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TAX JURISPRUDENCE

CASE LAW ALERT – JANUARY 2026

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>Damandeep Kaur [TS-1739-ITAT-2025(CHANDI)]</u>	The issue before the Hon. ITAT was whether the failure of the Assessing Officer (AO) to issue a draft assessment order under Section 144C before passing a final assessment order—despite the assessee being an “eligible assessee” and the AO proposing variations prejudicial to the assessee—renders the assessment order void ab initio, even when the assessment is framed under Section 153A pursuant to a search.	The Hon’ble ITAT has held that the assessment orders for AYs 2016-17, 2018-19, 2019-20 and 2020-21 passed under Section 153A without issuance of a draft assessment order under Section 144C—despite the assessee being an eligible assessee—are void ab initio, being vitiated by a fatal and incurable jurisdictional defect.
Indirect Tax		
<u>Amman Try Trading Company Pvt. Ltd. vs. State Tax Officer – V (RS) (2025) 36 Centax 146 (Mad.)</u>	Whether GST can be levied on a corporate guarantee given by an assessee to its related party without consideration, when the assessee relied on CBIC Circulars and claimed that the recipient was eligible for full Input Tax Credit (ITC), and whether the adjudicating authority passed a non-	The High Court set aside the GST demand order as it was a non-speaking order that failed to consider the assessee’s contentions and binding CBIC circulars. The matter was remanded for fresh adjudication, with directions to pass a reasoned order after considering all

	speaking order by not considering these defence's.	defence's. No opinion was expressed on merits.
<u>Sahil Enterprise V. Union of India & Ors. [WP (C) No. 688 of 2022]</u>	Whether a bona fide purchaser (buyer) can be denied Input Tax Credit (ITC) under GST solely because the supplier failed to deposit the tax collected to the Government?	The Hon'ble Tripura High Court quashed the demand order stating that ITC cannot be denied to bona fide transaction where there is no fraud or collusion are involved and directed the authorities to restore of ITC wrongly denied to the petitioner.

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

Facts in brief & Issue Involved:

- ◆ The assessee, an NRI, was subjected to search and seizure proceedings under Section 132(1) in connection with the Chandigarh Group of Colleges. Pursuant to the search, the Assessing Officer (AO) initiated assessment proceedings under Section 153A for multiple assessment years, namely AYs 2016-17, 2018-19, 2019-20 and 2020-21. During the course of assessment, the AO proposed variations prejudicial to the interest of the assessee.
- ◆ Despite the assessee being an "eligible assessee" within the meaning of Section 144C(15)(b), the AO did not issue draft assessment orders as mandated under Section 144C(1). The AO directly passed final assessment orders under Section 153A, bypassing the Dispute Resolution Panel (DRP) mechanism.
- ◆ The assessments were framed after 1 April 2020, without adherence to the mandatory procedure prescribed under Section 144C.
- ◆ Aggrieved, the assessee challenged the validity of the assessment orders before the ITAT on the ground of lack of jurisdiction.

Contentions of Taxpayer:

- ◆ The taxpayer contended that once an assessee falls within the definition of an "eligible assessee" under Section 144C(15)(b) and the Assessing Officer (AO) proposes variations prejudicial to the interest of the assessee, the issuance of a draft assessment order under Section 144C(1) becomes mandatory and not discretionary.
- ◆ It was argued that the AO's failure to issue a draft assessment order goes to the root of jurisdiction, rendering the final assessment order void ab initio. Such a defect is not a mere procedural lapse but a jurisdictional illegality.
- ◆ The taxpayer submitted that Section 292B cures only technical or procedural defects and cannot cure a complete non-compliance with a mandatory

statutory requirement. Therefore, the defect arising from bypassing Section 144C cannot be validated by invoking Section 292B.

- ◆ The taxpayer contended that although the assessments were framed under Section 153A pursuant to a search, there is no statutory exception excluding search assessments from the ambit of Section 144C. Hence, the special nature of Section 153A proceedings does not dilute or override the mandatory DRP procedure.
- ◆ The taxpayer argued that participation in assessment proceedings, acquiescence, or failure to object at an earlier stage cannot confer jurisdiction upon the AO or validate an otherwise void order. There is no estoppel against the statute.
- ◆ It was submitted that Section 144C prescribes strict and non-extendable time limits for passing the final assessment order. In the absence of a draft order and DRP proceedings, the AO exceeded the statutory framework, thereby rendering the assessments barred by limitation.
- ◆ The taxpayer emphasized that non-issuance of a draft assessment order resulted in denial of a valuable statutory right to approach the Dispute Resolution Panel, causing serious prejudice.
- ◆ The taxpayer placed reliance on binding High Court judgments, including:
Barentz India (Bombay High Court)
Sumitomo Corporation (Delhi High Court)
Ahmed Buhari (Madras High Court)
to support the proposition that non-compliance with Section 144C renders the assessment non est and unenforceable.

Contentions of Revenue:

- ◆ The Revenue contended that assessments framed under Section 153A pursuant to search and seizure operations are special provisions under the Income-tax Act.
 - As such, these proceedings have a distinct statutory purpose and procedure.

- The AO is empowered to directly pass final assessment orders in search cases, and therefore, strict compliance with Section 144C is not mandatory.

- ◆ The Revenue argued that the non-issuance of a draft assessment order under Section 144C constitutes at most a procedural irregularity, not a jurisdictional defect.
 - It does not vitiate the assessment order itself.
 - Such procedural lapses are curable under Section 292B, which allows rectification of clerical or technical mistakes.
- ◆ The Revenue submitted that the assessee participated in the assessment proceedings and did not object to the variations proposed by the AO.
 - By participating, the assessee implicitly accepted the assessment, and therefore, the final assessment should be held valid.
 - Participation or acquiescence should operate as estoppel, legitimizing the AO's action.
- ◆ The Revenue contended that the time limits prescribed under Section 144C are directory in nature, or are superseded in the context of Section 153A assessments.
 - Even if the DRP procedure was not followed strictly, the AO retained jurisdiction to complete assessments within a reasonable timeframe.
- ◆ The Revenue emphasized the practical difficulties in search-related cases, especially when multiple assessment years are involved.
 - Issuing draft orders and waiting for DRP consideration in every case would delay revenue collection.
 - Therefore, Section 153A proceedings should not be invalidated on a hyper-technical interpretation of Section 144C.

Observations & Decision of the Hon'ble ITAT:

- ◆ The Tribunal first examined whether the assessee qualified as an "eligible assessee" under Section 144C(15)(b). It was held that the assessee, being an NRI and facing variations prejudicial to its interest, was undoubtedly an eligible assessee. Consequently, the procedure under Section 144C became mandatory,

and the AO was legally obliged to issue a draft assessment order before passing the final assessment.

- ◆ The ITAT emphasized that the failure to issue draft assessment order under Section 144C is not merely procedural, but a jurisdictional defect. The Tribunal relied on the principle that: "Jurisdictional illegality cannot be cured under Section 292B." Thus, any final assessment passed without a draft order is void ab initio.
- ◆ The Revenue argued that Section 153A is a special provision and allows direct assessment, bypassing Section 144C. The Tribunal rejected this argument, noting: Section 144C contains an express, overriding mandate for eligible assessee. Special provisions under Section 153A cannot override mandatory procedural safeguards under Section 144C. The Tribunal stated: "The argument that search assessments under Section 153A are special provisions cannot defeat the express, overriding mandate of Section 144C."
- ◆ The Revenue contended that the assessee's participation in assessment proceedings validated the order. The ITAT observed: No estoppel against statute exists. Participation or acquiescence by the assessee cannot confer jurisdiction upon the AO. Therefore, a void order remains void, irrespective of the assessee's conduct.
- ◆ The Tribunal highlighted that Section 144C prescribes strict statutory time limits for passing the final assessment order. Even if the assessee did not file objections or accepted the draft order, the AO was statutorily bound to complete the final order within the prescribed timeframe. Passing assessment orders beyond this period renders the order invalid.
- ◆ The Tribunal held that the assessment orders for AYs 2016-17, 2018-19, 2019-20, and 2020-21 were void ab initio. Key reasons for quashing the assessment: AO failed to issue draft assessment orders under Section 144C. Mandatory DRP procedure was bypassed. Jurisdictional defect could not be cured under Section 292B. Assessments were framed beyond statutory time limits, violating Section 144C(4).
- ◆ Since the failure to follow the procedure under Section 144C renders the assessment order non est and void ab initio, and any order passed beyond the

statutory limitation is bound to be quashed, the impugned assessment orders are legally unsustainable and liable to be set aside.

NASA Comments:

This decision underscores the well-settled principle that beneficial provisions are required to be interpreted liberally in order not to deprive the assessee from claiming legitimate benefits merely on account of procedural defects/ technical lapses to which the assessee is otherwise entitled to.

INDIRECT TAX

Case 1 – Amman Try Trading Company Pvt. Ltd. vs. State Tax Officer – V (RS) (2025) 36 Centax 146 (Mad.)

Facts in brief & Issue Involved

- ◆ The petitioner company had extended a corporate guarantee in favour of its related entity free of charge to enable the latter to avail financial facilities.
- ◆ The State Tax Officer issued a show cause notice proposing to treat the corporate guarantee as a taxable supply under GST and to levy tax at the rate of 1% of the guaranteed amount.
- ◆ The adjudicating authority passed a non-speaking order confirming the demand without examining or dealing with the contentions raised by the petitioner or the applicability of the relevant circulars because of which the petitioner approached the High Court by way of a writ petition challenging the demand.

Contentions of Petitioner

- ◆ The petitioner contended that the impugned demand was unsustainable both on facts and in law. It was argued that the corporate guarantee furnished to the related party was issued without any consideration and therefore could not automatically be treated as a taxable supply under the GST regime.
- ◆ The petitioner relied heavily on CBIC Circular No. 199/11/2023-GST dated 17.07.2023 and Circular No. 210/4/2024-GST dated 26.06.2024, which clarify the valuation mechanism for corporate guarantees, especially in cases where the recipient is eligible for full input tax credit.
- ◆ It was further submitted that no invoice was raised for the alleged supply and the value of the transaction was correctly taken as nil by the petitioner. Since the recipient entity was entitled to full ITC, no GST is payable on corporate guarantee extended to related party.

- ◆ According to the petitioner, in such circumstances, the proviso to Rule 28 of the CGST Rules squarely applies, and the declared value ought to have been accepted as the open market value.
- ◆ The petitioners also alleged serious procedural lapses, stating that although a detailed reply was filed to the show cause notice, the adjudicating authority failed to examine or even advert to the specific defences raised, particularly the applicability of the binding circulars.
- ◆ On this ground alone, the order was unpleasant as a non-speaking and arbitrary order, violative of principles of natural justice.

Contentions of Respondent

- ◆ The respondent justified the impugned order by contending that the petitioner had provided a service of corporate guarantee to its related entity, which squarely fell within the scope of taxable supply under the CGST Act.
- ◆ They also argued that Rule 28(2) of the CGST Rules clearly provides a deemed valuation mechanism, under which the value of such service is fixed at one per cent of the guarantee amount per annum, irrespective of whether actual consideration is received.
- ◆ The respondent maintained that the issuance of a show cause notice and the subsequent adjudication were carried out in accordance with law, and that the mere absence of monetary consideration and eligibility of full ITC to recipient would not exempt the transaction from tax liability when the supplier and recipient are related persons.

Observations & Decision of the High Court

- ◆ The High Court noted that the petitioner had furnished a corporate guarantee to a related entity without receiving any consideration.

- ◆ In response to the show cause notice, the petitioner had specifically relied upon CBIC Circular No. 199/11/2023-GST dated 17.07.2023 and Circular No. 210/4/2024-GST dated 26.06.2024, contending that since the recipient was eligible for full input tax credit and no invoice had been issued, the value of the transaction was required to be taken as nil.
- ◆ The Court observed that these contentions, which went to the root of the matter, were not examined at all by the adjudicating authority. It was emphasized that the circulars issued by the CBIC are binding on the departmental authorities and any adjudication ignoring such binding instructions cannot be sustained.
- ◆ The Court reiterated the settled principle of administrative law that failure to consider the defence raised by the noticee renders the adjudication order legally vulnerable and unsustainable.
- ◆ The matter was remanded to the assessing authority for fresh adjudication, with a direction to consider all the contentions raised by the petitioner in its reply and to pass a reasoned order on merits and in accordance with law.
- ◆ The Court clarified that it had not expressed any opinion on the merits of the taxability issue. The writ petition was accordingly allowed.

NASA Comments

- ◆ The High court has set-aside the order on the ground of non-consideration of defence and remanding the matter for fresh adjudication, the Court has struck a balance between protecting procedural fairness and leaving substantive issues open for proper determination.
- ◆ Overall, the ruling strengthens the requirement of reasoned decision-making in GST proceedings and safeguards the taxpayer's right to fair adjudication, without diluting the powers of the department to examine the issue afresh in accordance with law.

Case 2 – Sahil Enterprise V. Union of India & Ors. [WP (C) No. 688 of 2022]

Facts in brief & Issue Involved

- ◆ The petitioner, Sahil Enterprise, is a proprietary concern engaged in the trading of rubber products and registered under GST, which has received a demand-cum-show cause notice under Section 73 alleging wrongful availment of input tax credit.
- ◆ Investigation by CGST Enforcement authorities revealed that a supplier collected GST from purchasers, including the petitioner, but failed to deposit the tax with the Government.
- ◆ The petitioner submitted his reply stating that it had paid GST to the supplier, verified transactions through GSTR-2A, and had no mechanism to verify the supplier's GSTR-3B compliance.
- ◆ The Proper Officer ignored the reply and passed the order.
- ◆ The petitioner challenged the demand order before the High Court, arguing the constitutional validity of Section 16(2)(c) of the CGST Act, leading to a writ petition.

Contentions of Petitioner

- ◆ The petitioner argued that they genuinely purchased goods for business purposes, received the goods, and paid the full invoice value including GST to the supplier.
- ◆ They argued that denial of ITC solely because the supplier failed to pay GST to the Government is unfair, especially when the purchaser acted honestly and complied with the law.
- ◆ The petitioner argued that requiring a purchaser to ensure that the supplier has actually paid tax to the Government imposes an impossible and impractical burden.

- ◆ They challenged Section 16(2)(c) of the CGST Act, claiming it is unreasonable because it makes the buyer dependent on the supplier's conduct, which violates Articles 14, 19(1)(g), and 300A of the Constitution.

Contentions of Respondent

- ◆ The respondent contended that Input Tax Credit (ITC) is not an absolute or fundamental right; it is a benefit granted by statute, which can be claimed only on fulfilment of conditions prescribed under the CGST Act.
- ◆ They argued that Section 16(2)(c) of the CGST Act clearly mandates that ITC can be availed only if the tax charged on supply has actually been paid to the Government by the supplier.
- ◆ According to the respondent, since the supplier failed to deposit GST with the Government, the statutory condition for availing ITC was not satisfied, and hence ITC was rightly denied to the petitioner.
- ◆ The respondent submitted that the condition under Section 16(2)(c) is essential to prevent fake invoicing, circular trading, and tax evasion, and to protect Government revenue.

Observations & Decision of the High Court

- ◆ The Court observed that although Input Tax Credit (ITC) is a statutory benefit, it cannot be denied mechanically when the recipient has acted bona fide and complied with all legal requirements.
- ◆ The Court observed that Section 16(2)(c) of the CGST Act must be applied reasonably and purposively, and not in a manner that causes undue hardship to honest taxpayers.
- ◆ The Court noted that there was no allegation that the petitioner was involved in fake invoicing, tax evasion, or collusion with the supplier, which weighed in favour of the petitioner.

- ◆ The Court emphasized that GST law aims to avoid cascading of taxes, and denial of ITC in such cases defeats the very objective of the GST regime.
- ◆ The Court stressed that tax administration must be fair and equitable, and honest taxpayers should not suffer for faults beyond their control.

NASA Comments

- ◆ The decision reinforces that Input Tax Credit cannot be denied to a bona fide purchaser who has complied with all statutory requirements and paid GST to the supplier.
- ◆ This ruling injects that a supplier's failure to deposit tax with the Government cannot, by itself, be a ground to deny ITC to the recipient in the absence of fraud or collusion and statutory requirements are to be applied reasonably.

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