ECONOMIC
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RECENT DEVELOPMENTS IN DIRECT & INDIRECT TAX

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DIRECT TAX - RECENT CASE LAWS

Huntsman Investment (Netherlands) BV[1]: Gains on buy-back of shares by Indian subsidiary held to arise in the course of 'corporate reorganization'; taxable only in Netherlands under Article 13(5) of India-Netherlands DTAA, not in India.

FACTS OF THE CASE

- The Assessee is a Netherlands based company holding 99.98% of the shares of its Indian subsidiary, Huntsman International (India) Pvt. Ltd. **(HIIPL)**.
- Pursuant to a buy back scheme, HIIPL bought back shares (about 24% of its capital) from the Assessee; the Assessee offered resulting long term capital gains to tax in its return.
- The Transfer Pricing Officer **(TPO)** determined the arm's length value of the price at which shares were bought back and proposed an upward TP adjustment. Accordingly, the Assessing Officer **(AO)** recomputed the capital gains.
- Before the Dispute Resolution Panel **(DRP)**, the Assessee claimed that:
  - the buy-back was exempt as a transfer from parent to subsidiary under Section 47(iv) of the Income-tax Act, 1961 "the Act"; and
  - As per the Article 13(5) of the India-Netherlands Double Taxation Avoidance Agreement **(DTAA)**, gains were taxable only in the Netherlands;
- The DRP rejected both contentions and confirmed the TP adjustment.
- On appeal before the tribunal, there was a split order between the Accountant Member (allowing the treaty claim under Article 13(5)) and the Judicial Member (rejecting both Section 47(iv) of the Act and Article 13(5)); the matter was referred to a Third Member.

ASSESSEE'S STAND

- It was contended by the Assessee that the buy-back is neither taxable as capital gains under the Act or nor taxable in India in terms of Article 13(5) of the India Netherland DTAA as buyback is in the nature of a corporate reorganization which is taxable in Netherlands only.
- The Assessee countered lower authorities' findings and argued that the term "corporate organization, reorganization, amalgamation, division or similar transaction" in Article 13(5) of the India Netherlands DTAA includes buy-back.
- The Assessee placed its reliance on judicial dictionary Law Lexicon and guidance issued by Institute of Chartered Accountants of India **(ICAI)**, and Institute of Company Secretaries of India **(ICSI)** and submitted that buy-back is to be treated as capital/financial restructuring. falling within Article 13(5) of India Netherlands DTAA and not taxable in India.

REVENUE'S STAND

- On Assessee's claim for exemption under Section 47(iv) of the Act revenue contended that same was inapplicable as the Assessee held 99.98%, not 100%, of HIIPL; taxability was governed by Section 46A of the Act, not the parent-subsidiary exemption.
- Further it was argued by the revenue that the buy-back does not qualify as a "corporate organization, reorganization, amalgamation, division, or similar transaction" under Article 13(5); as there was no court-

[1] Huntsman Investment [Netherlands] BV Vs. The A.D.I.T, International Taxation Circle- 1 (2), New Delhi No.- ITA NO. 764/DEL/2014.

approved scheme, group-level reorganization, or significant change in shareholder rights. It was merely a profit-remittance through buy-back, taxable in India.

- Buyback was implemented using proceeds from an earlier issue, thereby contravening Section 77A of the Companies Act, 1956; an illegal or non-compliant buy-back cannot be treated as treaty-protected reorganization.
- Reliance by the Assessee on External guidance (such as Nigeria-Netherlands protocol, ICAI/SEBI directions) is misplaced and cannot override domestic law
- Further the revenue relied on the decision of Mumbai Bench tribunal in the case of Accordis Beheer BV (ITA 4688 and 5025/Mum/2010) wherein it was held that buy-back does not automatically qualify as a reorganization.
- Further revenue submitted that Assessee's claim of non-taxability of buyback in terms of Article 13(5) of the India Netherlands DTAA, was an afterthought as it was raised only at the DRP stage, with no evidence of a broader corporate reorganization.

TRIBUNAL DECISION

- Accountant Member held that:
  - "reorganization" is broad; buy-back qualifies as capital/financial restructuring under Indian High Courts, Law Lexicon, ICAI guidance and under the Nigeria–Netherlands protocol
  - Gains were taxable only in the Netherlands, making TP/capital-gains issues irrelevant.
- Judicial Member held that:
  - benefit under Section 47(iv) of the Act was inapplicable (as the Netherland entity held less than 100% shareholding);
  - buy-back was non-compliant qua Section 77A of the Companies Act, 1956,
  - buyback was not part of any court-backed or group reorganization;
  - Article 13(5) of India Netherlands DTAA did not apply
  - Buyback is taxable under the Act.
- Third Member (i.e. the Vice President) held that buy-back was funded from accumulated profits and securities premium. Further post buyback capital was reduced by 24.15% however it did not affect control. The third member accepted the broader legal/accounting meaning of "reorganization" and the treaty intent, held that the buyback is form of reorganization covered by exception in Article 13(5) of the India Netherland DTAA. Thus, capital gain on account of buyback is taxable only in the country of residence viz Netherlands.
- Accordingly, the Assessee's appeal was allowed and addition made was deleted.

ELP Comments

The Delhi ITAT's decision in Huntsman Investment confirms that a share buy-back qualifies as a "corporate reorganization" under Article 13(5) of the India-Netherlands DTAA and gains arising from such buyback is taxable only in Netherlands and not in India. The ruling serves as a significant precedent for strategic repatriation by MNCs to repatriate funds.

The ruling also underscores the importance of such corporate reorganization being fully compliant with corporate laws as any procedural or legal non-compliance could potentially jeopardize the claim.

Benteler Automative (China) Investment Ltd.[2]: AO bound by higher appellate findings on taxability; denial of NIL withholding certificate u/s 197 upheld.

FACTS OF THE CASE

- Benteler China, Chinese tax resident and Asia-Pacific HQ of Benteler group **(Assessee)**, provides management, finance, HR, IT, quality, legal, tax, and related services to group entities, including Benteler India Pvt Ltd **(Benteler India)**.
- Services were rendered to Benteler India remotely via email, calls, and video conferencing. There were no personnel visiting India for this purpose.
- Benteler India paid cost-plus 5% fee, deducting 10% Tax Deducted at Source **(TDS)** under section 195 of the Act.
- In earlier years it was held that the services performed by Benteler China are in nature of fees for technical services and thus refund claims were denied. The appeals for those years are currently pending before the ITAT/CIT(A).
- For the relevant year, Benteler China applied for a NIL-withholding certificate under section 197 of the Act. The AO rejected relying on decisions of ***Ashapura Minchem [2010] 40 SOT 220 (Mum.)***, ***Guangzhou Usha AAR 2015 378 ITR 465 (AAR)*** and Assessee's own case for earlier years.
- The Assessee filed a writ petition seeking: (i) a declaration that consideration received from Benteler India is not taxable in India under the India–China DTAA; (ii) quashing of the AO's order denying the NIL certificate; and (iii) a direction to issue a NIL TDS certificate u/s 197 of the Act and refund TDS already deducted.

ASSESSEE'S STAND

- The Assessee contended in absence of any Permanent Establishment **(PE)** in India in terms of Article 5 of India China DTAA, business profits (Article 7 of India China DTAA) are not taxable in India.
- Further services would be taxable as Fees for Technical Services **(FTS)** under Article 12 of India China DTAA only if:
  - Services are provided "in" India by the Chinese resident (Art. 12(4)), and
  - Income "arises in" India per Art. 12(6) (linked to payer/PE).
- Since services rendered entirely from China with no personnel in India do not constitute FTS under Art. 12(4), therefore not taxable in India.
- Further Assessee relied on DTAA between India-China, India-Israel and India-Finland and contended that these DTAAs constitute a deliberate deviation from India's usual treaty practice and require performance of services in source state for taxing FTS.
- Additionally, the Assessee relied on Chinese tax authorities **(SAT)** Circular (1994) & SAT Announcement (2011) to substantiate its stand that FTS is taxable only if services performed in source state.
- The Assessee also contended that provisions of Rule 28AA of the Income Tax Rules, 1961 (the 'Rules') are not applicable in present case as there is no tax payable on income.

REVENUE'S STAND

- It was submitted by the revenue that writ jurisdiction should not be exercised in the present case as lower/nil TDS declaration under Section 197 of the Act is provisional in nature. Further in Assessee's own case for earlier

[2] Benteler Automative (China) Investment Limited, WRIT PETITION NO.11074 OF 2025; TS-435-HC-2026(BOM).

AYs it has been held that services are taxable. These appeals are pending before appellate authorities. Additionally, in present case there exists an alternative remedy of revision under section 264 of the Act.

- It was contended that services rendered via email, calls, or video conferencing are effectively used in India. Virtual rendition is equivalent to physical presence in this context. Even if Article 12(4) of India China DTAA requires "physical rendition," interactive virtual services meet this standard. This interpretation is recognized in both judicial and business contexts.
- Under Rule 28AA of the Rules, the Assessing Officer must consider income assessed for earlier years as well as existing tax liabilities under the Act before issuing any Nil/ lower TDS certificate. Issuing a NIL certificate in present case would ignore appellate authority findings in Assessee's own case for earlier years and violate the principle of consistency.
- Further, the revenue contended that Article 12(4) of India-China DTAA does not mandate a physical presence. The provision of services covers any work rendered to and used within the state.
- Additionally, it was submitted by the revenue that Article 12(6) of India-China DTAA deems fees to arise where the payer resides (source rule). In present case since the payer is in India, the income arises in India and is taxable in India.
- Other treaty articles relied on by the Assessee, such as Article 13(5) of the India-Israel and Article 12 (5) of the India-Finland, DTAA, explicitly require physical presence. Article 12 of the India-Chinatreaty contains no such condition, proving physical presence is unnecessary.
- The Chinese SAT circular is a unilateral view and has not been notified to India. Under the Vienna Convention, it cannot alter the existing treaty.
- Comparisons with other DTAAs, such as those with Israel or Finland, are irrelevant. The India-China treaty must be interpreted based on its own ordinary meaning.

HIGH COURT DECISION

- Bombay HC rejected revenue's claim that virtual services equal physical rendition in India; without explicit statutory or treaty language, services via email/video from China are not "physically rendered" in India.
- High court held that under Section 197 of the Act read with Rule 28AA of the Rules, the AO may grant NIL/low-rate certificates by considering existing/estimated tax liability including assessed income in prior years. In Assessee's own case for earlier AY's it has been held the managerial fees taxable findings by (CIT(A)/DRP). Thus, AO cannot issue NIL certificate contrary to these subsisting determinations.
- The order rejecting the NIL certificate was upheld as consistent with section 197 of the Act read with Rule 28AA of the Rules, and respect for higher authority findings.
- The Court declined to rule on the substantive Art. 12 India–China DTAA issue, as identical matters are already pending before ITAT.

ELP Comments

The Bombay High Court in the Benteler Automotive case has clarified that while Section 197 is a summary process, it must follow the "rule of consistency" under Rule 28AA of the Rules. This means taxpayers cannot use writ proceedings to bypass the normal appeal route when the same issue is already in appeal.

If there are adverse positions in earlier years, the revenue may rely on them to deny lower withholding.

Pertinently, the Court has not ruled on the merits given the ongoing appellate proceedings in assessee's case for earlier years.

It remains to be seen how the tribunal will decide the matter on merits for earlier years, considering the Chinese circular relied upon by the Assessee provides that rendering physical services is must for taxation under Article 12 of India China DTAA.

INDIRECT TAX - RECENT CASE LAWS

Kerala High Court clarifies scope of section 16(3): ITC denial restricted only to tax component on which depreciation is claimed

FACTS OF THE CASE

- The South Indian Bank Ltd[3] **(the "Petitioners")**, being banking companies, had opted to avail input tax credit **(ITC)** under section 17(4) of the Central Goods and Service Tax Act, 2017 **(CGST Act)** i.e. availing 50% of the eligible ITC on inputs, input services and capital goods, while reversing the balance 50%.
- For the reversed 50% ITC portion relating to capital goods, the Petitioner capitalised the same to the respective assets and accordingly claimed depreciation under the Income-tax Act, 1961.
- Based on intelligence received, the Department initiated investigations and issued Show Cause Notices under Section 74 alleging wrongful availment of ITC on the premise that once depreciation is claimed on any portion of the tax component, ITC becomes inadmissible on the entire tax component in terms of Section 16(3).
- In certain cases, the proceedings culminated into issuance of Order-in-Original **(Order)** under Section 73 confirming the demand.
- Aggrieved by the issuance of SCNs as well as the Orders, the Petitioners approached the High Court challenging the interpretation adopted by the Department and the consequent denial of ITC.

RULING OF KERALA HC

- The Kerala HC held that Section 16(3) restricts ITC only in respect of the specific "tax component" on which depreciation is claimed, and not the entire ITC.
- The Court emphasised that the expression "the said tax component" in Section 16(3) is crucial and must be interpreted restrictively, i.e., linked only to the portion on which depreciation is actually claimed. It was observed that the objective of Section 16(3) is to prevent double benefit, i.e., simultaneous claim of ITC and depreciation on the same tax component.
- In cases where ITC is not availed [i.e., reversed under Section 17(4)], there is no possibility of double benefit, and hence Section 16(3) cannot be invoked. The Court explained that Section 17(4) creates a deeming fiction, whereby 50% of the ITC represents credit attributable to exempt supplies [as per Section 17(2)].
- Accordingly, the reversed portion does not retain the character of ITC and therefore cannot be subjected to restriction under Section 16(3).
- The Court held that denial of ITC on the entire tax component merely because depreciation was claimed on the reversed portion would lead to an unreasonable and incorrect interpretation of the statutory scheme.
- Consequently, the Court quashed the SCNs and orders to the extent they denied ITC by invoking Section 16(3) on the entire tax component.

ELP Comments

This judgment is noteworthy as the Kerala High Court has examined the issue at a holistic and conceptual level, rather than adopting a narrow or mechanical interpretation of Section 16(3). In doing so, the Court has analysed the interplay between Sections 16(3), 17(2) and 17(4) and ruled that the restriction is aimed solely at preventing double benefit, and not at denying legitimate ITC. Importantly, this appears to be one of the first judicial pronouncements

[3] TS-162-HC(KER)-2026-GST

to directly and comprehensively address the treatment of depreciation on the reversed portion of ITC, especially in the context of the mechanism under Section 17(4) read with Rule 38, thereby setting a persuasive precedent.

From a practical perspective, the ruling significantly strengthens the position that Section 16(3) cannot be applied in an overbroad or blanket manner. The Court's recognition that reversed ITC loses its character as ITC is critical, as it decisively counters the Department's approach of denying ITC on the entire tax component merely due to availing the benefit of depreciation on a part thereof.

Karnataka HC holds that Section 74 proceedings can rely on material gathered by another Commissionerate

FACTS OF THE CASE

- Vigneshwara Transport Company[4] **(Respondent-assessee)**, engaged in transportation services, was investigated in connection with an alleged fake invoicing and e-way bill manipulation racket.
- Investigation was initially conducted by the Mangaluru Commissionerate, which had initiated inquiry into an alleged fake invoicing and e-way bill manipulation network involving the Respondent-assessee and, in the course thereof, gathered material indicating tax evasion. Such material was subsequently shared with the Bengaluru Commissionerate, being the jurisdictional Commissionerate of the Respondent-assessee.
- Based on such material, the Bengaluru Commissionerate issued a Show Cause Notice **(SCN)** under Section 74 of the CGST Act.
- The Respondent-assessee challenged the SCN on the ground that the underlying search and seizure proceedings were initially conducted by officers lacking jurisdiction, and therefore, the material could not be relied upon.
- The Single Judge accepted this contention and quashed the SCN, directing refund and return of seized materials.
- Aggrieved, the Revenue preferred an intra-court appeal before the Hon'ble Karnataka High Court.

RULING OF KARNATAKA HC

- The HC set aside the Single Judge's order and upheld the validity of the SCN issued under Section 74.
- The Court held that proceedings under Section 74 are independent adjudicatory proceedings and are not contingent upon the validity of search and seizure proceedings under Section 67.
- Relying on the Supreme Court's ruling in Pooran Mal v. Director of Inspection (Investigation)[5], the Court held that relevant evidence does not become inadmissible merely because it was obtained through an allegedly illegal search.
- The Court further observed that there is no bar under the CGST Act preventing a proper officer from relying on material gathered by another Commissionerate, particularly in cases involving coordinated investigations.
- For issuance of SCN under Section 74, the relevance of the material is determinative, not its source or the manner of its collection.
- The Court also held that where the Respondent-assessee has been furnished with the material and given an opportunity to respond, interference at the SCN stage is not warranted.

[4] [2026 (3) TMI 900 - KARNATAKA HIGH COURT]
[5] [1973 (12) TMI 2 - SUPREME COURT]

ELP Comments

This ruling indicates that GST investigations can extend across jurisdictions, particularly in cases involving interconnected transactions. In the present case, the Mangaluru Commissionerate, while investigating entities within its jurisdiction, issued summons to the assessee and recorded statements, which were later relied upon by the Bengaluru Commissionerate for issuing the show cause notice.

The High Court has upheld such reliance and declined to interfere at the notice stage, thereby indicating that material gathered during investigation by one Commissionerate can be used by the jurisdictional officer, even if the assessee falls under a different jurisdiction.

The decision also suggests that technical objections on jurisdiction at the investigation stage may not, by themselves, invalidate proceedings, so long as the notice is issued by the competent authority and the assessee is given an opportunity to respond.

Gujarat HC sets aside proceedings for non-supply of Relied Upon Documents (RUDs) and denial of cross examination

FACTS OF THE CASE

- The Department issued a Show Cause Notice **(SCN)** to M/s Singhvi Tradelink LLP[6] **(the Petitioner)**, inter alia, on the basis of statements recorded from certain persons and the relied upon documents **(RUDs)**. Pursuant thereto, an order came to be passed against the Petitioner.
- During the adjudication proceedings, the Petitioner specifically sought (i) copies/access to the RUDs, and (ii) an opportunity to cross-examine the persons whose statements had been made the basis of the proposed demand. However, both such requests came to be denied.
- Aggrieved by the aforesaid approach and the resultant order passed in violation of principles of natural justice, the Petitioner preferred a challenge before the Hon'ble Gujarat High Court.

RULING OF GUJARAT HC

- The HC held that non-supply of RUDs and denial of cross examination vitiates the entire proceedings.
- The HC observed that where reliance is placed on such material or statements, the taxpayer must be granted access to all relied-upon documents. Further, where the Department relies on statements of third parties, the assessee must be given a meaningful opportunity to rebut such evidence, including cross-examination
- Failure to do so amounts to a violation of the principles of natural justice. The Court emphasized that such principles are integral to adjudication proceedings, and any violation thereof renders the order unsustainable.
- Accordingly, the HC set aside the impugned order and remanded the matter, directing the authorities to furnish all RUDs, and grant opportunity for cross-examination before passing a fresh order.

ELP Comments

This ruling reinforces that non-supply of RUDs and denial of cross examination strikes at the root of adjudication proceedings, rendering them unsustainable on grounds of violation of natural justice.

[6] 2026 (3) TMI 579 – Gujarat High Court

It is in line with the settled position in various rulings, including that of the Hon'ble Supreme Court in Andaman Timber Industries[7] , where denial of cross examination of witnesses whose statements are relied upon was held to vitiate the proceedings and render the order unsustainable.

Notably, the Calcutta HC in Truvolt Engineering Company Pvt Ltd[8] has also recently taken a similar view, directing that where reliance is placed on statements, the assessee must be granted an opportunity to cross-examine such persons.

However, divergent views exist such as the Delhi HC in Vallabh Textiles[9] adopted a more restrictive approach, holding that cross examination is not an absolute right and may be denied where the case is based on unimpeachable documentary evidence and no prejudice is caused.

The ruling assumes significance in the context of increasing departmental reliance on investigation statements without granting cross-examination, which often forms the sole basis for demand. Accordingly, denial of RUDs or cross-examination continues to remain a strong ground to challenge such demands, though its applicability will depend on the facts of each case.

Madras HC upholds 18% GST on services to Government entities; recovery of differential tax deferred

FACTS OF THE CASE

- Sri Ezhumalaiyan Construction[10] **(Petitioner)** was engaged in execution of works contracts for Government departments such as District Rural Development Agency **(DRDA)** and Block Development Offices.
- The contracts were entered prior to 18.07.2022, when GST on such services was applicable at 12%.
- Pursuant to Notification No. 3/2022-Central Tax dated 13.07.2022 (effective from 18.07.2022), the GST rate on services supplied to Government entities was increased from 12% to 18%.
- The Petitioner continued execution of the contracts post rate revision; however, Government authorities did not reimburse the additional 6% GST.
- The Department issued assessment orders demanding differential GST of 6% for FY 2022-23 and 2023-24.
- The Petitioner challenged the assessment orders, contending that:
  - The contracts were executed at 12% GST and did not factor in the increased rate;
  - The additional tax burden had not been reimbursed by the Government departments; and
  - The authorities ought to direct the concerned Government entities to bear the differential GST liability.

RULING OF MADRAS HC

- The Madras High Court upheld the applicability of 18% GST on services supplied to Government entities post 18.07.2022. The Court's reasoning rests on the following key principles.
  - ***Statutory levy overrides contractual terms:*** The Court held that once the rate of tax stands revised by way of a statutory notification, the tax authorities are bound to apply the revised rate. The existence of pre-existing contracts at a lower rate does not override the statutory mandate. Accordingly, the challenge to the assessment orders demanding tax at 18% was not sustainable.
  - ***Reimbursement issues do not affect tax liability:*** The Court observed that non-receipt of reimbursement from Government authorities does not absolve the Petitioner from its statutory obligation to pay GST at

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[7] 2015 (10) TMI 442 - Supreme Court
[8] WPA 21285/2024
[9] 2025 (4) TMI 1154 – Delhi High Court
[10] TS-174-HCMAD-2026-GST

the applicable rate. The liability to pay tax arises under law and is independent of contractual arrangements between the parties.

- Noting that the concerned Government departments had acknowledged the issue and were pursuing reimbursement of the additional 6% GST, the Court granted limited relief. It directed the authorities to expedite the reimbursement process within six months.
- Pending such exercise, the Court ordered that recovery of the differential 6% GST shall remain in abeyance. However, other confirmed demands were required to be paid along with applicable interest.

ELP Comments

This ruling reinforces the settled principle that GST liability is governed by statute and cannot be diluted by contractual terms or commercial hardship. Suppliers must discharge tax at the revised rate from the effective date of the notification, irrespective of whether the additional burden is contractually recoverable.

At the same time, the decision reflects a balanced judicial approach, recognizing the practical difficulties faced by contractors in Government projects. While the Court declined to interfere with the tax liability, it granted equitable relief by deferring recovery of the differential tax, thereby safeguarding the Petitioner from immediate coercive action.

The ruling is, however, limited in its application, as the relief of deferring recovery of the differential tax has been granted in the context of contracts with Government authorities, where reimbursement is being actively pursued.

It will be interesting to see how this judgment will be applied in similar situations involving non-Government entities. Further, while recovery of the differential tax has been kept in abeyance, the Court has not expressly granted any waiver from interest liability, and in fact, has directed payment of other confirmed dues along with interest.

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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