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BUSINESS ADVISORS

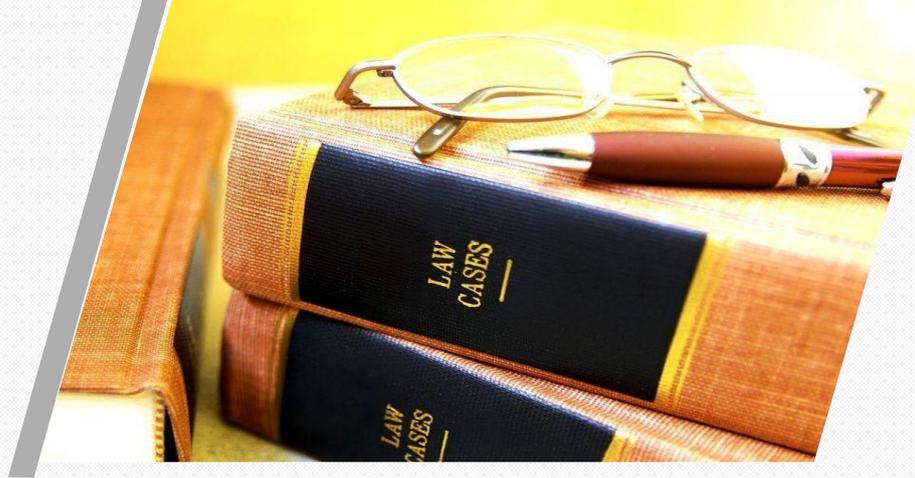
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February - 2022

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Direct Tax Case Laws



Case Law 1:

Sirpur paper mills, a corporate debtor, filed a writ petition under article 226 of the constitution in the high court of Telangana seeking quashing of notices issued under Income Tax Act. Sirpur paper mill was the corporate debtor against whom its operational creditors filed an application for initiating Corporate Insolvency Resolution process under insolvency and bankruptcy code 2016. The NCLT Admitted the corporate debtor to **“Insolvency”** on 18th September 2017. Final Resolution Plan was approved on 19th July 2018.

Corporate debtor filed its Income tax return for AY 2017-2018 on 17th September 2019. Thereafter, on 22nd September 2019, income tax department issued a notice for limited scrutiny under CASS of corporate debtor's return. Here, notice was issued after approval of resolution plan.

Responding to the notice, the corporate debtor claimed that the resolution plan is approved by IBC hence all proceedings and claims stood discharged. However, income tax department again issued a notice demanding more information. Aggrieved by this, corporate debtor filed a writ petition.

The Court noted that Section 31 of the Code provides that once the resolution plan is approved by the Adjudicating Authority, it shall be binding on the corporate debtor and its employees, members, creditors including

Central Government, any State Government or any local authority to whom a debt in respect of the payment of dues arising under any law for the time being in force such as authorities to whom statutory dues are owed, guarantors and other stakeholders involved in the resolution plan.

Further, court held that by virtue of Section 238 of IBC, provisions of IBC will override other laws including Income Tax Act. In this regard the court took note of various judgements like Dena Bank v. Bhikhabhai Prabhudas Parekh & Co, Principal Commissioner of Income Tax v. Monnet Ispat and Energy.

The high court set aside the Impugned notices issued under the Income Tax Act as being wholly unsustainable in law and allowed the writ petition.

[The Sirpur Paper Mills Limited & Another Vs Union of India, W.P. No. 25827 of 2019]

Case Law 2:

The assessee-bank had offered to tax entire receipt of interest from money advanced as credit in the profit and loss account without claiming any exemption under section 10(15)(iv)(c), (d), (e) and (f) as the details were not fully collected. A note was made in the return to the effect that particulars of assessee's claim of interest exempt under

Direct Tax : Case Laws

section 10(15)(iv) were being collected and would be submitted separately. Assessing Officer passed the assessment order section 10(15)(iv) were being collected and would be submitted separately. Assessing Officer passed the assessment order

According to the assessee, Assessing Officer overlooked the claim made by the assessee for exemption under section 10(15)(iv) on ground that relevant details were not furnished. Thereafter, the Assessing Officer passed an order under section 154 allowing gross exemption under section 10(15)(iv). When assessee received further details in respect of interest exemption under section 10(15)(iv), it furnished those details to Assessing Officer but he refused to consider the further claim of the assessee.

Then on direction of the Commissioner (Appeals), deduction was allowed to assessee. After a period of four years, Assessing Officer issued reassessment notice contending that by claiming gross receipts as exempt and claiming the cost of borrowing, etc., from its business income, assessee in fact claimed double deduction. Thus, excess exemption was allowed which resulted in escapement of income.

State Bank of India v Vineet Agrawal, Assistant Commissioner of Income Tax [Writ Petition No. 13 of 2002, dated September 21, 2020]

Direct Tax Notifications



1. Extension of Timelines for Filing Of Income-Tax Returns And Various Reports Of Audit For the Assessment Year 2021-22

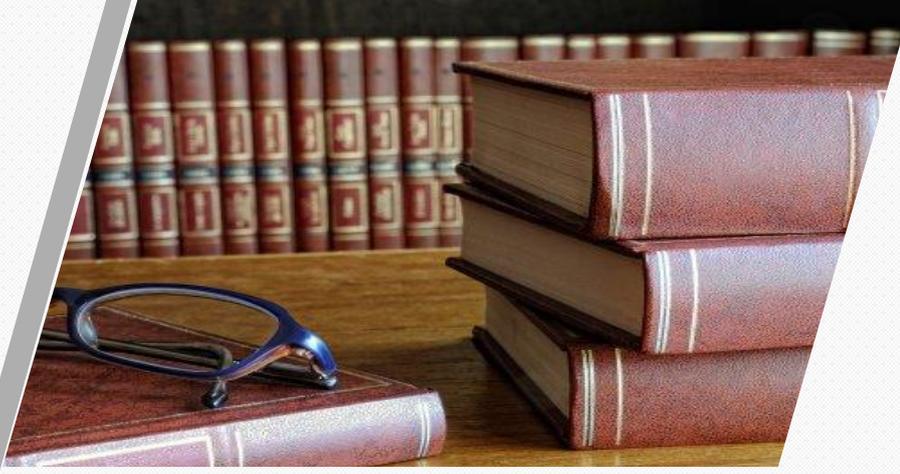
(Press release dated January 11th, 2022)

On consideration of difficulties reported by the taxpayers and other stakeholders in electronic filing of Income-tax returns and various reports of audit under the provisions of Income-tax Act, 1961 (Act), the Central Board of Direct Taxes (CBDT), in exercise of its powers under Section 119 of the Act, provides relaxation in respect of the following compliances:

Nature AY 2021-2022	Actual Dated	Extended dates as per Cir No. 17/2021 Dt. 09/09/2021	Newly Extended Due Date via Cir No. 01/2022 Dt. 11/01/2022
Tax Audit Report	30/09/2021	15/01/2022	15/02/2022
Report for International/ Specified Transactions	31/10/2021	31/01/2022	15/02/2022
ITR - Audit Cases	31/10/2021	15/02/2022	15/03/2022
ITR for International/ Specified Transactions	30/11/2021	28/02/2022	15/03/2022

Link: <https://incometaxindia.gov.in/communications/circular/circular-no-1-2022.pdf%20>

Indirect Tax : Case Laws



Case Law 1:

Whether partial recovery of amount paid towards renting of cab service, from employees, covered under the scope of 'supply' and chargeable to GST?

The applicant is in Maharashtra and is primarily engaged in providing software development and support services to its holding company located outside India. The applicant avails 'renting of motor vehicles/ cab service' for providing transport facility to its employees, to ensure the safety & security of its staff including female employees. Ensuant to the receipt of such service, the applicant initially pays the entire amount and subsequently recovers partial amount from the respective employees.

In the instant case, the applicant has sought an advance ruling on the following: -

- Whether partial recovery of amount paid towards renting of cab service, from employees, in respect of transport facility provided to them would be treated as 'supply' as per provision of GST and whether GST is leviable on the same?
- If answer to the above question is affirmative, then how the value of said supply will be determined keeping in mind that employee and the applicant are related party as per provisions of GST law?

- Further, if the answer to first question is affirmative, then whether Input Tax Credit is admissible in respect of GST paid on inward supply of 'renting of motor vehicle service' which is used for employees?

In the instant case, the ruling authority finds that the applicant is engaged in providing software development and support services to its holding company located outside India. Thus, the provision of transport facility to the employees is a welfare, security and safety measure and is not at all connected to the functioning of the business. Further, the said activity is not a factor which will take the applicant's business activity forward.

Besides, the applicant is not supplying transport or lease/rental of vehicle service to its employees, on its own account. The transport facility is provided to employees by third party vendors. Therefore, in the instant case, the applicant is not providing transport facility to its employees, in fact the applicant is a receiver of such services.

Further reference is made to the decision of Uttar Pradesh Advance Ruling Authority in the case of M/s North Shore Technologies Private Limited. In the said case, the ruling authority observed that the applicant was in the business of software development and staff augmentation services. The facility of transportation provided to their employees was not integrally connected to the functioning of their business and therefore, providing transport facility to its employees

Indirect Tax : Case Laws

cannot said to be in the furtherance of business.

Accordingly, in the present case, the ruling authority is of the view that arranging the transport facility for employees, is not an activity which is incidental or ancillary to the activity of software development, nor it can be called an activity done in the course of or in furtherance of development of software as it is not integrally connected to the business in such a way that without this the business will not function. Therefore, since the first question is answered in negative, the remaining questions become redundant and merit no discussion.

AUTHORITY FOR ADVANCE RULING (IN THE CASE OF M/s INTEGRATED DECISIONS AND SYSTEMS INDIA PVT LTD – ADVANCE RULING NO. GST -ARA-116/2019-20/B-113, MUMBAI DATED 16TH DECEMBER 2021)

Legal & Regulatory Notifications



S. No Notifications

1. INCREASE IN ADDITIONAL FEES UPTO 18 TIMES FROM EXISTING 12 TIMES OF NORMAL FEES

(MCA notification dated January 11, 2022)

The Ministry of Corporate Affairs (MCA) vide its notification and circulars dated January 11, 2022 has amended the Companies (Registration Offices and Fees) Rules, 2014 and section 403 of the Companies Act, 2013.

The key amendments are as follows:

- a) The amendment shall be effective from July 01, 2022.
- a) The following table of additional fee and higher additional fee for delay in form filing shall be applicable:

SL. NO	PERIOD OF DELAYS	ADDITIONAL FEE AS A MULTIPLE OF NORMAL FEES	*HIGHER ADDITIONAL FEE AS A MULTIPLE OF NORMAL FEES (FOR CERTAIN CASES)
1.	Upto 15 days (For filing ADT-1 & DIR-3B and DIR-3C)	1 time of Normal fees	NA
2.	More than 15 days and upto 30 days (For filing ADT-1 & DIR-3B and DIR-3C) and upto 30 days in remaining forms.	2 times of normal filing fees	3 times of normal filing fees
3.	More than 30 days and upto 60 days	4 times of normal filing fees	6 times of normal filing fees
4.	More than 60 days and upto 90 days	6 times of normal filing fees	9 times of normal filing fees
5.	More than 90 days and upto 180 days	10 times of normal filing fees	15 times of normal filing fees
6.	Beyond 180 days	12 times of normal filing fees	18 times of normal filing fees

Legal & Regulatory

* Higher additional fee will be applicable in case of two or more times delay in filing e-form PAS-3 and e-form INC-22.

Such higher fees will be calculated from the date of filing of the last such belated e-form for which additional fee or higher additional fee, as the case may be, was payable.

c) Where higher fees are applicable, additional will not be charged.

c) E-forms INC-22 & PAS-3 which were filed prior to commencement of the Companies (Registration Offices and Fees) Amendment Rules, 2022 shall be exempt from higher fees.

Link:

<https://www.mca.gov.in/bin/dms/getdocument?mds=%252FwqhpSXC6%252BFxaMTdJJWnnA%253D%253D&type=open>

Column



Business Combination

By – Ayush Bhardwaj

IBA

Business combination is a transaction or other event in which an acquirer obtains control of one or more businesses.

A parent – subsidiary relationship is formed when:

- Less than 100% of the firm is acquired, or
- The acquired firm is not dissolved.

Applicability :

Ind AS 103 provides guidance on accounting in the books of Acquirer only. There is no Explanation on Accounting in the books of Acquiree.

We can classify Business Combination under the following headings :-

- By Acquiring Net Assets
- By Acquiring Equity Interest
- Special Transaction

Identifying a business combination :

An entity shall determine whether a transaction or other event is a business combination by applying the definition in this Ind AS, which requires that the assets acquired, and liabilities assumed constitute a business. If the assets acquired are not a business, the reporting entity shall account for the transaction or other event as an asset acquisition.

The acquisition method :

An entity shall account for each business combination by applying the acquisition method.

Applying the acquisition method requires:

- a) Identifying the acquirer:** For each business combination, one of the combining entities shall be identified as the acquirer.

- b) Identify the acquisition date:** The acquirer shall identify the acquisition date, which is the date on which it obtains control of the acquiree.
- c) Identify the purchase consideration:** Purchase consideration is the aggregate of payments which is made by an acquirer to an acquiree in consideration of acquisition of business.
- d) Identification of Assets & Liabilities:** Acquirer will take over Assets & Liabilities from Acquiree at "Fair value" Which Prevails on Acquisition Date.

Exception to the above rule (Identification of Assets & Liabilities) :

It may be possible that Recognition of Acquired Assets & Liabilities has been made on Provisional fair value on Acquisition date because confirmed fair value may not Prevail sometimes in relation to an Asset or Liability on Acquisition date.

e) Identification of Goodwill or Bargain Purchase :

(1) Goodwill :

If Purchase Consideration Exceeds Net Assets acquired on Acquisition date, then it will be transferred to Goodwill

(2) Bargain Purchase :

If Purchase Consideration becomes Lower than Net Assets acquired, then difference will be considered as Bargain Purchase, and It will be transferred to gain in other comprehensive income on the acquisition date and accumulate the same in equity as capital reserve. The gain shall be attributed to the acquirer

Additional guidance for applying the acquisition method to particular types of business combinations :

A. A business combination achieved in stages :

An acquirer sometimes obtains control of an acquiree in which it held an equity interest immediately before the acquisition date. In a business combination achieved in stages, the acquirer shall remeasure its previously held equity interest in the acquiree at its acquisition-date fair value and recognise the resulting gain or loss, if any, in profit or loss or other comprehensive income, as appropriate.

B. A business combination achieved without the transfer of consideration :

An acquirer sometimes obtains control of an acquiree without transferring consideration. The acquisition method of accounting for a business combination applies to those combinations. Such circumstances include:

- The acquiree repurchases a sufficient number of its own shares for an existing investor (the acquirer) to obtain control.
- Minority veto rights lapse that previously kept the acquirer from controlling an acquiree in which the acquirer held the majority voting rights.

- The acquirer and acquiree agree to combine their businesses by contract alone. The acquirer transfers no consideration in exchange for control of an acquiree and holds no equity interests in the acquiree, either on the acquisition date or previously. Examples of business combinations achieved by contract alone include bringing two businesses together in a stapling arrangement or forming a dual listed corporation. together in a stapling arrangement or forming a dual listed corporation

Disclosures:

The acquirer shall disclose information that enables users of its financial statements to evaluate the nature and financial effect of a business combination that occurs either:

- during the current reporting period; or
- after the end of the reporting period but before the financial statements are approved for issue.

The acquirer shall disclose information that enables users of its financial statements to evaluate the financial effects of adjustments recognised in the current reporting period that relate to business combinations that occurred in the period or previous reporting periods.

Back to office after Lockdown



We are back to office with full strength and enthusiasm after lifting of lockdown. With the compassion and cooperation, we are ready to combat all challenges

Upcoming Compliances

Date	Compliance
February 11,2022	Due Date for filing of FORM GSTR-1 for the month of January 2022 for the registered taxpayers who have opted for monthly filing of GST Returns.
February 13,2022	Due Date for filing of Invoice Furnishing Facility (IFF) for the month of January 2022 for the registered taxpayers who have opted for quarterly filing of GST Returns.
	Due Date for filing of FORM GSTR-6 for the month of January 2022 for the taxpayers who have obtained Input Service Distributor (ISD) registration.
February 14, 2022	Due date for issue of TDS Certificate for tax deducted under section 194-IA, 194-IB, 194M in the month of December, 2021.
February 15, 2022	Due date for furnishing of Form 24G by an office of the Government where TDS/TCS for the month of January, 2022 has been paid without the production of a challan.
	Quarterly TDS certificate (in respect of tax deducted for payments other than salary) for the quarter ending December 31, 2021.
	Due date for filing of audit report under section 44AB for the assessment year 2021-22 in the case of a corporate-assessee or non-corporate assessee (who was required to submit his/its return of income on October 31, 2021).
	Due date for filing of audit report under section 44AB for the assessment year 2021-22 in the case of an assessee who is also required to submit a report pertaining to international or specified domestic transactions under section 92E.
February 20, 2022	Due Date for filing of FORM GSTR-3B for the month of January 2022 for the registered taxpayers who have opted for monthly filing of GST Returns.
February 25, 2022	Due Date for making cash payment towards the tax liability for the month of January 2022, in FORM GST PMT-06, for the registered taxpayers who have opted for quarterly filing of GST Returns.

Editorial Team



About us:

IBA is a leading financial and legal advisory company with specialization in Assurance, Risk Consulting, Legal, Direct Tax, Indirect Tax (GST) and Corporate Advisory for midsize, SMEs and start-up firms. IBA constitute a young team of path breaking professionals, who believe in creating value through innovation and creativity to provide ultimate client satisfaction. Clients benefit from our fresh thinking, constructive challenge and practical understanding of the issues they face. We aim to alloy a perfect blend of professionalism with high standards of service, in our pursuit of excellence.

Founded in the Year 2003, the company witnessed immense growth from 2 members to currently a 100 members team, with its offices in Delhi, Mumbai and Bengaluru and its clients from across states. IBA continues to offer wholesome service experience to boost highly valued client relationships by combining the technical and industry expertise at par with well-placed firms together with a personal commitment to optimize client service.

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Queries/Feedback/Suggestions on this newsletter may be addressed to: info@ibadvisors.co

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