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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		
Novanet India Private Ltd [TS-203-ITAT-2025(Mum)]	<p>(a) Whether the amount paid by Novanet India Private Ltd (the "Taxpayer") to a foreign entity Novanent Singapore Private Ltd (NSPL) towards communication charges of Voice over Internet Protocol (VoIP) minutes, is to be treated as Fees for Technical Services (FTS) u/s 9(1)(vii) of the Income-tax Act, 1961 (the "Act")?</p> <p>(b) Whether Novanent India Private Limited was liable to deduct TDS on the said transaction; and whether non-deduction of TDS should attract disallowance u/s 40(a)(ia) of the Income-tax Act, 1961 (the "Act")?</p>	<p>i. The Hon'ble Mumbai ITAT held that payments made by the taxpayer towards communication charges of VoIP minutes from NSPL are not taxable in the hands of NSPL in India, as NSPL is not having PE in India and the transaction between NSPL and the taxpayer cannot be classified as FTS under section 9(1)(vii) of the Act.</p> <p>ii. Consequently, no disallowance was required u/s 40(a)(ia) of the Act for not deducting TDS.</p>
Indirect Tax		
M/s B Braun Medical India Pvt. Ltd. Vs Union of India And Ors	Whether Input tax credit can be denied on account of	The Hon'ble High Court of Delhi held that disallowing Input tax credit due to clerical error

	clerical errors made by the supplier.	causes substantial harm to the petitioner. Hence the said input tax credit is to be allowed on correction of the clerical errors.
<u>Star Roofs and Metals v. Assistant Commissioner (ST) & Others [W.P.(C) No. 44100 of 2024]</u>	Whether the utilization of ITC available in IGST but claimed as CGST and SGST can be considered wrongful availment, warranting tax liability and penalty under the CGST and SGST Acts?	The Kerala High Court ruled that such utilization of ITC is not wrong thereby quashing the order and directing the officer to reconsider the matter afresh.

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

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DIRECT TAX

Novanet India Private Limited Versus Income Tax Officer (Mumbai ITAT) ITA No. 4505 of 2024

Facts in brief & Issue Involved:

- ♦ The taxpayer is a domestic company engaged in the business of rendering VoIP services to clients in India. For the said purpose, the taxpayer has independently developed infrastructure and customer base and has obtained requisite regulatory licenses.
- ♦ The assessment in case of taxpayer was reopened on the ground that the taxpayer had made a payment of Rs. 3,44,82,784/- to NSPL towards communication charges without deduction of any TDS.
- ♦ The taxpayer during the assessment proceedings submitted that the taxpayer had paid communication charges for VoIP minutes. Further, the taxpayer also stated that since the amount paid by the taxpayer is not taxable in the hands of NSPL in India, no TDS was to be deducted by the taxpayer.
- ♦ However, the Assessing Officer (AO) relying on the order passed u/s 201 of the Act, treating taxpayer as assessee in default for not deducting TDS on VoIP payment to NSPL, held that NSPL is providing technical services which taxable in India and that the tax ought to have been deducted on the said payments. The AO made disallowance entire amount u/s 40(a)(ia) of the Act on the ground -
 - The services rendered by NSPL to the taxpayer were of technical nature.
 - The taxpayer is a Permanent establishment of NSPL and thus payment is taxable in India.
- ♦ Aggrieved by the order, the taxpayer filed an appeal with the Commissioner of Income-tax Appeal (CIT(A)). The CIT(A) upheld the additions made by the Ld. AO

based on the Unilateral Carrier Services Agreement and order passed u/s 201 of the Act.

- ◆ Aggrieved by the same, the taxpayer filed an appeal before the Hon'ble ITAT.

Contentions of Taxpayer:

- ◆ The taxpayer has obtained a license from Department of Tele-Communications in the year 2006 to operate the internet and VoIP services in India. The taxpayer has built its own data centre infrastructure and cultivated a customer base in India.
- ◆ The taxpayer further submitted that NSPL was incorporated only in the year 2012 whereas the taxpayer was incorporated in 1997 and the taxpayer has been carrying on the business of VoIP much before the Singapore entity was incorporated.
- ◆ The taxpayer further contended that NSPL is not providing any technical service to the taxpayer and the process of procuring VoIP minutes is a fully automated process and there is no human element involved. NSPL also does not make available any knowledge to the taxpayer and therefore the income cannot be treated as FTS in the hands of NSPL.
- ◆ Drawing reference to various rulings in case of Bharti Cellular Ltd., Vodafone Digilink Ltd. and Atos Information Technology HK Ltd., the taxpayer stated that since there was no manual intervention involved in the technical operations for interconnection, the said services did not amount to "technical services" u/s 9(1)(vii) of the Act.

Contentions of Respondent:

- ◆ The tax department drew reliance upon the decision of the lower authorities and contended the said transaction was covered under FTS and the payment was subject to TDS.

Observations & Decision of the ITAT, Mumbai:

- ♦ The Hon'ble ITAT observed that VoIP is a technology in which calls are made using the internet connection instead of traditional telephone lines. VoIP converts voice into digital signal which is sent in digital packets through internet and these packets gets arranged to be reconverted at the receiving end. The billing for using VoIP is done for the bandwidth and usage of VoIP minutes.
- ♦ The Hon'ble ITAT further observed that the taxpayer is a service provider who procures VoIP network from various carriers across the globe and sells the same to customers in India.
- ♦ The Hon'ble ITAT observed that VoIP is a fully automatic process with no human intervention i.e. the conversion of voice into digital data, transmitting data packets through optimum routing, and reconverting into voice at the receiving end etc. The role of NSPL and for that matter even that of the taxpayer is to ensure that the customer who has bought the dedicated VoIP network is provided with the same.
- ♦ NSPL is not involved in the technology of VoIP but acts as an intermediary to obtain the network services and sell the same to the customers. Therefore, it cannot be said that NSPL is providing any technical services to the taxpayer by procuring and selling the VoIP network.
- ♦ The Hon'ble ITAT, considering the facts that NSPL was not having any Permanent Establishment (PE) in India and judicial precedence relied by the taxpayer held that when there is no human intervention and process is carried out through a fully automated software, then payment made for such charges will not be considered as FTS.
- ♦ Accordingly, payments made by the taxpayer to NSPL towards communication charges of VoIP are not taxable in the hands of NSPL in India and therefore the taxpayer is not liable to deduct any tax on such payments.



NASA Comments:

- ◆ Understanding the true nature of a service is instrumental in determining its taxability. There are various factors which needs to be considered to evaluate the taxability of service. The factors include human intervention involved in rendering the service, make available clause in DTAA, PE in India, etc.

INDIRECT TAX

Case 1 - M/s B Braun Medical India Pvt Ltd Vs Union of India And Ors [2025-TIOL-445-HC-DEL-GST]

Facts in brief & Issue Involved

- ♦ The Petitioner M/s B Braun Medical India Private Limited (Delhi) is a private limited company engaged in the business of selling pharmaceutical products and medical devices.
- ♦ The Petitioner has purchased a large quantum of products from M/s Ahlcon Parenterals (India) Limited (hereinafter 'Ahlcon') based on various purchase orders.
- ♦ Ahlcon raised various invoices on the petitioner during FY 2017-18 to FY 2019-20; however, inadvertently mentioned the address and GSTIN of the state of Maharashtra.
- ♦ The department raised a demand of GST Rs 5,65,91,691/- on the petitioner vide order in original (OIO) claiming that the petitioner has wrongly availed Input tax credit.
- ♦ Thus, aggrieved by the order the petition was filed in Hon'ble Delhi High Court.

Contentions of Petitioners

- ♦ The petitioner contends that the petitioner's name is correctly mentioned in the invoices however, incorrect GST number is mentioned on the invoices. On this issue no stand is taken by the GST department in counter affidavit. The standing counsel of the department also admitted that no other entity has claimed ITC on the said purchases.

- ♦ The only issue is the incorrect GSTIN mentioned by the supplier. The said error is merely a clerical error and a substantial loss would be caused to the petitioner if the credit is not granted for such a small error on behalf of the supplier.
- ♦ The counsel of the petitioner also submits that if an opportunity of correction in the invoices is permitted and ITC is allowed to the petitioner, the petitioner shall not press challenge to the constitutional validity of section 16(2)(aa) of CGST Act.

Observations & Decision of the Honorable Allahabad High Court

- ♦ The Hon'ble court held that rejecting the ITC due to a clerical error would cause substantial harm to the petitioner.
- ♦ Further the department has also admitted that no other entity has claimed ITC on the invoices in question.
- ♦ In light of the above, the Hon'ble court dropped the impugned order-in-original dated 28th June 2024 permitting the petitioner to avail Input Tax Credit in respect of the supplies in question provided the correction is made in the invoices.

NASA Comments

- ♦ This ruling of Hon'ble High Court is welcome judgement as it highlights that minor clerical errors should not lead to disallowance of ITC.
- ♦ It also indicates that GST authorities must evaluate whether the reason for disallowing ITC constitutes a valid reason for taking such drastic measures further emphasizing fairness in the enforcement of GST rules.

Case 2 – Star Roofs and Metals v. Assistant Commissioner (ST) & Others [W.P.(C) No. 44100 of 2024]

Facts in brief & Issue Involved

- ♦ The petitioner, Star Roofs and Metals, was assessed for FY 2017-18 and found to have utilized ITC in excess of what was available in GSTR-2A.
- ♦ The petitioner had availed ITC of Rs. 9,97,409/- under the head CGST & SGST each which was reflecting in GSTR 2A under head IGST.
- ♦ A liability of Rs. 19,94,818/- was imposed under Section 73 of CGST & SGST Act, 2017.
- ♦ The petitioner had already appealed against the assessment order, but the appeal remained pending for disposal for eight months. Therefore, the petitioner has filed a writ in the Kerala High Court.


Observations & Decision of the Court

- ♦ The High Court referred to the case *Rejimon Padickapparambil Alex v. Union of India*, which held that an electronic credit ledger operates like a wallet with different compartments of IGST, CGST & SGST.
- ♦ The Court ruled that merely availing benefit of ITC available in IGST which is claimed as CGST & SGST does not amount to wrongful availment warranting penalty.
- ♦ The assessment order was set aside, and the tax authorities were directed to reconsider the case afresh after granting the petitioner an opportunity of hearing within three months.
- ♦ The appeal filed against the assessment order was deemed closed, and the pre-deposit made by the petitioner was ordered to be refunded.



NASA Comments

- ◆ This ruling of Hon'ble High Court is a welcome judgement as it reiterates that mere availing ITC in the wrong head of tax does not warrant reversal of ITC and levy of penalty.
- ◆ The judgement comes as a relief for the taxpayers from unjustified tax demands in similar cases.



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