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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		
<u>Goldman Sachs Services (P.) Ltd Vs. Pr. Commissioner of Income Tax [TS-1286-HC-2025(KAR)]</u>	The assessee had provided back-end support services to the Goldman Sachs group entities. The assessee employed expatriate employees, with part of their salary paid by assessee and part by the overseas entity, which were reimbursed by the assessee at cost. Revenue contended that these reimbursements qualified as FTS and should be taxed accordingly as defined in section 9 (1) (vii) and relevant DTAA provisions.	The court relied on ITAT's judgement and reaffirmed that services rendered, and amount reimbursed did not constitute FTS and instead fell under an employer – employee relationship. There was no obligation to deduct tax at source u/s 195 and assessee could not be treated as assessee in default u/s 201.
Indirect Tax		
<u>Khokan Motors Works Pvt. Ltd. Vs Senior Joint Commissioner Of State Tax [W.P.A. No. 1783 of 2025, decided on 3-9-2025]</u>	Whether failure to supply documents forming the basis of tax allegations invalidates the adjudication and appellate orders?	The Hon'ble Calcutta High Court held that failure to supply documents forming the basis of tax allegations amounts to a violation of the principles of natural justice at the initial stage, which invalidates the entire adjudication process. Such a defect cannot be cured at the appellate stage.

<u>Transformative Learning Solutions Pvt Ltd v. Commissioner, Central Goods and Service Tax [2025-TIOL-1622-HC-DEL-GST]</u>	Whether export refunds under GST can be denied for FIRCs not matching with individual export invoices	The Hon'ble Delhi High Court held that invoice-wise matching is not mandatory and aggregate reconciliation of foreign remittances is sufficient,
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The brief analysis of above referred decisions and rulings are given below.

DIRECT TAX

Goldman Sachs Services (P.) Ltd Vs. Pr. Commissioner of Income Tax [TS-1286-HC-2025(KAR)]

Facts in brief & Issue Involved:

- ♦ Goldman Sachs Services (P.) Ltd. ('assessee'), a subsidiary of Goldman Sachs (Mauritius) LLC, was engaged in providing back-end support services in the nature of information technology enabled services and software development services to the Goldman Sachs group entities.
- ♦ The assessee employed expatriate employees, with part of their salary paid by assessee and part by the overseas entity, which were reimbursed by the assessee at cost.
- ♦ In the books of the assessee, reimbursement made were recorded as salary and payroll costs and TDS deducted us. 192 of the Income -tax Act, 1961 ('Act') on 100% of the salary.
- ♦ The Assessing Officer issued order us. 201(1) & 201(1A) of the Act for non-deduction of TDS us. 195 of the Act on payments made to non-residents for salary costs.
- ♦ Revenue argued that these reimbursements qualified as FTS and should be taxed accordingly, relying on the definition in section 9(1)(vii) and relevant DTAA provisions.
- ♦ The CIT(A) upheld the contention of the AO. However, ITAT ruled in favour of the assessee.

Contentions of Taxpayer:

- ♦ The assessee contended that the arrangement was an employer-employee relationship based on the agreement, work performed, control and supervision exercised by assessee over expatriate employees.

- ♦ The seconded employees were present in India for more than 183 days, held PAN cards and filed Income tax returns on full salary amount.
- ♦ The payment made by the assessee to the overseas entity is towards reimbursement of the portion of salary paid by overseas entity to seconded employee in USA for local use and family maintenance, at the request of the employee.
- ♦ India Recharge and Cost Allocation Agreement entered by the assessee with overseas entity, is for secondment of staff from overseas entity to the assessee in India and not an agreement for rendering of services by overseas entity to the assessee in India.

Contentions of Revenue:

- ♦ No employer – employee relationship exists between expatriate employees and assessee with real employer being overseas entity.
- ♦ The revenue contended that payment made by assessee satisfied FTS definition under section 9 (1)(vii) and DTAA and hence any payments made attract TDS u/s 195.
- ♦ The revenue claimed that the Hon'ble ITAT has erred by not treating the payments as FTS, referencing DIT(IT) vs. Abbey Business Services India Pvt. Ltd. (122 taxmann.com 174) and Centrica India Offshore Pvt. Ltd. vs. CIT (44 taxmann.com 300) cases.

Observations & Decision of the Hon'ble High Court:

- ♦ The Hon'ble High court affirmed the ITAT's view saying that the expatriate employees were economically employed by Indian entity. Reimbursements represented salary costs, and not FTS and the same was on cost-to-cost basis. "Make available" clause under DTAA was also not satisfied.
- ♦ ITAT also held that there was no obligation to deduct TDS u/s 195 and the assessee could not be treated as assessee in default u/s 201 for the relevant period.

- ♦ The court referred to established Karnataka High Court decisions: Abbey Business services (supra) and DIT(IT) vs. Flipkart Internet Pvt. Ltd. (171 taxmann.com 693), which held such reimbursements were in the nature of employer and employee relationships and not taxable as FTS.
- ♦ Revenue's appeal before the Hon'ble court was dismissed.

NASA Comments:

- ♦ This decision establishes the key principle that reimbursement of salary costs for secondees where the Indian entity is the economic employer, cannot be treated as FTS.
- ♦ Employer-employee relationship supersedes FTS characterization and cost reimbursements also represent salary not FTS.

INDIRECT TAX

Case 1 – Khokan Motors Works Pvt. Ltd. Vs Senior Joint Commissioner Of State Tax [W.P.A. No. 1783 of 2025, decided on 3-9-2025]

Facts in brief & Issue Involved

- ♦ M/s Khokan Motors Works Pvt. Ltd ("the petitioner") was issued a pre-show cause notice and a subsequent show cause notice under GST laws for FY 2018-19, alleging significant tax evasion on several counts mentioned therein.
- ♦ However, in both notices various descriptions of discrepancies have been alleged therein but in a cryptic manner only with the alleged quantum of evasion of tax. Also, the petitioner did not reply to the said show cause notice since the notice did not disclose the detail of the alleged description of discrepancies.

- ♦ The adjudicating authority proceeded to pass an order determining tax liability. The Petitioner applied for rectification of the said order of the adjudicating authority, which was rectified, and the rectification order was passed by the adjudicating authority with a lower demand amount.
- ♦ Being Aggrieved the petitioner preferred the statutory appeal before the appellate authority. The appellate authority did not interfere with the finding of the order of the adjudicating authority on rectification.
- ♦ Being Aggrieved the petitioner filed the said Writ petition.

Contentions of Petitioners

- ♦ The Petitioner argued that show cause notice, being the source whereupon the rectification ultimately took place, has not disclosed the adequate materials on the basis of which charges of evasion of tax were levied against the petitioner at the adjudicating stage which is in clear violation of the basic principle of natural justice.
- ♦ The Petitioner requested to set aside the demand notice following the order of the adjudicating authority and the appellate authority including the portion of the order of the adjudicating authority on the basis where the said impugned demand notice has been issued.

Contentions of Respondents

- ♦ The respondent contended that adequate hearing opportunity was given at both adjudication and appellate stages.
- ♦ The Respondent further stated that since rectification and appeal proceedings were conducted after hearing the Petitioner, natural justice was complied with.
- ♦ The findings of the appellate authority were lawful and justified and therefore the demand should stand.

Observations & Decision of the High Court

- ♦ The Honbl'e Calcutta High Court observed that the basis of the materials on which the evasion of tax was alleged against the petitioner, were never made available before the petitioner to deal with ,an act which is clearly in violation of the basic principle of natural justice and has rendered the finding of the adjudicating authority to the extent it was upheld by the appellate authority bad in law and not in sustainable in law.
- ♦ The orders of both adjudicating authority and the appellate authority were set aside and quashed, and the matter was remanded to the adjudicating authority for fresh adjudication.

NASA Comments

- ♦ This decision reinforces the cardinal principle of natural justice in GST proceedings.
- ♦ The ruling mandates that show cause notices and adjudication orders must be speaking and self-contained clearly stating out the facts, evidence and reasoning.

Case 2 – Transformative Learning Solutions Pvt Ltd v. Commissioner, Central Goods and Service Tax [2025-TIOL-1622-HC-DEL-GST]

Facts in brief & Issue Involved

- ♦ M/s **Transformative Learning Solutions Pvt Ltd** ("The petitioner"), claimed GST refunds by submitting Foreign Inward Remittance Certificates (FIRCs) and Bank Realization Certificates (BRCs) as proof of receiving foreign exchange.
- ♦ The GST authority, during audit raised objections that the petitioner has failed to submit proof of FIRC's or BRC's or any other document issued by the bank regarding foreign remittances.

- ♦ The GST authorities alleged that the amounts received by the petitioner do not corroborate with invoice wise/Month wise/year wise quantum of the petitioner leading to a liability in the hands of the petitioner.
- ♦ Subsequently the GST department issued a Show cause notice ("SCN") demanding the Tax, interest and penalty. The Petitioner replied to the said SCN against the GST department who passed the demand order.
- ♦ Being aggrieved the petitioner filed a writ petition in the Delhi High Court challenging the assessment / demand order.

Contentions of Petitioner

- ♦ The petitioner contended it had claimed refund of the accumulated ITC and along with the refund application, it had annexed inter alia proof of exports and receipt of export proceeds which were duly verified by the GST department.
- ♦ The Petitioner also contends that during the entire audit period, it has been claiming refund and submitting the relevant documents on the basis of which refund has been sanctioned by the GST department.
- ♦ The Petitioner further states that the submissions made against the objection raised by the GST department has not been duly considered and the order has rejected the refund by only reasoning given therein is that the FIRC's

Observations & Directions of the Hon'ble Delhi High Court

- ♦ The Hon'ble Delhi High Court held that FIRC's need not match with transactions by transaction and could even be on the periodic basis so long as the total benefit that is being claimed is fully supported by foreign exchange which has been remitted to the petitioner.
- ♦ The impugned order was set aside and ordered the adjudicating authority to issue a fresh notice for personal hearing and adjudicate the SCN afresh after considering the submission made by the petitioner therein



NASA Comments

- ♦ This judgment clarifies that invoice-wise matching of FIRC's is not mandatory for export refunds under GST and aggregate reconciliation is sufficient. The primary purpose of FIRC is to authenticate payments received from overseas parties
- ♦ It sets a useful precedent protecting genuine exporters from denial of refunds on grounds of non-reconciliation of FIRC's



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