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TAX JURISPRUDENCE

CASE LAW ALERT – MARCH 2025

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		
Nokia Networks OY [TS-132-HC-2025] (DEL)	(a) Whether Liaison Office of Nokia OY (the assessee) in India constitutes Fixed Place Permanent Establishment (PE) in terms of Article 5 of India-Finland Double Taxation Avoidance Agreement (DTAA). (b) Whether Nokia India Pvt Ltd (NIPL), a Wholly Owned Subsidiary of the assessee constitutes a Dependent Agent PE (DAPE) in terms of Article 5 of the DTAA.	The High Court held as under: i. The Liaison Office does not constitute a Fixed Place PE as it was involved only in advertising activities and the core business activities were conducted offshore. ii. Wholly Owned Subsidiary (WOS) does not constitute a Fixed Place PE as its activities were deemed preparatory and auxiliary under Article 5(4) of the DTAA. The WOS does not qualify as a DAPE of the assessee as it operated independently and did not have the authority to bind the assessee in contracts as well as WOS's activities were

		not related to the offshore contracts being undertaken by the assessee.
	(c) Whether interest on delayed receipt of consideration towards supply of equipment is taxable in India as interest earned from vendor financing?	iii. No real income had been generated from delayed receipts from the customers as the addition was based on a notional accretion without evidence of interest on delayed payments or credit extended by the assessee. Since the Act does not tax notional income, the addition is not sustainable in law.
	(d) Whether the income earned from supply of software is chargeable to tax as "royalty" or "Fees for Technical Services (FTS)" under the Income Tax Act, 1961 as well as under India-Finland DTAA?	iv. The income from supply of software is not in the nature of royalty on the basis of ratio laid down by the decision of the Hon'ble Supreme Court of India in the case of Engineering Analysis Centre of Intelligence Private Limited v. Commissioner of Income Tax wherein it is held that consideration for

		resale/ use of computer software is not in the nature of royalty in terms of definition of 'royalty' provided under the DTAA.
Indirect Tax		
Messrs Aculife Health Care (P.) Ltd. Vs UOI & Ors [2025] 171 taxmann.com 272 (Gujarat)	Whether refund can be claimed after being time barred in case of wrong payment of tax?	The Hon'ble high Court of Gujarat contends that time limit for refund application to be computed from circular date in case of GST paid on notice pay recovery.
Tirumala Balaji Marbles and Granites [TS-73-HC(AP)-2025-GST]	Whether GST registration can be sought without the taxpayer or its concerned representatives belonging to said state?	The Hon'ble high court of Andhra Pradesh ruled that registration cannot be denied merely because the business does not belong to the state and/or there is an apprehension of tax evasion.

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

DIRECT TAX

Case 1 – Nokia Networks OY [TS-132-HC-2025] (DEL) (21.02.2025)

Facts in brief & Issue Involved:

- Nokia OY (the assessee), a company incorporated in Finland, has open a Liaison Office in India. Subsequently, a Wholly Owned Subsidiary (WOS) viz; Nokia India Private Limited (NIPL) was formed.

- The assessee was engaged in the manufacturing and sale of advanced telecommunication systems including GSM equipment. Sale of GSM equipment to Indian telecom operators was effected in terms of independent contracts entered into between the assessee and telecom operators. Installation services were provided by NIPL in terms of independent contracts entered into between NIPL and telecom operators.

- The assessee did not file return of income in India claiming that income generated from sale of equipments i.e. offshore sales was not taxable in India. The AO held that the Liaison Office as well as WOS of the assessee in India constitutes a PE of the assessee in India and accordingly, profit on sale of hardware, licensing of software as well as Interest Income on account of delayed receipt of consideration is brought to tax.

- Interest on receipt of delayed consideration towards supply of equipment's was considered as commercial income in view of specific clause mentioned in the off-shore supply contract in relation thereto and accordingly, same is assessed as income in the hands of the assessee. Further, the income from supply of software was assessed as income under the head "royalty" u/s 9(1)(vi) the Act as well as under India-Finland DTAA holding that software was not sold but licensed to the Indian telecom operators.

- CIT(A) upheld the stand of the AO. In the first round, ITAT held that the Liaison Office of the assessee in India does not constitute PE. However, WOS in India constitutes PE on the basis that the assessee virtually projected itself in India through WOS and

guarantees given by the assessee that it will not dilute its shareholding in WOS below 51% without written permission of Indian Telecom Operators to hold that the assessee was in a position to control and monitor WOS's activities. Payments received towards supply of software was not in the nature of royalty in terms of provisions of the Act as well as DTAA because the same was for a copyrighted article and not for use of copyright. The addition made by the AO of interest income from vendor financing is confirmed. The decision of the ITAT of holding that the Liaison Office in India does not constitute PE is affirmed by the High Court. However, the issue of deciding as to whether WOS in India constitutes PE was remitted back to the ITAT for fresh adjudication.

- In the second round, the ITAT concluded that WOS did not constitute a Fixed Place PE as its peripheral activities and administrative assistance were deemed preparatory and auxiliary services under Article 5(4) of the DTAA. ITAT further concluded that since offshore activities of sale of equipment were undertaken by the assessee on a principal-to-principal basis in Finland, the same does not constitute DAPE. Similarly, the installation activities are undertaken by WOS in India on a principal-to-principal basis, same also does not constitute DAPE.

Contentions of Taxpayer:

- It was contended that WOS does not constitute a Fixed Place PE, as its peripheral activities and administrative assistance were deemed preparatory and auxiliary services under Article 5(4) of the DTAA. Further, offshore activities of sale of equipment were undertaken by the assessee on a principal-to-principal basis in Finland and hence the same does not constitute DAPE. Further, the installation activities are undertaken by WOS in India on a principal-to-principal basis and hence the same also does not constitute DAPE.

Contentions of Revenue:

- It was contended that WOS of the assessee in India constitutes a PE of the assessee in India keeping in view the fact that more than 51% of the shareholding is held by the assessee which ultimately ensures direct control over the activities of WOS.

Observations & Decision of the Hon'ble Delhi High Court:

- **Fixed Place Permanent Establishment:** The High Court affirmed the decision of the ITAT holding that WOS did not constitute a Fixed Place PE, as its activities were deemed preparatory and auxiliary under Article 5(4) of the DTAA. The Liaison Office also does not constitute a Fixed Place PE as it involved only in advertising activities and the core business activities were conducted offshore.

- **Dependent Agent Permanent Establishment (DAPE):** The High Court confirmed the findings of ITAT that WOS did not qualify as a DAPE of the assessee as it operated independently and did not have the authority to bind the assessee in contracts. The High Court also confirmed the view of ITAT that WOS's activities were not related to the offshore contracts being undertaken by the assessee.

- **Interest on Delayed Payments as Vendor Financing:** The High Court affirmed the decision of ITAT that no real income is generated from delayed receipt of consideration, as the addition was based on a notional accretion without evidence of interest on delayed payments or credit extended by the assessee. Since the Act does not tax notional income, the addition is not sustainable in law.

- **Revenue from Software as Royalty or Fee for Technical Services:** It is held that the income from supply of software is not in the nature of royalty on the basis of ratio laid down by the decision of the Hon'ble Supreme Court of India in the case of Engineering Analysis Centre of Intelligence Private Limited v. Commissioner of Income Tax wherein it is held that consideration for resale/ use of computer software is not in the nature of royalty in terms of definition of 'royalty' provided under the DTAA.

NASA Comments:

This Ruling has laid down the following important principles:

- Mere formation of Wholly Owned Subsidiary in India by itself does not constitute PE in India.
- The activities undertaken by the other person/ entity are on its own account or on behalf of the assessee is deciding factor in determination of DAPE.

- The holistic view of the complete transaction or contract is to be taken into account in determination of PE in India.

- If the consideration is paid for resale/ use of computer software, then the same cannot be treated as royalty in terms of DTAA and accordingly, the same cannot be subjected to tax.

INDIRECT TAX

Case 1 – Messrs Aculife Health Care (P.) Ltd. Vs UOI & Ors [2025] 171 taxmann.com 272 (Gujarat) [09-01-2025]

Facts in brief & Issue Involved

- The Petitioner (Messrs Aculife Healthcare Pvt. Ltd.) is a Private Limited Company engaged in the business of manufacture of chemicals and pharmaceuticals.

- During July 2017 to July 2022, the Petitioner voluntarily deposited a sum of Rs.45,14,300/- as tax on notice pay recovery, in lieu of various employees who left the employment. This amount of tax has been deposited by the Company from its own pockets.

- The Union Government issued a Circular No.178/10/2022-GST dated 03.08.2022 clarified that such amount and such recovery was not chargeable to GST. Hence, the amount deposited by the Petitioner as GST was "not taxable".

- The Petitioner filed a refund claim for Rs.13,91,114/- for the period July 2017 to August 2018 on 05.11.2022 and Rs.31,23,1,86/- for the period September 2018 to July 2022 on 07.11.2022.

- The respondent rejected the first claim entirely and the second claim partially on the same being time-barred

- The Petitioner filed appeals before the Appellate Authority contending that the amount recovered as tax had to be refunded to the petitioner.

- The Appellate Authority rejected both the appeals on the grounds that the claims were barred by limitation of two years and therefore, the rejection of the claims on the ground of limitation in lodging the refund claims was proper.

- Aggrieved by the order the petition was filed in Gujarat high court.

Contentions of Petitioners

- The petitioner contented that they kept on paying the GST on notice pay recovery in lieu of services under the mistaken belief that the company was liable to pay the tax. The respondents-authorities have also accepted the Tax for all these years also under the mistaken belief that they were authorized to collect the tax.

- The Government came up with a clarification on 03/08/2022 wherein the recovery of notice pay by the employer was not taxable in GST only then it became apparent that the "Tax" paid thus far was not sanctioned under article 265 of the Constitution of India.

- Since the circular was issued on 03/08/2022, how can the refund application could be filed before and hence the time limitation could only be calculated from 03/08/2022

Observations & Decision of the Court

- The honorable High Court observed that since the Circular came out on 03.08.2022, it must be said that the petitioners could not have had the opportunity of filing the refund claims in respect of the GST deposited by the Petitioner till such date. Therefore, the period of two years, for filing a claim, within the meaning of Section 54 of the CGST Act must be computed from the date of the Circular i.e. from 03.08.2022.

- Referring to the judgement passed in the case of M/S Gujarat State Police Housing Corporation Ltd. v. Union of India & Anr [Special Civil Application No.11221 of 2022 and allied matters], the Honorable court held the amount of GST paid by the petitioner is admittedly paid as a self- assessment, which the petitioner was not required to pay as per and accordingly, in the facts of the case, the amount paid by the petitioner from electronic cash ledger is required to be refunded by the respondent authority and could not have been rejected on the ground of limitation under Section 54(1) of the CGST Act.

- Further, the court held that just as the citizens have to diligently pay tax which are legally due to the State, the State is not entitled to unjustly enrich itself with amounts

collected from citizens which are not sanctioned as Tax within the meaning of Article 265 of the Constitution of India.

- The Honorable High Court of Gujarat sanctioned the Petitioners claim and asked the respondent to refund the due amount along with interest @ 9% per annum from the date of filing the refund application till the date of actual payment.

NASA Comments

- This ruling of Hon'ble High Court is a welcome judgement which would provide relief to the taxpayers who have not been refunded their tax amount which is not more liable to be paid solely based on the same being time barred.

Case 2 – Tirumala Balaji Marbles and Granites [TS-73-HC(AP)-2025-GST]

Facts in brief & issues of Applicant

- The petitioner, Tirumala Balaji Marbles and Granites, sought registration in the city of Rajamahendravaram (Andhra Pradesh), but said registration was denied by the Assistant Commissioner (herein after referred as "the respondent").

- The respondent rejected the application on the grounds that the applicant does not belong to Andra Pradesh and the authorized representatives put forward by petitioner does not belong to the state of Andhra Pradesh and hence the registration may amount to the scope of tax evasion.

- Challenging this decision, the petitioner filed a writ petition before the Andhra Pradesh High Court.

Observations & Decision of Court

- The Andhra Pradesh High Court observed that the registration cannot be refused on a ground which is not available under the statute or the Rules.

- There are no statutory restrictions for person outside the state to come into the state of Andra Pradesh and seek registration under APGST Act.

- The court also referred to Article 19 of the Constitution of India, which grants every citizen the right to set up and do business anywhere in the country.

- The court found that the order of rejection was clearly without any basis in law and that mere apprehension of tax evasion, however well founded, cannot deny the petitioner his right to carry on trade and business in the State of Andhra Pradesh.

- Accordingly, the order of rejection was set aside, and the respondent were directed to register the petitioner.

NASA Comments

- This ruling by Hon'ble High Court has placed a benchmark for uniform implementation of GST laws across states. Further it has provided more clarity and assurance that businesses can operate hassle free without any arbitrary registration denials.

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