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RECENT DEVELOPMENTS IN DIRECT & INDIRECT TAX

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DIRECT TAX - RECENT CASE LAWS

Delhi HC holds that intentional non-recovery of funds from group company is deemed colourable device, disallowable as bad debts

FACTS OF THE CASE

- The assessee[1], was engaged in the business of financing, which includes lending and advancing money. It agreed to stand as a guarantee in relation to debt taken by group company (CIPL) from an lender in consideration of guarantee commission to be paid on a subsequent date.
- On default by CIPL, the assessee settled the lender. Assessee pursued to recovery of the amounts due including commission and damages but CIPL could only pay partial amount. Assessee entered into a settlement agreement to recover the partial amount and the balance amount was written-off. Further, it was not feasible for assessee to recover any amount of guarantee commission from CIPL.
- In its Return of Income (ROI) for AY 2015-16, the assessee claimed the amount written-off of INR 27.76 crore as bad debts.
- During assessment proceedings, tax authorities disallowed bad debts claimed by the assessee on the grounds that (i) assessee did not receive guarantee commission and being a guarantor was not in the ordinary course of business of the assessee; (ii) such bad debts written off were not claimed as income by CIPL in books of accounts; (iii) the assessee did not pursue legal action for commission recovery, despite knowing CIPL had funds, as it donated INR 10 crore during that year; and (iv) it was a colorable device to reduce tax liability.
- On appeal, CIT(A) upheld tax authorities order. The Tribunal however allowed the claim of bad debts.

RULING OF THE HC

- As per the provisions of s.36(1)(vii) read with s. 36(2)(i), no deduction on account of bad debts shall be allowed if (i) the same is not accounted in computing income of the assessee during previous year or prior years; or (ii) it represents money lent in the ordinary course of business.
- HC referred to the main objects of the assessee and noted that standing as a surety is not one of the main objective of the assessee. Although the object clause was worded widely, it did not include standing as a guarantor to secure lenders against default in payment obligation of borrower.
- Further, the HC noted that the assessee had not entered into any similar transaction for any other entity apart from its group company. Hence, the transaction was an isolated one and not in the ordinary course of business.
- It was also noted that the assessee and CIPL were part of the same group, in control of same set of persons. Therefore, making donation of INR 10 crore was not a necessary expenditure since it was not a prudent expenditure where CIPL suffered losses. In contrast assessee did not take any steps for recovery the amounts from CIPL.
- Thus, the HC held concluded that the arrangement was devised in a manner where loss on account of bad debts could be set off against income and CIPL would not be liable to pay taxes on account of writing off liability as it was sick company and suffered losses. Thus, the arrangement in effect transferred the loss within same group company from a loss-making entity to profit making entity and profits resulting

[1] WGF Financial Services Pvt. Ltd [TS-165-HC-2025(DEL)]

from remission of liability to a loss making.

- The HC held that none of the conditions of s.36(1)(vii) and s. 36(2)(i) were satisfied, non-recovery of guarantee was deemed to be a colourable device and therefore, bad debts deduction was denied in the hands of the assessee.

ELP Comments

This ruling of the Hon'ble Delhi High Court is a critical ruling which based on the facts held that the transaction was a colourable device and denied the claim for bad debts even after the fact that ITAT had allowed the claim of the assessee. It is advisable for taxpayers to maintain robust documentation in respect of claims made in the return of income and should not resort to dubious transactions for tax savings.

Mumbai ITAT holds that for the purpose of determining the residential status of an individual, only his stay in India is relevant.

FACTS OF THE CASE

- The assessee[2], filed his Return of Income (ROI) for AY 2016-17 as a non-resident. On scrutiny, the assessee was required to furnish documentary evidence to support his claim of being a non-resident for the relevant year.
- The assessee submitted employment proofs qua services rendered outside India and also submitted that he remained out of India for 210 days and remaining 156 days in India.
- The tax authority after considering submission, excluded 28 days of stay since the same was for purpose other than employment, accepted only 182 days as spent outside India and held him to be a resident in India for tax purposes.
- On appeal, CIT(A) upheld order of tax authority on the ground that assessee had not received any salary for 28 days and there is difference between employment and official work from employment.

RULING OF MUMBAI ITAT

- ITAT noted that the only controversy was whether 28 days in USA where assessee was trying to seek employment can be considered for the purpose of calculation of period of stay for determining residential status. The assessee contended that term 'purpose of employment outside India' includes purpose of searching employment as well.
- ITAT observed that as per the provisions contained in s.6(1) of the IT Act, an individual can be considered as a resident if his stay in India exceeds 182 days during the year or he is in India for more than 365 days in previous 4 years and more than 60 days in that year.
- ITAT referred to Kerela HC decision in case of Abdul Razak [3] where the court considered CBDT circular no. 346 dated 30.06.1982 and held that no technical meaning can be assigned to the word 'employment' and the purpose of employment may also include taking up self-employment in the form of business and profession. However, the same may not include tourist or medical purpose.

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[2] Mitesh Vijay Gulati [TS-201-ITAT-2025(Mum)]
[3] (2011) 337 ITR 350

- Further, reference was also made to decision of Delhi HC in case of Suresh Nanda[4] wherein it upheld the findings of Delhi ITAT that residential status is to be determined only on the basis of stay in India and there is no restriction of stay outside India.
- The ITAT also considered certificates from employer companies in Texas and Miami stating that employee was visiting their office during the period of 28 days.
- The ITAT further observed that it was undisputed that the assessee stayed in India for 156 days only and 210 days were spent outside India.
- Considering the above facts and judicial precedents, ITAT held that assessee was in India for less than 182 days and therefore a non-resident, entitled to claim exemption of income earned outside India and resultantly, the additions were deleted.

ELP Comments

Mumbai ITAT interprets the term 'for the purpose of employment outside India' in a broad manner and re-iterates the legal position that residential status is dependent on the number of days of stay in India.

[4] (2013) 352 ITR 611

INDIRECT TAX - RECENT CASE LAWS

High Court ruled that each year must be separately assessed for applicability of Section 73/ 74[5]

FACTS OF THE CASE

- The Petitioner challenged the issuance of consolidated Show cause Notice ("**SCN**") by the GST authorities by invoking the provisions of Section 74 of the CGST Act for the entire period from 2017-18 till 2021-22. The authorities alleged non-filing of returns in 2017-18 while for subsequent years, it alleges wrong GST rate being charged on its supplies.
- The Petitioner argued that while non-filing of returns for 2017-18 may be treated as suppression, for subsequent years, the authorities cannot invoke section 74 where there is dispute as to the rate of tax and all returns were filed. By issuing consolidated SCN for entire period, the petitioner was unnecessarily subjected to the harsher provisions of Section 74 for all periods. The Petitioner submitted that authorities may be directed to issue separate notices for each year.
- The authorities *per contra* contended that while consolidated SCN has been issued for multiple year, separate orders will be issued for each year and contentions of the Petitioner for each year will be separately considered.

RULING OF KERALA HC

- The Kerala HC, while disposing of the writ petition, held that:
  - The Competent Authority shall consider the issues for each year, separately.
  - The Competent Authority should also consider the Petitioner's submission that Section 74 may not be applicable for 2018-19 to 2021-22, and therefore facts relating to each year must be separately testing for their applicability of the provisions of Section 73 or 74.
  - Any taxes already paid by the petitioner must be credited while finalizing the proceedings.
  - The petitioner must be given a personal hearing before any final order is passed.

ELP Comments

The ruling by the Hon'ble Kerala HC reiterates the basic principle arising out of the provisions of the GST law that each year is a separate year for assessment and therefore, GST authorities cannot club/ bunch up assessment of multiple years through single SCN. The above case further lays down an important canon of issuing demand notices, stating that each year must be decided on its own merits for applicability of the provisions of Section 73 or 74.

*The principal issue of bunching-up of multiple years into single SCN is no longer res integra and has been held to be bad in law by several High courts in numerous cases, viz., **Titan Company Ltd.**[6], **Veremax Technologies**[7] and **Gopi Chand**[8], wherein the Hon'ble courts shunned the GST authorities from involving into undesirous practice of issuing common SCNs for multiple years and painting the entire period with the same brush of either Section 73 or 74.*

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[5] 2025 (3) TMI 362 - (KERALA)
[6] Titan Company Ltd. vs Joint Commissioner of GST [2024 (1) TMI 619 – (Mad)]
[7] Veremax Technologies Services Limited vs ACCT, Bengaluru [2024 (9) TMI 1347 – (Kar)]
[8] Gopi Chand vs DCCT (Audit), Bengaluru [2025 (1) TMI – (Kar)]

The above case sets out an important aspect of bunching-up of multiple periods wherein all the years may not be laden with the proceedings of either Section 73 or Section 74 entirely and must be dissected separately for application of either of those provisions for each year based on their merits.

E-way bill expiry during stock transfers no grounds for detention when no evasion of tax involved[9]

FACTS OF THE CASE

- M/s Saahaj Milk Producer Company Ltd. ("**Petitioner**") is engaged in the business of manufacturing and retail of milk and milk-related products. Goods were being transferred from the petitioner's business premises in Aligarh to its units in Firozabad and Agra as intra-state stock transfers along with proper documents, including stock transfer challans and e-way bills. However, due to driver's personal exigency, the vehicle was diverted and e-way bill got expired.
- On resumption of journey, the same was intercepted by Department and detained. Petitioner argued that it had no control on the driver's actions, and as such, there was no intent to evade tax, since all documents were properly made and no allegation on the same were made by Department. *Per contra*, Department alleged that owing to expiry of e-way bill, GST provisions have been contravened, and hence, the case is fit for penalty.

RULING OF ALLAHABAD HC

- The Hon'ble Court observed that it is an admitted fact that the goods were in transit as an intra-state stock transfer and not sold goods when intercepted. Further, at the time of detention, the petitioner promptly submitted a letter explaining the driver's mistake, which was not disproved by the authorities.
- There is no finding recorded, or evidence provided by the authorities, with regard to the intent of the petitioner to avoid the payment of legitimate tax and in the absence thereof, the penalty proceeding is vitiated. Further, the fact that driver failed to intimate his diversion from journey to the Petitioner is also not disputed/ disbelieved by the authorities.
- The Hon'ble Court relied on **Shyam Sel and Power Ltd.**[10] which held that once authorities haven't observed intent to evade tax, proceedings under section 129 ought not to be initiated, instead, that of section 122. Similar reliance was also placed on **Satyam Shivam Papers Private Limited**[11] and **M/s Vacmet India** Ltd.[12] as well.
- Accordingly, the impugned orders were found to be unjustified as per law and quashed with a direction to refund any amounts deposited.

ELP Comments

This is yet another important case favouring taxpayers that takes the authorities head on against their quest for raising minor procedural compliance issues when such cases bereft of any intention to evade tax.

It is stated position of law that penalty proceedings are always attracted only when there is mens rea involved and intent to evade tax is proved. With provisions relating to transportation of goods laid down

[9] 2025 (3) TMI 107 – (ALLAHABAD)
[10] 2023 (10) TMI 218 – (ALLAHABAD)
[11] Assistant Commissioner (ST) & others vs. M/s Satyam Shivam Papers Private Limited (SLP © No. 21132/21)
[12] M/s Vacmet India Ltd. vs. Additional Commissioner Grade -2 (Appeal) And Another - 2023 (10) TMI 863 – (ALLAHABAD)

under the GST law touch upon even minor aspects like time taken based on distance covered by a vehicle, it became really onerous for taxpayers to ensure their due compliance under the GST regime, especially when multiple parties are involved (consignor, transport company, driver, recipient, etc.). This judgement is addition to a long list of favourable judgements wherein courts rescued taxpayers when authorities wield the stick firmly without effectively following the intent of those provisions.

Karnataka HC rules pre-deposit can be made after filing of appeal but before limitation period prescribed under Section 107 of the CGST Act[13]

FACTS OF THE CASE

- M/s Sri Nandi Studio and Colour Lab ("**Petitioner**") filed an appeal under Section 107 of the CGST Act before the Appellate Authority. The order appealed against was passed under Section 74 of the CGST Act. The Appellate Authority rejected the appeal solely on the ground that the statutory deposit of 10% was not made simultaneously with the filing of appeal.
- The Petitioner argued that the statutory deposit was made after 5 days from the filing of appeal but within the limitation period of 3 months as prescribed under Section 107(6) of the CGST Act. Therefore, the Appellate Authority committed grave error in dismissing the appeal without taking note of essential fact that statutory deposit was made within the limitation period.

RULING OF KARNATAKA HC

- The Karnataka HC held that section 107 prescribes 3 months for filing of appeal from the date of communication of order. Further, extension of one month can be provided if acceptable cause is shown. Section 107(6)(b) states that no appeal shall be filed until the appellant deposits 10% of the disputed tax amount.
- Applying the provisions of Section 107 to the present facts, the Court concluded that Petitioner's compliance with the statutory deposit requirement within the limitation period satisfies the conditions of Section 107(6)(b). The timing of the deposit, being within five days of the appeal filing, did not contravene the statutory requirements, thus invalidating the Appellate Authority's basis for dismissal.
- A liberal interpretation is to be given to Section 107(6)(b) and if statutory deposit as required is made within the prescribed limitation period, such amount should be deemed compliant with the requirement to deposit the amount "along with the appeal". This interpretation aligns with the legislative intent to secure revenue without obstructing the right to appeal.
- In the instant case, since the pre-deposit was made within the limitation period of 3 months, the order dismissing appellant's appeal was quashed, and the matter was remanded to Appellate Authority for decision on merits.

ELP Comments

Section 107(6)(b) of the CGST Act states that no appeal shall be filed unless the appellant has paid 10% of the disputed tax amount. The department has been strictly interpreting this provision and mechanically dismissing the appeal wherein the pre-deposit is not made simultaneously with the filing of appeal. In a significant ruling, the Hon'ble Karnataka HC has given a liberal interpretation to Section 107(6)(b) by

[13] 2025 (3) TMI 607 – (KAR)

allowing the statutory deposit of 10% to be made after filing of appeal but before the expiry of limitation period. This is a welcome decision and underlines liberal interpretation of statutory provisions in the matters where there is no wrong intent found, but only procedural delinquencies are made with no prejudice to Revenue.

Orissa HC quashes SCN issued by Central authorities when State authorities already initiated audit proceedings on same issue much before[14]

FACTS OF THE CASE

- Bipin Kumar Aggarwal ("**Petitioner**") challenged the order passed by Central GST Officer under Section 74 *read with* Section 61 of the CGST Act. The Central GST Officer initiated a scrutiny proceeding for the FY 2017-18 and 2018-19 and on conclusion of the same, issued SCN u/s 74 of the CGST Act. After considering the reply of the Petitioner, the Impugned Order was passed. For the same period, State GST officer had already initiated audit proceedings under Section 65 after the issuance of summons by Central authorities, but before issuance of SCN by them. The State authorities on conclusion of the audit, submitted an audit report raising tax liability. The Petitioner accepted the discrepancies identified in the audit report and discharged the tax liability along with interest. The audit proceedings were concluded before the initiation of scrutiny proceeding by the Central GST officer.
- In light of this, the Petitioner contended that under Section 6(2)(b) of the CGST Act, if a State GST Officer has initiated proceeding on a subject matter, no proceeding shall be initiated by the Central GST officer on the same subject matter. Therefore, the Impugned Order is liable to be set aside on the ground that for the same period, the audit proceedings was concluded by the State GST officer which precluded Central GST officer in initiating the scrutiny notice and consequent Impugned Order.

RULING OF ORISSA HC

- The Hon'ble Orissa HC observed that the word 'subject-matter' and 'proceedings' occurring in Section 6(2)(b) of the CGST Act are not defined under the Act. Therefore, it relied upon the ruling of the Allahabad HC in **G.K. Trading Company**[15] wherein the Court held that Section 6(2)(b) bars central officer from initiating any proceeding in the subject matter on which state officer has already initiated the proceeding.
- The word 'subject-matter' precedes the word 'proceedings' which indicates an adjudication process on the same cause of action and for the same dispute which may be proceedings related to audit, scrutiny, assessment, demand and recovery, offences and penalty etc. Accordingly, in the present case, since the audit proceedings were already undertaken and going on by the State officers, on the same issue, Central officers couldn't have proceeded to issue the SCN.
- The HC held that the legislature by enacting Section 6(2)(b) intended that overlapping probe should not be initiated by the GST officers (central or state). Therefore, the Impugned Order of the Central authorities on conclusion of scrutiny proceedings, was set aside as state officer has already concluded audit proceedings on the same subject matter.

[14] 2025 (3) TMI 170 – (ORISSA)

[15] 2021 (1) TMI 130 – Allahabad High Court

ELP Comments

The HC through this ruling has established the intention of the legislature that simultaneous proceedings on the same subject-matter by the State GST Officer and Central GST officer was never intended. Once, the proceedings has been initiated by either by State GST officer or Central GST officer, the other officer will be precluded from initiating any proceeding in the same subject matter. Further, 'proceeding' would include scrutiny, audit, assessment, demand and recovery, offences and penalty etc. In this regard, the CBIC has also issued Instruction no. 01/2023-24-GST(Inv.) dt. 30.03.2024 wherein it clarified that fact of initiation of inquiry, if any, already on same subject matter with respect to the same taxpayer/ GSTIN by another investigating office or tax administration must be ascertained for purposes of obtaining approval to initiate investigation.

We trust you will find this an interesting read. For any queries or comments on this update, please feel free to contact us at insights@elp-in.com or write to our authors:

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