ECONOMIC LAWS PRACTICE
ADVOCATES & SOLICITORS

RECENT DEVELOPMENTS IN DIRECT & INDIRECT TAX

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DIRECT TAX - RECENT CASE LAWS

ITAT Mumbai[1] held that Section 56(2)(x) of the ITA cannot be invoked where permanent alternate accommodation is not received during the relevant year

FACTS OF THE CASE

- The Assessee was a co-tenant of a residential premises with her husband in Mumbai, which was taken up for redevelopment.
- The couple executed an agreement to surrender their tenancy rights in exchange for a larger apartment on ownership basis along with temporary rental compensation, and a corpus fund.
- Pending redevelopment, the assessee, jointly with her husband, received temporary accommodation and rental compensation, and the net differential rent is being the excess of rent received over rent paid was offered to tax equally.
- While the building was still under construction and possession had not been handed over, the Assessing Officer (**AO**) treated the stamp duty value of the under construction apartment as taxable income and made an aggregate tax addition under section 56(2)(x) of the Income Tax Act,1961 (**ITA**) on the premise that the property was received without consideration.
- Ld. Commissioner of Income Tax (Appeals) ("CIT(A)") held that the payment received was for settlement of claims and thus rightly assessed to tax u/s 45 of the Act and deleted the addition relating to the husband's share in the property and halved the addition for the redeveloped property.
- The Assessee filed an appeal before the Hon'ble Income Tax Appellate Tribunal (**ITAT**) in Mumbai to challenge this sustained tax addition.

ASSESSEE'S CONTENTION

- The Assessee submitted that the stamp duty value cannot be taxed under "Income from Other Sources" as the transaction is linked to tenancy rights, which are a capital asset.
- Though tenancy rights exist and consideration is agreed, no transfer has taken place since surrender is contractually conditional upon receipt of possession of the new premises.
- As possession was not handed over, the Assessee's rights were not extinguished but merely in abeyance, and hence no transfer under Section 2(47) of the ITA occurred.
- Moreover, the transaction is not without consideration, as the permanent alternate accommodation and corpus are received in exchange for valuable tenancy rights under a reciprocal contractual arrangement.
- Condition of "receipt" of property is not satisfied, as possession of the permanent alternate accommodation was not received during the year.
- Alternatively, if treated as a transfer, the transaction would fall under capital gains with eligibility for Section 54F of the ITA exemption, resulting in no tax liability.

REVENUE'S CONTENTION

- The Revenue relied on the orders of the lower authorities.
- The Revenue contended that the Assessee had received immovable property during the relevant year without consideration, or for inadequate consideration, and that section 56(2)(x) of the ITA was therefore attracted.

[1] ITA No. 258/MUM/2026

- It was submitted that the stamp duty value of the permanent alternate accommodation exceeded the declared consideration and the differential value was taxable as income from other sources.
- The Revenue supported the order of the CIT(A), contending that, having already granted partial relief, it had correctly sustained the addition to the extent of the Assessee's share in the stamp duty value of the property.

TRIBUNAL DECISION

- The Tribunal deleted the addition, holding that Section 56(2)(x) of the ITA had been invoked prematurely for the relevant Assessment Year, as there was no actual receipt of immovable property during the year.
- It observed that Section 56(2)(x), being a deeming provision, must be strictly construed and can be triggered only upon actual receipt of money or property without, or for inadequate, consideration. The provision cannot be applied on a notional, anticipatory or contingent basis.
- For immovable property, the Tribunal held that "receipt" requires the transfer of the right to use, occupy and enjoy the property, ordinarily evidenced by possession or title. Since possession of the permanent alternate accommodation had not been handed over and the property was still under construction, the Assessee had not received the property.
- The Tribunal further held that, until possession is handed over, tenancy rights cannot be treated as extinguished or transferred under Section 2(47) of the ITA and remain only in abeyance. A mere future right to receive property is insufficient to trigger Section 56(2)(x).
- Accordingly, the addition was deleted and the appeal was allowed.

ELP Comments

This ruling provides useful clarity that Section 56(2)(x) of the ITA cannot be applied on a notional or anticipatory basis merely because an assessee has a future entitlement to receive immovable property. In redevelopment cases, taxability should arise only upon actual receipt of the alternate accommodation, ordinarily evidenced by possession, title or an enforceable right to use and occupy the property. Until such stage, tenancy rights cannot be treated as extinguished or transferred merely on execution of redevelopment documents, and a contingent right to receive property should not trigger tax under Section 56(2)(x).

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ITAT Kolkata[2] held that compensation received for surrendering right to sue is non-taxable capital receipt

FACTS OF THE CASE

- The Assessee, engaged in the real estate business, entered into cooperation agreement with 3 parties for undertaking a real estate project.
- For this purpose, the assessee entered into an agreement for acquisition of immovable property from Saregama India Ltd. (**SIL**) and paid a token advance.
- Disputes arose between the Assessee and SIL in relation to performance of the agreement for sale, and the matter was referred to arbitration.
- In the first award, the arbitrator dismissed the Assessee's claims for specific performance, execution of conveyance and handing over of vacant possession, holding, inter alia, that SIL itself did not have marketable right or title in the property.
- The Assessee challenged the arbitral award before the district Court, where an interim status quo order was granted.
- During the pendency of the litigation, SIL entered into a Settlement Agreement dated 27 March 2018 with the Assessee and the three corporate entities. Under the settlement, SIL agreed to pay INR 18 crores plus applicable GST as full and final settlement, in consideration of withdrawal of all pending cases, complaints and objections filed against it before judicial fora.
- In its return of income, the Assessee treated the settlement receipt as a capital receipt not chargeable to tax.
- The AO taxed entire amount as capital gains u/s 45 of the ITA, alleging extinguishment of rights.
- Ld. CIT(A) partly upheld the addition and granted relief to the Assessee by taxing only its share in the settlement and retained balance portion pertaining to three parties on a protective basis.
- Aggrieved, the Assessee preferred an appeal before the Hon'ble ITAT.

ASSESSEE'S CONTENTION

- The Assessee contended that the settlement amount was received for withdrawal of litigation, and not for the transfer or extinguishment of property rights.
- It was submitted that, in light of the arbitral awards, the Assessee did not hold any enforceable right, title or interest in the property at the time of settlement.
- The Assessee argued that what remained with it at the time of settlement was only a "right to sue", which is a personal right incapable of transfer and not a capital asset within the meaning of section 2(14) of the ITA. Accordingly, it was submitted that there was no "transfer" under section 2(47) and section 45 was not applicable.
- The Assessee further submitted that the receipt was capital in nature because the proposed acquisition of the land would have constituted a source of income in its real estate business. Compensation for sterilisation or loss of such source was therefore a capital receipt.
- The Assessee also challenged the protective addition on the ground that the amount belonged to and was received by the other 3 parties, who had accounted for their respective shares in their books.

[2] IT(SS)A 107/KOL/2025

REVENUE'S CONTENTION

- The revenue contended that the settlement amount was paid towards extinguishment of valuable rights which the Assessee and the other parties enjoyed under the Agreement for Sale.
- It was argued that the Assessee had acquired a right to claim specific performance under the Agreement for Sale and surrender of such right constituted transfer of a capital asset taxable under section 45 of the ITA.
- The AO relied on Laxmi Devi Ratani[3] and K.R. Srinath[4] to contend that consideration received for giving up a right under an agreement to sell is taxable as capital gains.

TRIBUNAL DECISION

- The Hon'ble ITAT held that the settlement amount was paid in consideration of the Assessee withdrawing all pending cases, complaints and objections against SIL, and not for relinquishment or extinguishment of any right in the property.
- It noted that the arbitral tribunals had rejected the Assessee's claims and held that SIL did not have marketable title and, accordingly, the Assessee had no enforceable right, title or interest in the property.
- Thus, at the time of settlement, the Assessee did not have any award, order or decree recognising any right of specific performance under the agreement.
- The ITAT distinguished Laxmi Devi Ratani (Supra) and K.R. Srinath (Supra) on the basis that those cases involved enforceable rights, unlike the present case.
- It held that only a "right to sue" remained, which is a non-transferable personal right and not a capital asset and, accordingly, no capital gains were chargeable relying on the decision of Ganeshsagar Infrastructure (P.) Ltd[5].
- Relying on Oberoi Hotels (P)[6] Ltd. and Saurashtra Cement Ltd.[7], it held that compensation for impairment of a profit-earning structure is capital in nature.
- The Tribunal also noted that section 28(ii)(e), introduced by the Finance Act, 2018 with effect from AY 2019-20, taxes compensation received in connection with termination or modification of business contracts. Since the relevant year was AY 2018-19, the provision did not apply. The Tribunal observed that this legislative amendment supported the Assessee's position that such receipts were not taxable as business income prior to AY 2019-20.
- Accordingly, the addition was deleted, and the protective addition was also set aside on the ground that the amount pertained to the other entities. The Assessee's appeal was therefore allowed.

ELP Comments

Taxability qua liquidated damages or compensations received against breach or non-fulfillment of conditions has been a vexed issue. The nuanced fact pattern could change the course of its taxability. The situation is equally sensitive for the payer of the compensation from tax withholding perspective. This ruling reaffirms distinction between compensation for surrender of an enforceable rights / withdrawal of litigation and surrender rights to sue.

[3] 147 Taxman 642

[4] 141 Taxman 268

[5] 135 taxmann.com 313

[6] 236 ITR 903

[7] 325 ITR 422

INDIRECT TAX - RECENT CASE LAWS

Allahabad HC invalidates the demand of penalty not specified in statutory Form GST DRC-01

FACTS OF THE CASE

- Proceedings under Section 74 of the Central Goods and Service Tax, 2017 (**CGST Act**) was initiated against M/s Comfort Battery (the "**Petitioner**")[8] in relation to wrongful availment of input tax credit (**ITC**) for multiple financial years.
- Pursuant thereto, the Department issued a detailed show cause notice (**SCN**) dated along with Form GST DRC-01, as prescribed under Rule 142 of the Central Goods and Service Tax Rules, 2017 (**CGST Rules**).
- While the detailed SCN proposed disallowance of ITC, recovery of interest and imposition of penalty equivalent to the disputed ITC, the statutory Form GST DRC-01 reflected the penalty amount as "0" (Nil).
- Thereafter, the Department passed an Order confirming the tax demand and, additionally, imposed a penalty of approximately Rs. 4.36 crore, despite no penalty amount having been specified in Form GST DRC-01.
- The Petitioner challenged the validity of the proceedings before the Allahabad HC, contending that the confirmation of penalty was contrary to Section 75(7) of the CGST Act since the penalty demand did not form part of the statutory notice in Form GST DRC-01.
- The Department, on the other hand, argued that the proposal for penalty was expressly mentioned in the detailed annexure to the SCN and, therefore, the omission in Form GST DRC-01 was merely procedural in nature.
- The issue before the High Court was whether a penalty demand could be sustained when the statutory Form GST DRC-01 failed to disclose any proposed penalty, even though the annexed SCN contained a proposal for such penalty.

RULING OF ALLAHABAD HC

- The Allahabad HC examined the scheme of Sections 74(1), 74(5) and 74(8) of the CGST Act along with Rule 142 of the CGST Rules and observed that a SCN under Section 74 must clearly specify the amount of tax, interest and penalty proposed to be demanded from the taxpayer.
- The Court noted that Rule 142 mandates issuance of a summary of the show cause notice in Form GST DRC-01, which contains specific fields for disclosure of tax, interest, penalty and other dues sought to be recovered.
- Rejecting the Department's contention that the penalty proposal contained in the annexure to the SCN was sufficient, the Court held that the statutory form cannot be treated as subordinate to the annexure. The particulars of the proposed demand must be expressly disclosed in Form GST DRC-01 itself.
- The Court observed that allowing the Department to rely on disclosures made only in an annexure, despite the absence of corresponding details in the statutory form, would create ambiguity and uncertainty in the adjudication process.
- Significantly, the Court emphasized that Section 74(8) grants a valuable statutory right to a taxpayer to conclude proceedings by paying tax, interest and 25% of the penalty specified in the notice. Such a right can be effectively exercised only when the exact penalty proposed is clearly reflected in Form GST DRC-01.
- The Court therefore held that the Department cannot seek confirmation of a penalty demand which was not disclosed in the statutory Form GST DRC-01, even if a reference to such penalty is found elsewhere in the detailed SCN.
- Accordingly, the Court concluded that the confirmation of penalty amounting to Rs. 4.36 crore suffered from a

[8] TS-363-HC(ALL)-2026-GST

procedural defect and was contrary to the statutory scheme governing GST adjudication proceedings.

- Consequently, the adjudication order was set aside, and the Department was granted liberty to rectify the SCN by clearly specifying the exact tax, interest and penalty proposed in Form GST DRC-01 and thereafter proceed afresh in accordance with law.

ELP Comments

This judgment reinforces the principle that GST proceedings must strictly adhere to the statutory framework prescribed under the Act and the Rules. The HC has rightly emphasized that Form GST DRC-01 is not a mere procedural accompaniment to a show cause notice but forms an integral part of the demand mechanism. Consequently, taxpayers may challenge demands where the statutory form fails to accurately capture the tax, interest or penalty proposed to be recovered, notwithstanding disclosures made elsewhere in annexures or supporting documents.

The decision is also significant from the perspective of taxpayer rights under Section 74(8). Since the quantum of penalty directly impacts the option to settle proceedings by paying a reduced penalty, any ambiguity or omission in Form GST DRC-01 may prejudice the taxpayer's statutory rights. The ruling therefore underscores the necessity of complete and unambiguous disclosure in the statutory notice itself before any demand can be confirmed.

This may also prompt taxpayers to closely examine whether the particulars disclosed in Form GST DRC-01 are consistent with the detailed show cause notice and the adjudication order, as any material discrepancy may provide a ground to challenge the demand, particularly in high-value disputes involving significant tax, interest and penalty exposures.

Interestingly, this judgment aligns with other recent rulings of the Allahabad HC in Sanjay Construction v. State of Uttar Pradesh[9] and Mahesh Chandra Trading Company Bandraha Hardoi v. State Of U.P.[10], wherein the Court quashed an interest demand on the ground that the amount of interest was not specified in the show cause notice. The Court held that Section 75(7) prohibits confirmation of an amount beyond what is proposed in the notice and clarified that Section 75(9) cannot be invoked to cure an omission in the show cause notice itself. Read together, these decisions indicate a clear judicial trend that tax, interest and penalty can be sustained only to the extent they are specifically and accurately proposed in the statutory notice, thereby strengthening procedural safeguards available to taxpayers during GST adjudication proceedings.

[9] Writ Tax No. 161 of 2026

[10] 2026 (5) TMI 1813

Rajasthan HC holds that right to collect toll under BOT (Toll) projects constitutes consideration for construction services and attracts GST

FACTS OF THE CASE

- CG Tollway Ltd. (the "**Petitioner**")[11] entered into a Concession Agreement dated 09.12.2016 with NHAI for six-laning of a section of NH-79 on Design, Build, Finance, Operate and Transfer (**DBFOT**) basis.
- Under the concession arrangement, the Petitioner was required to construct, operate and maintain the project highway and, in consideration thereof, was granted the exclusive right to collect toll from road users during the concession period. The concession agreement also contemplated payment of concession fee and premium to NHAI.
- The Petitioner awarded the actual construction work to an EPC contractor, M/s IRB Infrastructure Developers Ltd., which discharged GST on the construction activity undertaken by it.
- During audit proceedings, the Department alleged that the Petitioner had failed to discharge GST on the value attributable to the construction services supplied to NHAI under the concession arrangement and consequently raised a demand of approximately INR 16.36 crore along with interest and penalty.
- The Petitioner contended that it had not received any consideration from NHAI and had merely collected toll from road users, which is exempt under Entry 23 of Notification No. 12/2017-Central Tax (Rate) dated 28.06.2017.
- The Petitioner further relied upon Circular No. 150/06/2021-GST dated 17.06.2021, CBIC's clarification dated 28.06.2021 regarding BOT (Toll) projects, and also argued that taxing the transaction would result in impermissible double taxation since GST had already been paid by the EPC contractor.
- The adjudicating authority confirmed the demand, which was subsequently upheld in appeal, leading to the filing of the writ petition before the Rajasthan HC.

RULING OF RAJASTHAN HC

- The Rajasthan HC upheld the demand and held that the concession arrangement gives rise to a taxable supply under Section 7 of the CGST Act.
- The Court observed that the definition of "consideration" under Section 2(31) is broad and includes payment made "in money or otherwise". Accordingly, consideration need not necessarily be monetary.
- Examining the concession agreement, the Court held that the Petitioner was granted valuable commercial rights including but not limited to exclusive right to collect toll from road users.
- The Court held that the arrangement effectively constitutes a barter transaction, wherein construction and maintenance services supplied by the concessionaire are exchanged for the right to collect toll and other commercial rights granted by NHAI.
- Referring to the definition of "works contract" under Section 2(119) read with Schedule II, the Court held that the Petitioner supplied works contract services to NHAI and received non-monetary consideration in return.
- The HC rejected the contention that toll collection is independently exempt under Entry 23 of Notification No. 12/2017-CT (Rate). It observed that while access to a road or bridge on payment of toll is exempt, the present dispute relates to construction services classifiable under Heading 9954.
- Relying extensively on the Telangana HC ruling in GMR Pochanpalli Expressways Ltd.[12], the Court held that construction of roads remains taxable even where consideration is received in the form of deferred annuity or toll collection rights.

[11] D.B. Civil Writ Petition No. 15048/2025

[12] 2024 SCC Online TS 3988

- The Court further held that Circular No. 150/06/2021-GST correctly reflects the recommendations of the 43rd GST Council Meeting and clarifies that exemption available to toll collection services does not extend to construction services supplied under concession arrangements.
- The HC also rejected the Petitioner's argument based on audit objections having been dropped in similar matters in Gujarat and Karnataka, holding that there can be no claim of "negative equality" in taxation matters.
- Accordingly, the writ petition was dismissed and the GST demand, interest and penalty were sustained.

ELP Comments

This judgment is significant for infrastructure developers operating under BOT (Toll) concession models, as it reaffirms the Department's position that toll collection rights can constitute non-monetary consideration for construction services supplied to the grantor authority. The Court has adopted a substance-over-form approach and characterised the arrangement as a barter transaction, thereby bringing the construction activity within the ambit of taxable supply under Section 7 of the CGST Act. In doing so, the ruling also adopts an expansive interpretation of the term "consideration" under Section 2(31), recognising valuable commercial rights granted under a concession agreement as consideration, even in the absence of any monetary payment from the recipient.

The ruling is also noteworthy because it draws a clear distinction between the exemption available for access to roads on payment of toll under Entry 23 of Notification No. 12/2017-CT (Rate) and the taxability of construction services supplied under concession agreements. According to the Court, while toll receipts themselves may enjoy exemption under Heading 9967, such exemption does not alter the character of the underlying construction service supplied by the concessionaire.

Importantly, the decision aligns with the Telangana High Court's ruling in GMR Pochanpalli Expressways Ltd. and may further strengthen the Department's position in ongoing disputes involving BOT (Toll) projects. Given the substantial financial implications involved in infrastructure concessions, the issue is likely to remain contentious and may ultimately require authoritative determination by the Supreme Court.

This may also give rise to valuation related disputes, as the determination of the value of non-monetary consideration such as long-term toll collection rights is likely to remain contentious.

Accordingly, the ruling could have significant commercial implications for BOT (Toll) projects, particularly where bids were submitted on the assumption that GST would not apply on such arrangements. Any additional GST exposure may adversely impact project economics and margins, especially in long-term infrastructure projects.

Jammu & Kashmir & Ladakh HC holds that reimbursement under Budgetary Support Scheme cannot be denied on sale of M.S. Scrap generated during manufacture of eligible goods

FACTS OF THE CASE

- M/s Vijay Steel Industries and M/s KNK Chemicals IGC Samba (collectively, the "**Petitioners**")[13] were engaged in the manufacture of TMT/CTD Bars and other steel products and were availing area-based excise incentives under the erstwhile excise regime.
- Upon introduction of GST, the Government of India introduced the Budgetary Support Scheme vide Notification dated 05.10.2017 (**BSS**) to provide reimbursement of a specified portion of GST paid in cash by eligible industrial units located in specified States, including the erstwhile State of Jammu & Kashmir.
- The State Government subsequently adopted a corresponding scheme through Notification Nos. 519 and 521 dated 21.12.2017, providing reimbursement of State taxes and a portion of Central taxes to eligible manufacturing units.
- The Petitioners obtained registration under the BSS and were granted eligibility under the Central Scheme for the residual period of the erstwhile area-based exemption regime.
- During the manufacture of TMT/CTD Bars, certain non-standard lengths and edge cuttings emerged as a natural consequence of the manufacturing process. Such cuttings were sold as M.S. Scrap on payment of applicable GST.
- The Petitioners claimed reimbursement under the BSS in respect of GST paid on the sale of such M.S. Scrap.
- The State Tax Authorities rejected the reimbursement claims on the ground that M.S. Scrap did not constitute "specified goods" under Notification No. 519 dated 21.12.2017. According to the Department, the Petitioners were registered for manufacture of TMT/CTD Bars and not for manufacture of scrap and, therefore, reimbursement on sale of scrap was not admissible under the scheme.
- Aggrieved by the rejection orders, the Petitioners filed writ petitions before the Jammu & Kashmir and Ladakh HC.

RULING OF JAMMU AND KASHMIR AND LADAKH HC

- The HC examined the definition of "specified goods" under Clause 2.2 of Notification No. 519 dated 21.12.2017 and observed that the expression covers goods manufactured by the industrial unit except those specifically excluded under Annexure-A to the notification.
- The Court noted that Annexure-A contains an exclusionary list of specified categories of goods which are ineligible for benefits under the scheme. Therefore, denial of reimbursement can be justified only where the goods in question fall within any of the expressly excluded categories.
- The HC observed that the Department itself had admitted that the Petitioners were engaged in the manufacture of TMT/CTD Bars and that the impugned scrap emerged as an inherent residue of the same manufacturing process.
- The Court further noted that the scrap consisted of non-standard lengths of TMT/CTD Bars and had undergone the identical manufacturing process as the finished products. Consequently, such scrap retained the essential character of the manufactured goods.
- Rejecting the Department's contention that reimbursement could be denied merely because M.S. Scrap was not separately registered as a manufactured product, the Court held that such a ground finds no support under the scheme, particularly when the goods are not covered by any of the exclusions prescribed under Annexure-A.
- The Court therefore held that the rejection of reimbursement solely on the ground that M.S. Scrap does not constitute "specified goods" under the scheme was unsustainable in law.

[13] 2026 (4) TMI 605 - JAMMU AND KASHMIR AND LADAKH HIGH COURT

- Accordingly, the impugned orders were quashed, and the authorities were directed to reconsider the Petitioners' claims afresh by passing a reasoned order in accordance with the applicable notifications.

ELP Comments

This decision is significant as it reiterates that beneficial incentive schemes must be interpreted in accordance with their express terms and conditions. The HC has clarified that where a notification adopts an exclusion-based framework, eligibility cannot be denied by importing additional conditions or restrictions that do not find place in the scheme itself.

Notably, the Court treated Annexure-A as an exhaustive exclusionary list and held that denial of benefits must necessarily be traced to one of the specified exclusions. The Department's attempt to deny reimbursement merely because M.S. Scrap was not independently registered as a manufactured product was therefore rejected as being inconsistent with the language of the notification.

The ruling may have broader relevance for industrial units claiming benefits under budgetary support and other incentive schemes where ancillary products, by-products, manufacturing residues or production offcuts arise in the course of manufacturing eligible goods. It reinforces the principle that where an incentive scheme is structured around specified exclusions, benefits cannot be denied unless the goods or activities in question fall within one of such exclusions. Tax authorities cannot curtail incentive benefits through interpretational restrictions that are not expressly contemplated by the governing notification.

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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