

Katalyst Kaleidoscope

April 2024: Tax and Regulatory Insights

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A. Income Tax Highlights

1. Delhi HC¹: Events occurring after balance sheet date relevant to ascertain accrual in current year

In the present case, the assessee exported rice to Dubai importer in A.Y. 2010-11; however, due to quality issues the buyer returned certain quantity in the same year. In the subsequent year, the Assessee and the Dubai importer entered into settlement agreement wherein the assessee agreed to forego the part payment. The Assessee adjusted the irrecoverable amount during the impugned A.Y. (i.e. A.Y. 2010-11) itself though the settlement agreement was entered into subsequent year. The question was whether such adjustment in impugned AY itself was correct or not.

The matter went into appeal, wherein the Delhi HC upheld that the settlement agreement entered into in subsequent year with respect to sale effected during the impugned AY needs to be considered to determine **accrual of real income** in the AY 2010-11.

Further, Delhi HC (referring to AS 4 and AS 9) held that adjustment is required to be made to assets and liabilities for events which occur after the balance sheet date that may materially affect the determination of the amounts ultimately collectible, and if, at the time of rendering of services or sale, there is significant uncertainty in ultimate collection of the revenue, then the revenue recognition should be postponed.

In the present case, HC observed that the settlement agreement was executed after the drawing up of the balance sheet and consequently the assessee had lost the right to receive the full transaction value. Being aware of such fact, warranted the adjustment in impugned AY itself and accordingly the Revenue dismissed the appeal.

2. Mumbai ITAT²: Rejects taxability of notional interest; follows 'real income' theory

In the present case, Assessee, a public limited company engaged in the business of storage and handling of liquid cargo had provided interest free loan to its wholly owned subsidiary; to comply with Indian Accounting Standards, it recorded 'notional interest' of Rs. 2.76 Cr in the books of accounts and credited the same in the profit and loss account. While computing total income for the income tax purpose, assessee excluded such booked notional interest from the net profit.

The issue was regarding whether the notional interest is taxable; The matter went into appeal and the Mumbai ITAT (relying on Chennai ITAT ruling in Shriram Properties), dismissed the Revenue's appeal, on the ground that the notional interest income was credited to the profit and loss account to comply with Ind AS and tax could be levied only on real income, further such interest had not accrued to the assessee and that the revenue had failed to demonstrate the existence of contractual obligation to collect such interest.

¹Bhishansaroop Ram [TS-236-HC-2024(DEL)], dated 6th April 2024

² Kesar Terminals and Infrastructure Ltd [TS-193-ITAT-2024(Mum)], dated 23rd March 2024

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3. Hyderabad ITAT³: Claim of additional depreciation on goodwill inadvertently not claimed in original return; allowed on appeal before ITAT

During F.Y.2016-17, the assessee had acquired entire shareholding of SNL India at premium from existing shareholders of SNL India and excess purchase consideration paid over net assets of SNL was recorded as 'goodwill' in consolidated audited financials of assessee. Assessee inadvertently, had not claimed additional deduction of depreciation on goodwill and made such a claim by way of filing revised computation of income. However, the without providing any reasons rejected such claim made by the assessee.

The DRP rejected such a claim that the AO was not empowered to reduce the total income shown in the return of income and that the depreciation could not be claimed on goodwill arising out of amalgamation under existing provisions of the Act.

On further appeal, it was held:

- The question whether the assessee can make claim for a deduction not made in original return other than by filing revised return is covered by the decision of the Apex Court in the case of *Goetze (India) Ltd. v. CIT* wherein the Supreme Court ('SC') affirmed the principle that the appellate authorities can consider additional claim even if the same is not raised by the taxpayer in the original or revised return and the Tribunal under section 254 has the power to entertain for the first time a point of law provided the fact are available on the basis of which the issue of law can be raised before the Tribunal.
- Income Tax provisions requires apportionment of depreciation only when a particular asset is used in business by both the entities. In the present case, goodwill as an asset had arisen only on amalgamation and not before and accordingly it was available in the hands of the amalgamating company.
- The Income Tax provisions and CBDT Circulars provide that in computing the total income, the depreciation shall be granted whether or not the assessee has claimed such deduction and it is the duty of the department to assist a taxpayer in every reasonable way, particularly in the matter of claiming and securing reliefs.

For the above reasons, disallowance of the claim for deduction of depreciation on goodwill was ordered to be deleted.

³ S&P Capital IQ (India) (P.) Ltd [158 Taxmann.com 12 (Hyderabad Trib)], dated 26th December 2023

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4. Delhi ITAT⁴: ‘Unlikely recoverable’ SPA escrow amounts excludible for capital gains computation;

In the present case, the assessee sold the shares of its subsidiary company (Modi Tyre) to Continental India (purchaser) and a part of sale consideration was kept in an escrow account for meeting the future liabilities of the company. The assessee paid tax on entire sale consideration (including the amount set apart in escrow account). However, at the time of assessment proceedings, the assessee pointed out that it had only received a part amount deposited in escrow amount which had already been offered to tax and there were no chances of any further recovery out of the escrow account as the buyer had made huge claims against the escrow account. The assessee stated that amount still lying in escrow account should fall out of the ambit of “full value of consideration” and accordingly submitted revised capital gains (reducing the amount lying in escrow account). The question was whether such action of assessee tenable.

The matter went into appeal wherein the tribunal (referring to the decision of Bombay High court case of Dinesh Vaziran vs PCIT & Union of India) held that the capital gain was to be computed only on the net amount received from the escrow account after the adjustments on account of liabilities. The tribunal further observed that where sale consideration was specified in an agreement with certain liability, then capital gains should be computed after reducing the liability from the sale consideration; and even the contingent liability should be factored.

The tribunal held that proceeds from a sale of shares in a company that were kept in an escrow account for meeting future liabilities of the company and which were unlikely to be received by the taxpayer sought to be excluded from sale consideration for computing the capital gains. To the extent such proceeds are actually received by the taxpayer, the revenue would be entitled to tax such amount as capital gain as in the year in which it is actually received from the escrow account.

⁴ Modi Rubber Ltd [TS-81-ITAT-2024(DEL)], dated 09th February 2024

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B. Corporate Law Highlights

1. Himachal Pradesh HC⁵: Change of name of company in revenue record does not mean transfer of assets to attract stamp duty and registration fees

In the present case, Company 'MWIL' a public limited company, with a view to set up its business, purchased a land after having obtained necessary approval of Department of Revenue i.e. respondent. Subsequently, 'MWIL' got its name changed to 'MWIPL' (i.e. MWIL got converted into a Private Limited Company) with the approval of ROC; later, 'Group SEB India Pvt Ltd' (petitioner) purchased entire shareholding from shareholders of 'MWIPL' and the name of 'MWIPL' was changed in records of ROC as 'GSIPL'.

'GSIPL' applied for renewal of business and for change in name to be recorded in the records of various government authorities, which granted the renewal of business licence and recorded change in their records. However, Department of Revenue vide its impugned letter granted approval for change of name of company in revenue records **subject to payment of stamp duty and registration fees** for the reason that as per the Revenue the change in name of petitioner amounted to mean that the subject property (i.e. land) which was earlier purchased by former company and same has been transferred to separate company *i.e.* GSIPL, **as sale of property**.

GSIPL aggrieved by the communication of Department of Revenue, appealed before the High Court, wherein the HC held that change of name of company with the approval of ROC would not amount to transfer of assets from one company to another and also transfer of shares of shareholders of a company to third party does not mean transfer of properties of the company to third party for section 118 of Himachal Pradesh Land Reforms and Tenancy Act, 1972 to apply and thereby, such transfer cannot be subjected to stamp duty and registration charges.

2. Madras HC⁶: Stamp duty on amalgamation

In the present case, the issue arose on account of several circulars, notifications and Government Orders (G.O.) issued by the Tamil Nadu government to the effect that all the Schemes relating to amalgamation or reconstruction shall be liable to stamp duty at the higher of the following rates:

- 2% of the value of the immovable properties; or
- 0.6% of the net value of the shares transferred under the Scheme.

Various Writ Petitions were filed challenging the validity of such circulars, notifications and government orders levying stamp duty. The High Court upheld the constitutionality of the circulars, notifications and the G.Os on the ground that Order is an "Instrument" and a

⁵ Group SEB India (P) Ltd vs State of HP (HP HC), dated 3rd August 2023

⁶[State of Tamil Nadu vs. Serene Estate Private Limited in Writ Appeal No. 758 of 2022], dated 19th February 2024

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Conveyance, and held that an order of merger/demerger is an instrument/conveyance whereby a property is transferred. Therefore, such an Order would be subject to stamp duty.

As to the rate of stamp duty, the Court struck down the second part of the circular i.e. 0.6% of the net value of shares, and held that the rest of the notification would stand, thus, the effective rate of applicable stamp duty would be 2% of the value of immovable property under the Scheme.

The High Court further held that Stamp Duty, if any, paid while presenting the order / scheme relating to amalgamation in other States shall be taken into account, while calculating Stamp Duty payable in the State of Tamil Nadu and after setting off the amount already paid, only the balance amount if any alone can be demanded.

C. SEBI / RBI / Other Highlights

1. SEBI:⁷ Eases Compliance requirements for Listed Companies

To facilitate ease of doing business for listed companies, SEBI has, inter alia, approved following key amendments to SEBI LODR Regulations:

- Market capitalization-based compliance requirements for listed entities to be determined on the basis of average market capitalization of 6 months ending 31st December, instead of single day's (31st March) market capitalization.
- Extending the timeline from 3 to 6 months for filling the vacancies of Key Managerial (**KMP**) which require approval of statutory authorities
- Harmonization and reduction of timelines for prior intimation of Board Meetings to 2 working days
- Increasing the maximum permitted time gap between 2 consecutive meetings of the Risk Management Committee from 180 days to 210 days in order to provide flexibility to LEs to schedule the meetings.
- Introduction of uniform approach to verify the market rumours by listed entities
- Timeline for mandatory applicability of Listing Norms for High Value Debt Listed Entities (HVDLEs) extended till 31st March, 2025.

2. SEBI:⁸ New version of the SEBI Compliant Redress System (SCORES 2.0) launched

To protect the interests of investors in the securities market, SEBI has launched new version of the SEBI Complaint Redress System (SCORES 2.0); the salient features of SCORES 2.0 are as under:

- **Reduction of timelines:** For redressal of investor complaints i.e. 21 Calendar days from date of receipt of complaint.

⁷ SEBI PR No. 5/2024 dated 15th March 2024

⁸ SEBI PR No. 6/2024 dated 01st April 2024

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- **Auto-routing of complaints:** To the concerned regulated entity to eliminate time lapses, if any
- **Monitoring by designated bodies:** for timely redressal of the investors' complaints
- **Two Levels of review:** First review by the 'Designated Body' if the investor is dissatisfied with the resolution provided by the concerned regulated entity. Second review by SEBI if the investor is still dissatisfied after the first review.
- **Auto-escalation:** of complaint to the next level in case of non-adherence to the prescribed timelines by the regulated entity or the Designated Body.
- **Integration with KYC Registration Agency database** for easy registration of the investor on to the SCORES.

3. NSE⁹: Corporate Grouping of Listed Entities

SEBI vide circular- SEBI/ HO/ AFD/ AFD – PoD – 2/ CIR/ P/ 2023/ 148 dated August 24, 2023, regarding Corporate Grouping of Listed Companies, mandated FPIs, holding more than 50% of their Indian equity Asset Under Management in a single Indian corporate group (except corporate group with no identifiable promoters), to furnish details of entities holding ownership / economic interest / exercising control.

Further, NSE pursuant to the Circular No. NSE/CML/2023/81 dated November 30, 2023, mandated that in case of any change in corporate group of any listed company pursuant to any event such as Corporate Restructuring, Takeover, Merger, Demerger, Acquisition, Delisting etc., the companies are required to exercise abundant precaution while identifying and intimating such change, and shall intimate such change within **Two Working Days** of the Effective Date of the change.

In this connection, NSE has introduced an **online module** to facilitate listed companies to file aforesaid intimation through the **NEAPS application**.

4. Supreme Court¹⁰: reconciling inconsistencies in a document

In the present case, a Power of attorney (POA) was granted to the POA holder in respect of the immovable properties of the land owners/ principals for its management and maintenance; three clauses of the POA authorized the holder to conduct following acts on behalf of landowners/ principals

- Clause 3 authorized POA holder to **execute any type of deed and receive consideration** and to get such deed registered;
- Clause 11 authorized POA holder to **sell movable or immovable property** including land and receive consideration on such sale;
- Clause 15 authorized POA holder to **present for registration** of sale deeds/other documents signed by landowners/principals and admit execution thereof.

⁹ NSE: Circular dated 27th March 2024

¹⁰ Bharat Sher Singh Kalsia vs. State of Bihar Criminal Appeal No.523 of 2024, SPL (crl.) No.6562 of 2021, dated 31st January 2024

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Exercising the power under POA, the POA holder had sold the immovable properties on behalf of the land owners which was challenged by the landowners. The dispute revolved on whether the POA holder had the **power to sell the property or just a limited power to register** the sale documents executed by the landowners.

The Court observed that the present case was not a situation where the land owners/principals themselves had executed a Sale deed in favour of third party prior to any other sale deed being executed and registered by POA holder; it further observed that clauses 3 & 11 read together, authorized the POA holder to execute deed including sale deed, receive consideration and register the same, whereas clause 15 was an additional provision, wherein landowners retained authority for sale with themselves. Thus, there was no contradiction between the aforesaid clauses and an attempt should be made to read the two parts of the documents harmoniously.

Katalyst Comment: The Supreme Court Judgement has re-iterated the principle that the intention of the parties to the document is crucial and the document should be read in its entirety, and the endeavor should be made that no part of the document is excluded or made redundant.

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D. Goods and Service Tax Highlights

1. **Bombay HC¹¹: Non-Applicability of GST under RCM to both CIF & FOB Contract**

The Hon'ble Supreme Court has in case of 'Mohit Minerals' [TS-246-SC-2022-GST] has upheld the decision of Gujarat High court and held that GST under RCM is not applicable on ocean freight component paid by the Indian importer. The Bombay High court renders that the revenue's contention that the decision in case of 'Mohit Minerals' applies to CIF contracts and not on FOB contracts is untenable as the Notification No.8/2017-Integrated Tax (Rate) dated June 28, 2017 was declared by the Gujarat High Court as ultra vires of the IGST Act and the same was upheld by the SC and once, the notification is declared as ultra-virus to the Act, the notification in no manner was available to the State Authorities to be applied as it would amount to applying an "illegal notification". Thus, the Bombay HC quashed the SCN demanding GST and allowed the assessee to seek refund of the payment made under protest and directs to pay refund of tax with interest.

Katalyst comments: A welcome decision by the Bombay High court; no GST under RCM should be payable on ocean freight component for both CIF and FOB contracts. Post SC ruling in 'Mohit Minerals' case, the GST authorities demanded GST under RCM if the transportation contract was on FOB basis in case of import transactions. The assessee who have paid GST under RCM on FOB contracts may also seek refund of GST payment based on this judgment.

2. **Delhi HC¹²: GST registration cannot be cancelled retrospectively due to non-filing of GST returns.**

Delhi High court has held that GST registration number cannot be cancelled retrospectively due to non-filing of GST returns. The HC clarifies that in the light of provisions of section 29(2) of the CGST Act, GST registration can be cancelled only when circumstances set out in the provision are satisfied and also, the reason for cancellation of GST registration certificate should be based on some objective criteria. The SCN and order issued by the revenue were silent about the reason for cancellation and hence, the HC disposed off the petition of revenue.

Katalyst comments: A welcome decision by the Delhi HC. Any GST registration number cannot be cancelled mechanically. A taxpayer's registration can be cancelled with retrospective effect only where such consequences are intended and are warranted.

¹¹ Agarwal Coal Corporation Pvt Ltd vs. The Assistant Commissioner of State Tax [TS-199-HC(BOM)-2024-GST] dated 15th April 2024

¹² Good Life Zip India vs. Commissioner of Delhi Goods and Service Tax [TS-186-HC(DEL)-2024-GST] dated 5th April 2024

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3. West Bengal AAR¹³: Sinking-Fund, Common-area electricity-charges collected by the Residential Welfare Association ('RWA') from members taxable

The West Bengal AAAR upheld AAR ruling and held that the amount collected towards sinking fund, common area electricity charges by the RWA from the members is liable to GST. The AAAR rejected the ground of the applicant that the sinking fund is created for future use and hence, it should be treated as 'deposits' until it is actually applied for the expenditure. The AAAR clarified that the 'sinking fund' is created to meet future expenditure of structural repairing, reconstruction work etc. and hence, it should be treated as 'advances' for future supply and should be taxed at the point of collection only. Further, with respect to electricity charges, the AAAR has clarified that, as these charges are not billed separately but bundled with the common maintenance charges, full rate of GST is applicable on such charges.

¹³ In the matter of Prinsep Association of Apartment Owners. [TS-193-AAAR(WB)-2024-GST] dated 12th April 2024