

TAX JURISPRUDENCE

CASE LAW ALERT – FEBRUARY 2025
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EXECUTIVE SUMMARY OF JUDGEMENTS 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		
<u>KEC International Limited Vs DCIT (Bombay High Court) Income Tax Appeal No. 324 of 2003</u>	Whether merely reproducing computation of book profit u/s 115J of The Income Tax Act, 1961 ('the Act') in the assessment order u/s 143(3) amounts to examination of the correctness of the said computation? Whether the PCIT can subsequently issue a revisionary order u/s 263 in respect of such assessment order?	The Bombay High Court ("HC") held that merely reproducing computation of book profit u/s 115J of the Act for comparison with income assessed under normal provisions in an assessment order u/s 143(3), does not amount to examination of the calculation of the said book profit. Consequently, the said order is erroneous and prejudicial to the interest of the revenue, and the PCIT can revise the said order in accordance with provisions of Section 263 of the Act.
Indirect Tax		
<u>Joint Commissioner of Commercial Taxes (Appeals-1) v. Nam Estates (P.) Ltd. - [WP 1195 of 2024] Kar HC</u>	Whether the petitioner is eligible for a refund of the GST paid on the advance amount, in light of the contract cancellation.	The court quashed the orders rejecting the refund application and directed the authorities to process and grant the GST refund to M/S Nam Estates Private Limited.
<u>M/s. BLA Infrastructure Private Limited vs The State of Jharkhand & Ors. (Jharkhand High Court W.P.(T) No. 6527 of 2024)</u>	The issue pertains to whether the two-year limitation period stipulated under Section 54(1) for filing refund applications is mandatory or directory.	The Court observed that the language of Section 54 uses the term "may" make an application before the expiry of 2 years from the relevant date," indicating that the provision is directory rather than mandatory. The Supreme Court has previously interpreted the word "may" in various statutes as generally directory in nature.

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

DIRECT TAX

KEC International Limited Versus Deputy Commissioner of Income Tax (Bombay High Court) ITA No. 324 of 2003

Facts in brief & issues involved:

- ♦ The taxpayer's case was selected for scrutiny assessment and assessing officer passed an order under section 143(3) of the Act wherein income computed as per normal provisions of the Act was 'NIL', and income computed under 115J i.e book profit was stated at Rs.49,19,377/-. The book profit computed was same as that computed by the taxpayer in the return of income filed.
- ♦ Subsequently, the PCIT, by invoking powers conferred u/s 263 of the Act, initiated revisionary proceedings, since the assessing officer did not examine the correctness of the computation of book profit u/s 115J of the Act and computation u/s 32AB of the Act. The taxpayer duly filed submissions during the said proceedings.
- ♦ Aggrieved by the order passed u/s 263, the taxpayer filed an appeal before the Tribunal. The Tribunal upheld the order of PCIT and upheld the revisionary proceedings.
- ♦ Aggrieved by the order of Tribunal, the taxpayer preferred an appeal before the Bombay High Court.
- ♦ Meanwhile, the assessing officer passed an order u/s 143(3) r.w.s Section 263, wherein he made additions to the book profit u/s 115J of Rs. 95,28,900/- and reduced the deduction u/s 32AB by Rs. 33,63,258/-. The taxpayer did not file appeal against same.

Contentions of the Petitioner:

- ♦ The taxpayer contended that since the assessing officer computed book profit u/s 115J of the Act in the original assessment order u/s 143(3) of the Act, it was deemed that the same had been examined, and hence jurisdiction exercised by PCIT was not warranted.
- ♦ The order under Section 263 of the IT Act recorded a definite finding on merits and, therefore, the tax payer was justified in contesting the same on merits before the Tribunal and the High Court. He relied upon the decision of High Court in the case of Herdillia Chemicals Ltd. Vs. Commissioner of Income Tax¹ in support of this submission.

Contentions of the Respondent:

- ♦ The Supreme Court's decision in *Malabar Industrial Co. Ltd. v. CIT* established that non-examination of a claim by the AO gives the PCIT jurisdiction under Section 263.
- ♦ Since there was no verification of the computation of book profit u/s 115J in the original assessment, the PCIT was justified in invoking Section 263 since the order was erroneous and prejudicial to the interest of the revenue.
- ♦ The assessee accepted the revisional jurisdiction under Section 32AB, so challenging the jurisdiction under Section 115J on the same grounds was contradictory.

Observation and Decision of the Bombay High Court:

- ♦ Merely because the assessing officer reproduced the computation of book profit under section 115J of the Act in the original assessment order u/s 143(3) of the Act for comparison with income computed under normal provisions of the Act, it cannot be said that the assessing officer has examined the issue of computation of book profit.
- ♦ The fact that the order u/s 263 of the Act did not specify under which clause of the Explanation to Section 115J the addition could be made, itself proves that the PCIT directed the assessing officer to decide afresh in accordance with law, and that the said issues were not verified originally and required verification.
- ♦ The taxpayer accepted revisional jurisdiction for calculation of deduction u/s 32AB, hence not accepting the same for computation of book profit is itself contradictory and inconsistent.

NASA Comments:

- ♦ With enhanced revisionary powers, tax payers may have to re-evaluate legal positions already taken. In addition, tax payers must be mindful to file appeal against both, the revisionary order U/s 263 and the order passed U/s 143(3) r.w.s. 263.

Case 1 – Joint Commissioner of Commercial Taxes (Appeals-1) v. Nam Estates (P.) Ltd. – [2025] (Karnataka High Court)**Facts in brief & Issue Involved**

- ♦ M/s. Nam Estates Private Limited (“Respondent”), entered into an agreement with M/s Mavin Switch Gears and Control Private Limited (“contractor”) for the supply, installation, and commissioning of Gas Insulated Substations (GIS), Conventional Substations, and extra-high voltage transmission lines.
- ♦ An advance payment was made by respondent against a bank guarantee provided by the contractor. Upon receipt of this payment, the contractor issued a tax invoice including GST and reported it in Form GSTR-1 and Form GSTR-3B returns.
- ♦ However, the contractor failed to deliver the services, resulting in the cancellation of the contract in March 2021 and the advance payment was recovered by encashing the bank guarantee. In light of this, the Respondent, filed a refund application requesting a refund of the GST amount.
- ♦ The Assistant Commissioner of Commercial Taxes (Appellant No. 2 herein), reviewed the application and issued a notice (RFD-08), stating that the eligibility for a refund had not been established based on the taxpayer's submissions and refund rejection order was passed as no response was received.
- ♦ An appeal against the above refund rejection order was filed by the Respondent before the Appellate authority, (Appellant No. 1 herein). The Appellate authority highlighted that the contractor was obligated to issue credit notes for the cancelled contract and declare these in their tax return, adjusting the tax liability accordingly. It was concluded by the Appellate Authority that the taxpayer could not seek a refund of tax as the tax paid on the advance was the contractor’s responsibility.
- ♦ Aggrieved by the above rejected order the respondent filed writ petition against the refund rejection order before the High Court where the Single Judge bench issued an order in the favour of the respondent
- ♦ Aggrieved by the favourable order of the High Court, Appellant No 1 & 2 (Petitioners) have filed a Writ Appeal before the said high court.

Contentions of Petitioners

- ♦ The petitioner contended that the original authorities are responsible for determining the factual basis for a refund claim, which the learned Single Judge could not have taken on this task
- ♦ He also argued that the prescribed refund procedure cannot be overlooked and seek to invalidate the impugned order of the learned Single Judge.

Contentions of Respondents

- ♦ When GST is paid in anticipation of completing a contract that is later rescinded due to a breach by the other party, the tax amount should be refunded.
- ♦ Based on the facts evident from the records, the authorities should not have denied the refund, as doing so would effectively result in the unlawful acquisition of the respondent's private property.

Observations & Decision of the Court

- ♦ The Honourable High Court held that after the contract breach by the contractor, the respondent recovered the amount by encashing the bank guarantee.
- ♦ The GST portal and the returns of both the respondent herein and the contractor his vendor reflect the payment of GST amount
- ♦ The High Court rejected the appeal and further ordered that the petitioner to refund the amount within period of 8 weeks.

NASA Comments

- ♦ This judgment establishes that if an advance payment is made for supply of services under a contract and the supplier fails to deliver the same, the recipient is entitled to a refund of the GST paid on such advance.

Case Law 2 - M/s. BLA Infrastructure Private Limited vs The State of Jharkhand & Ors. (Jharkhand High Court W.P.(T) No. 6527 of 2024)

Fact of the Case:

- ♦ The petitioner, M/s. BLA Infrastructure Private Limited, is a registered dealer under GST carrying out business of loading, unloading and transportation of coal.
- ♦ A show cause notice was issued alleging mismatch in GSTR-1 and GSTR-3B for September 2019.
- ♦ An ex-parte order was subsequently passed, imposing a liability of ₹16,90,442/-, which included tax, interest, and penalty.
- ♦ Aggrieved by the Order-in-Original, the petitioner filed an appeal, complying with the mandatory requirement of a 10% pre-deposit. The appellate authority ruled in favour of the petitioner, overturning the previous decision.
- ♦ Upon seeking a refund of the pre-deposit, the petitioner's application was rejected through a deficiency memo, citing that it was time-barred

Contention of the Petitioner:

- ♦ The petitioner argued that the limitation period under Section 54(1) is directory, not mandatory, hence even if the application is filed beyond the period of two years, the legitimate claim of refund by the assessee cannot be denied in appropriate cases.
- ♦ Retention of the pre-deposit without reasonable cause is a violation of Article 265 of the Constitution, which prohibits the levy or collection of taxes without authority of law.

Contention of the Respondent:

- ♦ The respondents contended that the jurisdictional officer lacked the authority to condone the delay in filing the refund application
- ♦ Reliance was placed on Circular No. 125/44/2019-GST dated 18.11.2019, which treats such applications as time-barred.

Observations and Decision of the Court:

- ♦ The court observed that the use of the word "may" in Section 54(1) indicates that the two-year limitation period is directory rather than mandatory.
- ♦ It was held that the refund of a statutory pre-deposit becomes a vested right once the appeal is decided in favour of the assessee.
- ♦ The court emphasized when the Constitution of India restricts levy of any tax without authority of law, the retention of the same on the ground of statutory restriction, which is in conflict with the Limitation Act, appears to be being misread by the respondent
- ♦ Consequently, the deficiency memo rejecting the refund was quashed, and the respondents were directed to process the refund within six weeks, along with applicable interest.

NASA Comments:

- ♦ The ruling clarifies that the two-year limitation period for filing refund applications under Section 54(1) is directory, not mandatory.
- ♦ This judgment sets a precedent for similar cases across jurisdictions, providing relief to assesseees whose refund applications were previously rejected solely on limitation grounds.

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