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TAX JURISPRUDENCE

CASE LAW ALERT – FEBRUARY 2026

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		
Vodafone Mobile Services Limited [TS-16-ITAT-2026 (Mum)-TP]	Whether a draft assessment order passed under Section 144C in the name of a non-existent (amalgamated) entity renders the entire assessment proceedings void ab initio, even if the final assessment order is passed in the correct name.	The Tribunal held that the draft assessment order was a nullity as it was passed against an entity that had ceased to exist in law. Consequently, the entire assessment proceedings arising from such invalid draft order were quashed. Other grounds on merits were rendered academic. The assessee' s appeal was allowed.
Indirect Tax		
Birlanu Limited vs. Union of India [(2026) 38 Centax 172 (Telangana)]	Whether ITC distribution in ISD registration should strictly be in the same month as prescribed under Rule 39(1)(a)?	Hon'ble Telangana High Court held that the provision of distribution of ITC in the same month is ultra-vires to GST Act and is hereby struck down.
State of Jharkhand vs. BLA Infrastructure Pvt Ltd. [(2026) 38 Centax 186 (SC)]	Whether refund of pre-deposit made at the time of filing appeal cannot be granted if the refund application falls beyond the time limit for filing of refund application u/s 54?	Hon'ble Supreme Court upheld decision of Hon'ble Jharkhand High Court's decision of interpretation of Section 54 and held that the refund of statutory pre deposit is governed by Section 107(6) read with Section 115 and not Section 54.

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

DIRECT TAX

Vodafone Mobile Services Limited [ITA No. 922/Del/2017 Assessment year: 2012-13 [TS-16-ITAT-2026(Mum)-TP]

Facts in brief & Issue Involved:

- The assessee, formerly known as Vodafone West Limited, is engaged in providing cellular mobile telephony services in Gujarat. The assessee filed Return of income declaring total income of ₹180.97 crore.

- The return was processed under section 143(1) of the Act. Subsequently, the case was selected for scrutiny assessment. During the course of assessment reference was made to TPO. Draft assessment passed u/s 144C read with 143(3) of the Act. Thereafter, the Assessing Officer passed a draft assessment order under section 144C read with section 143(3) of the Act in March 2016, incorporating the proposed transfer pricing adjustments as well as certain other disallowances.

- Aggrieved by the draft assessment order, the assessee filed objections before the DRP under section 144C(2) of the Act.

- DRP, after considering the objections of the assessee, issued its directions.

- Pursuant to the directions of the Dispute Resolution Panel, the Assessing Officer passed the final assessment order dated 27.01.2017 under section 143(3) read with section 144C(4) of the Act, determining the total income after making making several additions including:
  - Depreciation on passive infrastructure
  - Network site rentals
  - Roaming charges
  - Licence fees & royalty
  - TP adjustments on royalty & ECB interest
  - Section 14A disallowance
  - **Additional Ground (Jurisdictional):** The draft assessment order (March 2016) was passed in the name of Vodafone West Limited, which had already ceased to

exist pursuant to amalgamation approved by the High Court with appointed date 01.04.2012.

- **Core Legal Issue:** Whether a draft assessment order passed under Section 144C in the name of a non-existent (amalgamated) entity renders the entire assessment proceedings void ab initio, even if the final order is passed in the correct name.

Contentions of Taxpayer:

- The taxpayer contended that the amalgamation was approved by the High Court and became effective prior to the draft order.

- The taxpayer explicitly informed the Assessing Officer vide a letter dated February 12, 2016, regarding the amalgamation, including proofs such as the High Court order and Registrar of Companies filings.

- Despite this prior intimation, the AO passed the Draft Assessment Order in March 2016 in the name of the non-existent amalgamating company (*Vodafone West Limited*).

- Final Order: Interestingly, the final assessment order was passed in the name of the correct successor entity, but the foundational draft order remained in the name of the dissolved entity.

- Argued that defect is jurisdictional, not procedural; Section 292B cannot cure it.

- Relied upon judicial precedents:
  - FedEx Express Transportation and Supply Chain Services (India) (P.) Ltd. v. DCIT
  - Boeing India (P.) Ltd. v. ACIT
  - Siemens Ltd. v. DCIT

Contentions of Revenue:

- Final assessment order and DRP directions were issued in the name of amalgamated company. AO had taken note of amalgamation while passing final order.

- Since final assessment stood completed in correct name, proceedings should not be invalidated merely due to defect in draft assessment order.

Observations & Decision of the Hon'ble ITAT:

The Tribunal ruled in favour of the assessee, observing:

- The Tribunal held that the draft assessment order is not merely a procedural or interlocutory step but a **"jurisdictional trigger"** that enables the assessee to approach the Dispute Resolution Panel (DRP).

- Passing the draft order in the name of a non-existent entity renders it **void** *ab initio* (invalid from the start). This is a jurisdictional defect that goes to the root of the matter and **cannot be cured** under Section 292B of the Act (which typically covers clerical errors).

- Once the draft order is issued, the AO becomes *functus officio* (having performed his duty) regarding the variations. He cannot unilaterally "fix" the defect by simply issuing the final order in the correct name.

- The Tribunal relied on following judicial precedents as relied upon by the taxpayer FedEx Express Transportation and Supply Chain Services (India) (P.) Ltd. v. DCIT Boeing India (P.) Ltd. v. ACIT and *Siemens Ltd Vs DCIT*), which established that assessment proceedings initiated or continued against a non-existent entity are illegal.

- **Held:** The Tribunal held that the draft assessment order was a nullity because it was passed against an entity that had ceased to exist in the eyes of the law. Consequently, the entire assessment proceedings arising from this invalid draft order were quashed. Other grounds on merits rendered academic. The assessee's appeal was allowed.

NASA Comments:

- This decision reinforces that Section 144C procedure is jurisdiction-sensitive and foundational.

- Draft assessment order is the “jurisdictional trigger”; without a valid draft order, the entire proceeding collapses.

- Revenue cannot rely on curative provisions once foundational jurisdiction itself is defective.

INDIRECT TAX

Case 1 – BirlaNu Limited vs. Union of India [(2026) 38 Centax 172 (Telangana)]

Facts in brief & Issue Involved

- BirlaNu Ltd., the petitioner, is registered as an Input Service Distributor ('ISD') under GST.

- During the GST audit, the department observed that the petitioner accumulated Input Tax Credit (ITC) under its ISD registration and distributed it to its recipient units only in the last month i.e., March of the year, instead of distributing it monthly.

- The GST authorities issued multiple memos, Final Audit Report (FAR) and Show Cause Notice (SCN) proposing penal action for violation of Rule 39(1)(a) of the CGST Rules which mandates that the credit available for distribution in a month shall be distributed in the same month.

- The Petitioner has challenged the constitutional validity of Rule 39(1)(a) by filing the writ petition before the Hon'ble Telangana High Court.

Contentions of Petitioner

- Section 20 of the CGST Act only authorises the manner and conditions of ITC distribution, not a strict monthly time limit. Further, eligibility to ITC is governed exclusively by Sections 16 and 17 of the Act, and once validly availed, such credit constitutes a vested and indefeasible right.

- The credit "available for distribution" is confined to the amount reflected in Form GSTR-6A. GSTR-6A is merely a system-generated, facilitative statement and cannot determine statutory entitlement or availability of ITC under the Act.

- The rule should be treated as directory, not mandatory where noncompliance causes no prejudice to the revenue and does not defeat the object of the statute, namely avoidance of cascading of taxes.

Contentions of Respondent

- Section 20 of the CGST Act and Rule 39 of the CGST Rules constitute a composite statutory scheme governing ISD and must be read harmoniously.

- The requirement of distributing credit in the same month forms an integral part of the prescribed manner which the statute expressly authorises.

Observations & Decision of the High Court

- The Hon'ble Telangana High Court observed that Section 20 of the CGST Act reveals that the legislature has consciously confined the delegated power to regulate the procedural mechanism of distribution and has not contemplated the imposition of any time limit for such distribution.

- Section 20 of the CGST Act is intended to ensure seamless flow and equitable distribution of ITC. Any interpretation of the rulemaking power that imposes rigid time constraints not envisaged by the statute would defeat this object and run contrary to the purpose of the provision.

- The Hon'ble High Court held that the Rule 39(1)(a) to the extent it mandates that Input Tax Credit available for distribution in a month shall be distributed in the same month, is declared ultra vires Section 20 of the CGST Act, 2017, and is hereby struck down.

NASA Comments

- Although the judgment strikes down Rule 39(1)(a) to the extent that it mandates distribution of ITC within the same month, the ruling applies to the pre-amendment provisions of Section 20, prior to the changes introduced by the Finance Act, 2024 (effective 1 April 2025).

- With effect from April 2025, Section 20 has been amended to expressly empower the prescription of a time limit for distribution of credit. Accordingly, the implications of this judgment will need to be assessed in light of the amended framework.

Case 2 – State of Jharkhand vs. BLA Infrastructure Pvt Ltd. [(2026) 38 Centax 186 (SC)]

Facts in brief & Issue Involved

- BLA Infrastructure Private Limited (the Company) filed an appeal u/s 107 of the CGST Act against an order dated 31 August 2021. The Company made a mandatory pre-deposit of 10% of the disputed tax amount as required u/s 107(6)(b). The appeal was allowed and Order in Form GST APL-04 was issued on 10 February 2022.

- Subsequently, the Company filed an application on 11 September 2024 seeking refund of the pre-deposit amount. However, the refund application was rejected through a Deficiency Memo in Form GST RFD-03 dated 06 November 2024 on the ground that it was time-barred u/s 54(1) of the CGST Act, 2017, as it was filed beyond two years from the relevant date.

- Challenging the rejection of refund application, the Company filed a writ petition before Hon'ble High Court of Jharkhand seeking quashing of the deficiency memo, refund of the pre-deposit amount with interest, and issue an appropriate writ stating that withholding of the refunded amount, after the appeal is allowed, is illegal and violative of Article 265 of the Constitution of India.

- The Hon'ble High Court held that refund of statutory pre-deposit is a vested right of the appellant once the appeal is allowed in favour of the appellant and that such refund cannot be denied by invoking the limitation prescribed under Section 54, since the word "may" used therein is directory. Accordingly, the High Court set aside the deficiency memo and directed refund with interest.

- The State of Jharkhand challenged the High Court's order before the Supreme Court, only to the extent of the interpretation of Section 54 in the Order.

Observations & Decision of the Supreme Court

- The Hon'ble Supreme Court held that the refund of statutory pre-deposit is governed by Section 107(6) read with Section 115 of the CGST, 2017, and not by Section 54 of the CGST Act. The Court observed that the High Court's exercise in interpreting Section 54 in this context was unnecessary.

- However, the direction for refund was upheld, and the SPL was disposed of with a direction to refund the statutory pre-deposit along with interest in accordance with law within a period of four weeks.

NASA Comments

- Refund of statutory pre-deposit made for the purpose of filing an appeal constitutes a statutory and vested right of the applicant upon the appeal being decided in its favor. Such refund is not governed by the provisions of Section 54 and, consequently, cannot be subjected to the procedural requirements or limitations prescribed therein.

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