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# TAX JURISPRUDENCE

CASE LAW ALERT – JUNE 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** | | |
| General Organization for Social Insurance [TS-636-ITAT-2025(Mum)] | Whether capital gains arising from the sale of *rights entitlement* attached to shares held by a Saudi Arabian resident taxpayer in an Indian company are taxable in India or only in Saudi Arabia under the India-Saudi Arabia DTAA. | The Hon'ble ITAT held that rights entitlement is a distinct and independent right separate from shares and not akin to shares themselves. Accordingly, the capital gains from the sale of rights entitlement are taxable only in the resident country, Saudi Arabia, under Article 13(6) of the India-Saudi Arabia DTAA, and not taxable in India. Therefore, the addition made by the revenue treating the gains as taxable in India was deleted. |
| **Indirect Tax** | | |
| M/s SICPA India Private Limited and Another vs Union of India and Others [WP(C ) No. 54 of 2023] | Whether unutilized ITC lying under credit ledger, upon discontinuance of business, can be claimed as refund? | The Court held that as there is no express prohibition under section 49(6) restricting refund of ITC in case of closure of business, the taxpayer is entitled to the refund of such unutilized ITC. |

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| M/s Namasivaya Auto Parts vs Union of India [TS-493-HC(MAD)-2025-GST] | Whether mere uploading of notices on the GST portal under the 'Additional Notices and Orders' tab constitutes valid service under Section 169 of the GST Act?<br>Additionally, does the absence of a response from the taxpayer impose an obligation on the officer to consider alternative modes of service as prescribed under the GST Act? | The Hon'ble Madras High Court held that merely uploading GST notices on the portal is not sufficient service if the taxpayer does not respond. In such cases, officers must explore other valid modes of service under Section 169 of the GST Act, such as RPAD. The Court set aside the ex parte assessment order and remanded the matter for fresh adjudication, subject to the petitioner depositing 25% of the disputed tax |

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

## DIRECT TAX

### General Organization for Social Insurance [TS-636-ITAT-2025(Mum)]

**Facts in brief & Issue Involved:**

- The taxpayer is a resident of Saudi Arabia and held shares in Bharti Airtel Ltd., an Indian company. During the assessment year 2022-23, the taxpayer earned short-term capital gains amounting to approximately INR 3.81 crore from the sale of rights entitlement, the right granted to existing shareholders to subscribe to additional shares in proportion to their current shareholding.

- The taxpayer did not offer these gains to tax in India, contending that rights entitlement is not the same as shares and hence, as per the India-Saudi Arabia DTAA, capital gains from such sale are taxable only in the resident country i.e Saudi Arabia.

- The Assessing Officer (AO), however, disagreed and held that rights entitlement derives its value from the existing shares and should be treated as shares for the purposes of capital gains tax. Accordingly, the AO included the gains in the taxpayer's taxable income in India.

- The Dispute Resolution Panel (DRP), while rejecting the taxpayers' objections, observed that rights entitlement and shares are closely related financial instruments. It noted that rights entitlement is a temporary credit in the DEMAT account, representing a specific financial instrument issued to existing shareholders to enable them to subscribe to additional shares at a discounted price. The DRP emphasized that rights entitlements are allotted proportionally to existing shareholdings and upon exercising these rights, shareholders increase their ownership. It further held that rights entitlement should be broadly interpreted as shares under paragraphs 4 and 5 of Article 13 of the India-Saudi Arabia DTAA, given their intrinsic linkage to shares both at origin and upon final conversion. Therefore, the DRP concluded that rights entitlement are akin to shares, and gains from their transfer would not fall under the provision taxing other property under Article 13(6) of the DTAA and accordingly order passed by Ld. AO was uphold.

- Aggrieved by the Order passed by Hon'ble DRP the taxpayer filed an appeal before the Income Tax Appellate Tribunal (ITAT) challenging the classification of rights entitlement as shares and the consequent taxability in India.

**Contentions of Taxpayer:**

- The *rights entitlement* is fundamentally a distinct and independent right granted to existing shareholders to subscribe to additional shares and is not the same as the shares themselves. They argued that rights entitlement is essentially "an offer or option" to purchase new shares, which can be exercised or renounced, and thus it is separately transferable and distinct from the underlying shares held.

- This position finds statutory backing in Section 62 of the Companies Act, 2013, which explicitly treats rights entitlement as an offer to subscribe, not as shares.

- Furthermore, the taxpayer pointed out that regulatory authorities like SEBI and the National Stock Exchange have recognized rights entitlement as a separate security with its own International Securities Identification Number (ISIN) and have treated it as an option in securities subject to Securities Transaction Tax (STT) at rates different from shares, underscoring its distinct nature.

- Relying heavily on the Supreme Court decision in *Navin Jindal v. ACIT* the taxpayer submitted that the rights entitlement, though arising out of existing shareholding, is a separate, independent, and transferable right capable of being alienated independently.

- Consequently, the taxpayer argued that capital gains arising from the sale of such rights entitlement fall under Article 13(6) of the India-Saudi Arabia DTAA, which taxes gains from alienation of any property other than shares only in the resident country. Hence, the taxpayer asserted that the gains from the sale of rights entitlement should be taxable only in Saudi Arabia, their country of residence, and not in India.

**Contentions of Revenue:**

- The rights entitlement is inherently linked to the underlying shares and should be treated as shares for tax purposes under the DTAA.
- Rights entitlement represents a financial instrument of the same class as shares because it arises directly from the existing shareholding and gives the holder the right to purchase additional shares at a discount.
- The Revenue also relied on a broad interpretation of the term "shares" under Article 13(4) and 13(5) of the India-Saudi Arabia DTAA, which permits taxation of capital gains arising from alienation of shares in the source country i.e India in this case.
- According to the Revenue, since the rights entitlement derives its value from the shares of an Indian company, gains from its sale should be taxable in India.

**Observations & Decision of the Hon'ble ITAT:**

- The ITAT closely examined the nature of rights entitlement and relied on the coordinate bench ruling in *Vanguard Emerging Markets* and the Supreme Court's judgment in *Navin Jindal v. ACIT*, which clearly established that rights entitlement is a distinct, independent right separate from shares.
- The Tribunal observed that rights entitlement represents an exercisable option or right to subscribe to new shares, not the shares themselves. It noted statutory provisions such as Section 62 of the Companies Act, SEBI and NSE circulars, and securities regulations, which treat rights entitlement as a separate security with its own ISIN, distinct from equity shares.
- The Hon'ble ITAT found that the Dispute Resolution Panel (DRP) erred in equating rights entitlement with shares by overlooking the critical distinction that rights entitlement is a transferable right and not a share.
- Consequently, the Tribunal held that capital gains arising from the alienation of rights entitlement fall within Article 13(6) of the India-Saudi Arabia DTAA, which

taxes such gains only in the resident country of the transferor. Accordingly, the Hon'ble ITAT deleted the addition made by the Revenue in India, thereby ruling that these gains are taxable only in Saudi Arabia.

**NASA Comments:**

- This ruling provides important clarity on the tax treatment of rights entitlement in the context of India's DTAA agreements. It reinforces the principle that rights entitlement, being a separate and distinct financial instrument from shares, should not be taxed as shares under capital gains provisions.

- This distinction protects foreign investors from potential double taxation on gains arising from transfer of such rights. The decision aligns with statutory and regulatory frameworks recognising rights entitlement as an independent security and underscores the need for tax authorities to carefully analyze the nature of the asset involved before taxing capital gains under DTAA provisions. This judgment will have implications for cross-border investments involving rights issues and may help streamline dispute resolution in similar cases.

## INDIRECT TAX

### Case 1 – SICPA India Private Limited and Another vs Union of India and Others [WP(C) No.54 of 2023]

**Facts in brief & Issue Involved**

- The petitioner, SICPA India Private Limited, was engaged in the business of manufacturing security inks and solutions and discontinue its operations in Jan 2019.

- The petitioner sold all its assets and appropriately reversed ITC as per the GST Act. After selling the assets and reversing applicable ITC, they had an unutilized Input Tax Credit (ITC) balance of ₹4.37 crore lying in their Electronic Credit Ledger. They filed a refund application under Section 49(6) read with Section 54 of the CGST Act, 2017.

- The Assistant Commissioner, CGST, rejected the refund application, holding that Section 54(3) allows refund only in specified cases, not for closure of business. The appellate authority upheld this decision. Aggrieved by the decision, the petitioners approached the High Court.

- The matter is in respect of whether refund of unutilized ITC on closure of business is permissible under Section 49(6) of the CGST Act, despite the restrictive conditions under Section 54(3).

**Contentions of Petitioners**

- The petitioners argued that Section 49(6) allows refund of balance in the Electronic Credit Ledger after payment of tax, interest, and penalty in accordance with Section 54 of CGST Act.

- Section 54 is an exception carved out that states that the taxpayer shall claim the refund of ITC in accordance with section 54(3) of CGST Act at the end of any tax period, and, that no refund of ITC shall be allowed except as provided in Section 54(3)(i) and

(ii) of CGST Act. The petitioners argued that it is vested right of claiming the ITC and that the vested right cannot be taken away by the said exemption.

- They stated that there is no express prohibition under the CGST Act denying refund of unutilized ITC on closure of business, and retaining such tax would be without authority of law.

- They relied on various judgments where courts permitted refund of unutilized credits even when no specific provision provided for refund on business closure.

**Contentions of Respondents**

- The respondents contended that closure or discontinuation of business is not recognized as a valid ground for refund of unutilized Input Tax Credit (ITC) under the CGST Act, 2017. Section 54(3) of the Act allows refund of unutilized ITC only in two specified circumstances: zero-rated supplies made without payment of tax and accumulation of credit due to inverted duty structure.

- They argued that Section 49(6) does not independently create a right of refund but merely provides that any refund of balance in the Electronic Credit Ledger will be subject to the conditions and procedure laid down in Section 54. Therefore, any claim for refund must necessarily satisfy the requirements of Section 54, particularly the restrictions imposed in Section 54(3).

- The respondents submitted that Section 29(5) of the CGST Act specifically provides for reversal of ITC in case of cancellation of registration but does not authorize refund. This indicates that the law contemplates reversal and not refund upon closure of business.

- They stated that recognizing such refund claims could set an unintended precedent allowing many businesses to claim refund of accumulated ITC upon closure, defeating the legislative intent and causing potential loss to the revenue.

- The respondents also argued that the petitioners had an alternative statutory remedy available under Section 112 of the CGST Act by way of an appeal to the Appellate Tribunal, which they failed to exhaust. Therefore, the writ petition should not be entertained at this stage.

- They emphasized that the impugned orders were passed after due consideration of the statutory framework and were neither arbitrary nor contrary to law. The rejection of refund was fully supported by the language of the CGST Act and should be upheld.

**Observations & Decision of the Sikkim High Court**

- The Court noted that Section 49(6) allows refund of balance in Electronic Credit Ledger, subject to Section 54, but Section 54(3) only lists specific cases for refund, without expressly prohibiting refund on closure of business.

- Relying on judgements in erstwhile laws, the Court held there is no specific prohibition of claiming refund of ITC on closure of business in section 49(6) r.w. section 54 and section 54(3). It observed that no provision in the CGST Act permits the government to retain tax without authority of law. The Court is of the view that the petitioners are entitled to refund of unutilized ITC on closure of business.

- Accordingly, the impugned order was set aside, and a refund was allowed.

**NASA Comments**

- The judgment clarifies that refund of unutilized ITC on business closure, though not expressly mentioned in Section 54(3), can still be granted since there is no statutory prohibition, upholding the principle that the government cannot retain tax without legal authority.

- The decision strengthens the interpretation that refund provisions under GST should not be construed narrowly when there is no express bar, ensuring fair treatment of taxpayers who have lawfully accumulated ITC.

## Case 2 – M/s Namasivaya Auto Parts vs Union of India [TS-493-HC(MAD)-2025-GST]

**Facts in brief & issues involved:**

- M/s. Namasivaya Auto Parts ("the Petitioner"), a registered GST taxpayer, challenged an ex-parte assessment order passed by the GST Department.

- The petitioner claimed that it was unaware of the issuance of notices in Form DRC-01A and the subsequent show cause notice in Form DRC-01, as the same were only uploaded on the GST portal under the "Additional Notices and Orders" tab.

- The petitioner was unable to participate in the adjudication proceedings, prompting it to file a writ petition before the Madras High Court.

- Aggrieved by said issue, the petitioner has preferred the writ petition before the High Court.

**Contention of the Petitioner:**

- The petitioner contended that neither the notices nor the assessment order was served via physical delivery or registered post, as required under Section 169(1) of the GST Act. Instead, it was uploaded in the common portal under the head "Additional Notices and Orders" tab.

- The sole uploading of notices on the portal rendered the service ineffective and left the petitioner unaware of the proceedings.

- The petitioner expressed willingness to deposit 25% of the disputed tax and sought one final opportunity to present objections before the adjudicating authority.

**Contention of the Respondent:**

- The Respondent contended that an intimation notices in Form DRC-01A followed by a show cause notice in Form DRC-01 was duly issued through the GST portal.

- A personal hearing was also offered, along with a reminder notice, but the petitioner failed to respond or appear.

- Accordingly, the assessment order was passed based on the unrefuted proposals in the show cause notice.

**Observation and Decision of High Court:**

- The Hon'ble Madras Court noted that while portal-based service is legally valid under Section 169, mere uploading of notices—without follow-up through other permissible modes when no response is received—fails to satisfy the requirement of effective service.

- High Court stressed that officers must apply their minds and, in the absence of taxpayer response, explore alternative service modes prescribed under Section 169(1), preferably RPAD (Registered Post with Acknowledgment Due).

- Passing ex-parte orders by simply completing formalities undermines natural justice and leads to unnecessary litigation, thereby burdening the administrative and judicial machinery.

- The Court found that the petitioner was not provided with a genuine opportunity to be heard and that the service of notices was procedurally insufficient.

**NASA Comments:**

- This judgement by Hon'ble Madras High Court will assist taxpayers who faces technical difficulties in receiving intimation of notices uploaded on GST portal and no other opportunity is given to submit the reply.

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