

- Passing of final assessment order without passing the draft assessment orders is without jurisdiction and is incurable defect u/s 292B of the Act. They cannot be set-aside for fresh adjudication. Hence, the assessment orders passed by the AO should be quashed.

Contentions of the Respondent:

- The taxpayer was non-compliant during the search assessment proceedings despite the fact that adequate opportunities were provided.

- The defect in non-passing of the draft assessment order is merely a technical defect and can be cured u/s 292B of the Act, more so in the light of non-compliant attitude of the taxpayer.

- As per section 144C (16), provisions of the section 144C are not applicable to search assessments.

Observation and Decision of the Hon'ble Mumbai Tribunal:

- As per the Finance Act, 2020 amendment to Section 144C, the taxpayer qualifies as an eligible assessee, and the amendment applies to all assessment orders passed after 01.04.2020, regardless of the assessment year or the taxpayer's cooperation during the proceedings.

- The Hon'ble Mumbai ITAT observed that the procedure prescribed u/s. 144C is a mandatory procedure and not directory and failure to follow such procedure is a jurisdictional error and not merely procedural error or irregularity. Hence, omission on the part of AO to pass draft order is not curable and provisions of section 292B cannot come to the rescue of the department. It relied on plethora of judgements including the jurisdictional High Court for this proposition.

- The Hon'ble ITAT also observed that the mandatory procedure laid down in the Act cannot be remedied by restoring the file to AO since a jurisdictional error. Failure to issue a draft assessment order denies the assessee the opportunity to take corrective actions and challenge the order.

- The Hon'ble ITAT also stated that the contention of the respondent that the provisions of section 144C are not applicable to search proceedings doesn't stand since the amendment is brought by Finance Act, 2024; effective 01.09.2024 and is prospective in nature.

- Since the assessment order passed u/s 153A/143(3) without complying with the mandatory provision section 144C of the Act could not be cured in any manner, the Hon'ble ITAT quashed the assessment orders passed against the taxpayer.

NASA Comments:

- This is a welcome judgment after amendment made by Finance Act 2020 to include every non-resident within the definition of "Eligible Assessee". Most of the decisions on this principle only touched assessee which were subject to transfer pricing assessment.

- The AO must follow the mandatory procedure of issuing a draft assessment order under Section 144C, even if the taxpayer is non-compliant. This jurisdictional error cannot be rectified under Section 292B. There are catena of judgments on which the taxpayer can rely on in this regard.

- The judgment reinforces the established principle that jurisdictional errors in assessment proceedings, such as failing to issue a draft assessment order under Section 144C, cannot be rectified under the provisions of the Income Tax Act. Unlike procedural errors, which may be cured under specific sections such as Section 292B, jurisdictional errors are non-curable, as such errors invalidate the assessment process as they violate mandatory legal requirements. This ensures adherence to the rule of law and protects the taxpayer's procedural rights.

M/s. IDFC Financial Holdings – Co. Ltd Vs. The DCIT, Corporate Circle – 2(2), Chennai (ITA No. 241/CHNY/2024) (04.12.2024)

Facts in brief & issues involved:

- The asessee, a public company is a wholly owned subsidiary of IDFC Limited. It declared a total income of Rs. 58,23,49,060/- under the normal provisions and deemed income of Rs.1,42,31,14,669/- u/s 115JB of the Act for the assessment year 2019-20 and paid tax on book profit being higher.

- The aforesaid income includes Capital Gains income on sale of investments on 28.03.2019. On the said capital gain income, the assesssee computed and paid advance tax on 31.03.2019.

- While processing the return u/s. 143(1) of the Act, CPC quantified interest u/s. 234C at Rs. 1,48,04,175/- as against Rs. 29,51,188/- thereby enhancing the same by Rs. 1,18,52,988/-.

- The CPC computed interest u/s. 234C of Rs. 1,48,04,175/- by considering capital gain income as a part of total income for all the quarters of the assessment year 2019-20. Aggrieved, an appeal was filed before CIT(A) whereby intimation was upheld.

- Aggrieved with the order of Ld. CIT(Appeals), the assessee preferred an appeal before the Tribunal.

Contention of the Assessee before Tribunal:

- The assessee contended that capital gain income arise on 28.03.2019 and it has paid advance tax on 31.03.2019 and accordingly it has rightly computed advance tax. Accordingly, it was submitted that the CPC has wrongly computed interest u/s. 234C of the Act by considering income from capital gains from sale of investments done on 28.03.2019 as part of total income for all the quarters instead and in place of 4th quarter, arising after 15.03.2019.

Contentions of the Respondent:

- The DR relied on intimation passed by CPC and order passed by CIT(A).

Observation and Decision of the Hon'ble Chennai Tribunal:

- The Hon'ble Chennai Tribunal observed that there was no dispute that the provisions of section 234C of the Act are applicable in case of book profit calculated under provisions of section 115JB of the Act and it also noted the fact that the assessee has promptly computed and paid advance tax which is not challenged by the revenue. The issue has arisen due to the unanticipated transaction of sale of investment of Rs. 1.40 crores on 28.03.2019.

- The Hon'ble Chennai Tribunal further observed that the similar issue was dealt by it previously in case of M/s. Hamilton Industries Pvt Ltd (ITA No.218/Mum/2022) for AY 2018-19 wherein it has observed as under:

  - Second proviso to section 234C of the Act which states that sub-section (i) and (ii) of the section shall not apply to any shortfall in the payment of tax due on returned income which is on account of underestimate or failure to estimate the amount of capital gains.
  - Assessee has promptly discharged its liability of advance tax on 31.03.2019.
  - The Circular no 13/201-Income Tax, dated 09-11-2001, issued by the CBDT, the decision of Hon'ble Supreme Court in the case of CIT Vs Rolta India Ltd and decision of Hon'ble

Bombay High Court in the case of JCIT Vs Summit Industries Ltd which were relied on and decided in favour of revenue were distinguished by the Hon'ble Tribunal.

- The provisions of section 234C(1) of the Act do not apply to shortfalls in advance tax arising from unexpected income or windfall gains if the assessee pays the entire tax liability for such windfall gains in the remaining advance tax instalments or, if no instalments remain, by 31st March of the financial year.
- This relaxation is subject to condition that the assessee has paid the whole amount of advance tax payable in respect of his total income (including windfall gains, if any), as part of the remaining installments of advance tax or before 31st March of the financial year.

- Referring to the above decision, the Hon'ble Tribunal observed that the liability to pay advance tax in respect of transactions resulting in capital gains arises only after transaction has taken place or occurred and the assessee has duly discharged its liability of Advance Tax by 31.03.2019.

- Keeping in view the above, the Hon'ble Tribunal respectfully following the above decision directed to delete additional interest of Rs.1,18,52,988/- (i.e Rs. 1,48,04,175 – Rs. 29,51,188) levied u/s. 234C of the Act.

NASA Comments:

- Aforesaid decision has correctly interpreted the law and provided much needed relief to the bona-fide tax payer discharging its tax liability on timely manner.

INDIRECT TAX

Case 1 – Rejimon Padickapparambil Alex vs Union of India & Ors [TS-781-HC(KER)-2024-GST]

Facts in brief & Issue Involved

- Rejimon Padickapparambil Alex (the appellant) runs a proprietorship concern with the name and style 'Padiken Silks'.
- The appellant received various interstate inward supplies on which IGST was paid by him during FY 2017-18.
- The appellant, instead of availing the IGST credit split the IGST credit into CGST and SGST in GSTR 3B leading to mismatch between GSTR 3B and GSTR 2A.
- A SCN for FY 2017-18 was issued by the assessing authority demanding the return of CGST/SGST utilized in excess by the appellant. An order confirming the demand was issued by the assessing authority.
- The appellant aggrieved by the order of assessing authority preferred a writ petition which was dismissed by a learned single judge.
- The petitioner thus has preferred a Writ appeal before the Kerala High Court.

Contentions of Taxpayer

- The appellant contends that the demand in impugned order is wholly sustainable since there is no excess utilization of credit.
- The appellant contends that he was entitled to take credit on the IGST paid and the only mistake was that appellant had not shown IGST credit separately and rather split the amount in CGST and SGST since he did not have any outward supply that attracted IGST.
- During the course of hearing, the Hon'ble High Court was also presented with a copy of the order passed by Assistant commissioner of Central tax, Bengaluru, on an identical case where the Assistant commissioner has relied on Circular No.192/04/2023-GST dated 17th July 2023 stating that the analogy of the above circular is that the GST system treats the electronic credit ledger as a unified resource, and interest is incurred if, collectively, the

available funds fall below the amount of wrongly availed credit during the specified period. Consequently, the Assistant commissioner contended that since there is no loss of revenue to the government, the show cause notice is liable to be dropped.

Contentions of Respondents

- The Respondent contends that since the appellant has claimed CGST and SGST instead of IGST, this mismatch had resulted in the appellant utilising 'unavailable credit' towards payment of CGST and SGST on outward supplies

Observations & Decision of the Kerala High Court

- The Hon'ble court states that it finds the order of the Assistant Commissioner, in the identical matter, to represent the correct view of the procedural law and demonstrates that revenue officials even at the level of Assistant Commissioner are capable of rendering timely and effective justice in our country.

- It states that proceedings initiated under section 73 of the GST Act are attracted only in case when it appears to a proper officer that any tax has not been paid or short paid or erroneously refunded, or where input tax has been wrongly availed or utilised for any reason. The case clearly reveals that there is no incorrect claim of ITC and the only mistake committed by the appellant was an inadvertent and technical one. The mistake was also insignificant because it is not in dispute that there was no outward supply attracting IGST that was effected by him.

- The High Court allowed the Writ Petition.

NASA Comments

- The ruling is a welcome judgment which would enable the taxpayers to legitimize their claim of ITC in cases where ITC has been claimed under incorrect head and there is no revenue loss to the government.

B 21-25, Paragon Centre,
Pandurang Budhakar Marg, Mumbai – 400013
Tel: 91-022-4073 3000, Fax: 91-022-4073 3090
E-mail Id: info@nashah.com