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BUSINESS ADVISORS

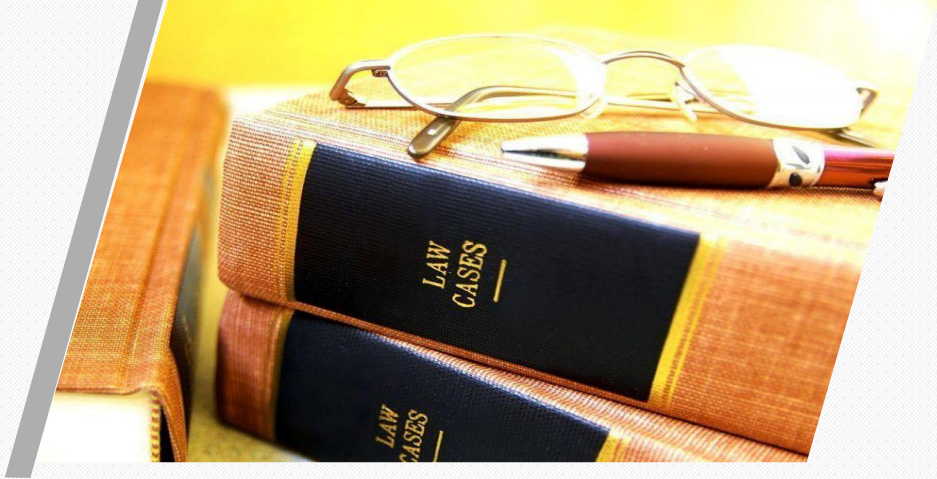
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September 2023

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Direct Tax Case Laws



Case Law 1:

Tax treatment of sale of Agricultural Land u/s 2(14)(iii) of the Income Tax Act, 1961.

Facts :

Out of 11.7 Acre of rural purported agricultural land, only 0.98 Acre was put to use for agriculture. Assessee claimed the entire land not being a Capital Asset u/s 2(14)(iii) of exceptions, being an agricultural land.

Out of 11.7 Acre, only 0.98 was used for the purpose of agriculture, and the rest of the land 10.72 Acre was never used for the purpose of agriculture.

Rest of the land 10.72 Ace was held to be non agricultural as -

- it was never used for agriculture.
- it was not capable of being cultivated being *Barren“
- it was not capable of being cultivated as there was no source of water supply on this part of the land.
- in the sale deed it was not*h referred as *agricultural land. In the deed it was referred to as land only.

Held: By Vice President as Third Member vide order dated 25.1.2023, the land in

question an agricultural land, as section 2(14)(iii) does not provide as condition active cultivation, on the contrary classification as agricultural land is sufficient.

Active cultivation on the land in the date of transfer is not the condition of section 2(14)(iii) to declare as agricultural.

Classification as agricultural land in revenue record is sufficient to hold it as agricultural land.

If land use is not changed to non-agricultural, rural land shall remain agricultural land even if not actively cultivated

Hon'ble Accountant Member held view in favour of assessee and held the land as agricultural land, whereas Hon'ble Judicial Member held different view in favour of Revenue.

Therefore, with the order of Hon'ble President, Hon'ble Vice-President Shri Rajpal Yadav was nominated Third Member, who ruled in favour of assessee by holding the land in question as agricultural land within the meaning of section 2(14)(iii) of the Act.

ACIT vs. Ashok W Wesavkar

Case Law 2:

TDS not required to be deducted on commission paid to overseas agents: Delhi HC

Direct Tax : Case Laws

Facts:

1. The respondent/assessee had sought a deduction of expenditure, which was the commission paid to agents overseas, but had not deducted the tax at source.
2. According to the AO, the non-deduction of TDS under Section 195 of the Income Tax Act, disentitles the assessee to avail of any deduction on that account.
3. The assessee contended that the commission paid to overseas agents was not chargeable to tax under the Act. Therefore, it had no obligation to deduct TDS.
4. The department contended that the question of whether any income is chargeable to tax in the hands of a non-resident agent is required to be considered in its assessment, and notwithstanding the question regarding the chargeability of such income, the payer is required to deduct and deposit TDS on any payments made by it.

on the part of an assessee to deduct or deposit tax if the payments made by it to non-residents are not chargeable to tax under the Income Tax Act.

3. The appeal of the revenue is dismissed.

PCIT Versus Maharani Enterprises

Held :

1. There is no material on record to even remotely suggest that the non-resident, who had been paid the export commission, had any permanent establishment in India, carried on any business within the taxable territory in India, or had any business connection in India rendering them liable to pay tax.
2. Section 195 of the Act provides for the deduction of tax in respect of the income that is chargeable under the Income Tax Act. There is no obligation

Direct Tax Circulars & Notifications



S. No Notification

1. Notification No. 76/2023 [F.No.300196/19/2022-ITA-I] / SO 3865(E)

The Central Government, under Income-tax Act, 1961, designates Real Estate Regulatory Authorities formed under the Real Estate (Regulation and Development) Act, 2016, as a specific class of authority.

They are allowed to receive

- Grant-in-aid or loan/advance from Government;
- Fee/penalty received from builders/developers, agents or any other stakeholders
- Interest earned on (a) & (b) above.

Provided they don't engage in commercial activities, maintain the specified income nature, and file income tax returns as required. This notification applies with respect to financial year 2022-2023, relevant to the assessment year 2023-2024.

Circulars :

Circular No 14/2023 :

The Indian government addresses tax issues related to co-operative sugar factories' payments to sugarcane growers in certain states. Previously, disputes arose regarding whether these payments, called Final Cane Price (FCP), could be considered business expenditure or profit distribution.

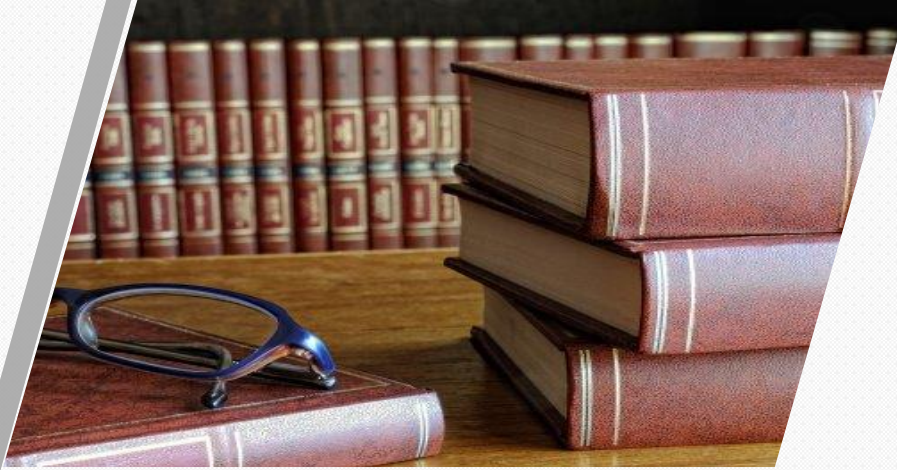
To resolve this, a clause was added to Section 36 of the Income-tax Act in 2015, allowing deductions for sugarcane purchases at or below government-fixed prices. However, this relief did not cover years before 2016-17.

A new sub-section (19) in Section 155 of the Act, effective April 1, 2023, allows revaluation of past deductions for co-operative sugar mills based on government-approved prices, up to April 1, 2014.

The application process for this relief is standardized in a Standard Operating Procedure (SOP), with documents required for re-evaluation, and the reassessment must be completed by March 31, 2027.

Indirect Tax :

Case Laws



Case Law 1:

Facts of the case :

M/s Vinod Kumari Goyal, registered under GST as well as Karnataka GST Act, 2017. The applicant is the owner of the land and has entered into an agreement with M/s Total Environment Building system Pvt Ltd for development of residential apartments.

The applicant has stated the important terms and conditions of agreement and stated that the project is developed under the name "The magic faraway tree phase 2 and phase 2A". The project is registered under RERA. The developer is in completion stage of phase 2 and in the process of seeking certificate from local authority. The developer has commenced the project under pre-GST regime and exercised an option to pay tax under the old scheme.

Seeking clarity on certain aspects of GST, the applicant has filed for an advance ruling. Their primary argument centers on Section 2(119) of the GST Act, 2017. They contend that once the transaction is subject to taxation in the hands of the developer, it should not be subjected to additional taxation when the applicant subsequently sells the apartments to customers. This argument holds true even if agreements were entered into prior to the issuance of completion certificates, particularly when no transfer of property in goods is involved.

Additionally, the applicant references specific conditions outlined in Notification 03/2019, specifically items (ie) and (if). They assert that during the transition to the new

GST scheme, they were not registered under GST and thus were not able to exercise the available option. They also cite recommendations from the 43rd GST Council meeting, emphasizing that, under the new scheme, Input Tax Credit (ITC) is restricted solely to the developer and does not extend to the landowner.

To support their case further, the applicant highlights anticipated expenses related to brokerage, marketing, and furnishing, all of which they consider as goods utilized in the advancement of their real estate business.

Rulings of the case :

The authority after analysing the documents submitted by the applicant, states the following:

- The applicant is acting as a supplier of works contract service to the prospective purchasers of apartments and hence he is a supplier under Section 7(1) of the CGST Act, 2017 liable to pay tax under Section 9(1) of the CGST Act, 2017.
- The applicant is liable to pay tax as per entries 3(i) to 3(id) of the Notification No. 11/2017 – Central Tax (Rate) dated 28.06.2017 as amended by Notification No.3/2019, dated: 29.03.2019 depending on the nature of the apartment, whether it is a residential or commercial apartment; if the apartment is a residential apartment, whether it is affordable category or not and whether the project is a residential real estate

Indirect Tax : Case Laws

- project or a real estate project other than residential real estate project.
- The applicant can claim Input Tax Credit (ITC) for the tax charged by the developer for construction services, only if both the conditions are satisfied: The applicant must be a registered dealer at the time when the construction services are supplied, and the tax amount payable by the applicant for the sale of apartments must exceed the tax amount charged by the developer for the construction services.
- The applicant is not eligible to claim input tax credit on other expenses, other than tax charged by Developer for supply of apartments.

In the matter of M/s Vinod Kumari Goyal, against Advance ruling No. KAR ADRG 28/2023 dated 24-08-2023]

Indirect Tax

Notifications & Circulars



S. No Notifications

1. Seeks to notify special procedure to be followed by the electronic commerce operators in respect of supplies of goods through them by composition taxpayers.

CBIC vide Notification No.36/2023-Central tax dated 04th Aug 2023, mandates a new procedure for eCommerce operators handling goods from composition taxpayers. Key elements include preventing inter-State sales, tax collection at source by eCommerce platforms, and mandatory reporting via FORM GSTR-8 for increased tax transparency and compliance in the eCommerce sector.

Link: <https://taxinformation.cbic.gov.in/view-pdf/1009818/ENG/Notifications>

2. Seeks to notify special procedure to be followed by the electronic commerce operators in respect of supplies of goods through them by unregistered persons.

CBIC vide Notification No.37/2023-Central tax dated 04th Aug 2023, notifies that eCommerce operators to follow specific procedures for goods from unregistered persons, allowing only those with an enrollment number, barring inter-State sales. They must report supply details in FORM GSTR-8, and the final payment-releasing operator bears responsibility in multi-operator transactions.

Link : <https://taxinformation.cbic.gov.in/view-pdf/1009819/ENG/Notifications>

3. Seeks to make amendments (Second Amendment, 2023) to the CGST Rules, 2017.

CBIC vide Notification No.38/2023-Central tax dated 04th Aug 2023, makes following amendment in CGST Rules,2017:

- **Amendment in Rule 9 :** The phrase “in the presence of the said person” has been eliminated.
- **Changes in Rule 10A :** Deadline for furnishing bank account details has been reduced to 30 days from the date of grant of registration or before furnishing GSTR-1 or both.
- **Changes in Rule 21A :** It modified to address violations of the Act or rules, potentially resulting in the cancellation or suspension of registration for the involved party.
- **Extension in Rule 23 :** extended the due date for 90 days for filing an application for the revocation of the cancellation of registration.
- **Rule 25 & Rule 88D :** Rule 25 defines the procedures and timelines for physical verification of premises in specific scenarios and Rule 88D deals with the difference in input tax credit as per the auto-generated statement and that availed in the return.

Indirect Tax Circulars & Notifications

S. No Notifications

- This notification has also brought significant changes and modifications to various rules (including Rules 108, 109, 138F, 142B, 162, and 163) and introduced new forms (FORM GST DRC-01C and FORM GST DRC-01D), as well as made notable revisions to existing forms (such as FORM GSTR-3A, GSTR-5A, GSTR-8, GSTR-9, GSTR-9C, and GST RFD-01).

Link: <https://taxinformation.cbic.gov.in/view-pdf/1009820/ENG/Notifications>

4. Seeks to amend Notification No. 02/2017-Central Tax dated 19.06.2017.

CBIC vide Notification No.39/2023-Central tax dated 17th Aug 2023, makes certain amendment in Notification no 02/2017, Serial no. 39, serial no. 101 and serial no. 107.

Link : <https://taxinformation.cbic.gov.in/view-pdf/1009829/ENG/Notifications>

5. Seeks to appoint common adjudicating authority in respect of show cause notice issued in favour of M/s United Spirits Ltd.

CBIC vide Notification No. 40/2023-Central Tax dated 17th August,2023 appoints specific officers as authorities to exercise powers and duties mentioned in the notification, primarily for adjudicating a notice issued to M/s United Spirits Ltd.

Link: <https://taxinformation.cbic.gov.in/view-pdf/1009830/ENG/Notifications>

6. Seeks to extend the due date for furnishing FORM GSTR-1 for April, May and June, and July 2023 for registered persons whose principal place of business is in the State of Manipur.

CBIC vide Notification No.41/2023-Central tax dated 25th August 2023, has extended the due date till the 25th Aug 2023 for filing GSTR-1 for the registered person filing return under section 39(1) in the state of Manipur w.e.f. 31th July 2023.

Link : <https://taxinformation.cbic.gov.in/view-pdf/1009834/ENG/Notifications>

7. Seeks to extend the due date for furnishing FORM GSTR-3B for April, May, June and July 2023 for registered persons whose principal place of business is in the State of Manipur.

CBIC vide Notification No.42/2023-Central tax dated 25th August 2023, has extended the due date till the 25th Aug 2023 for filing GSTR-3B for the registered person filing return under section 39(6) in the state of Manipur w.e.f. 31th July 2023.

Link : <https://taxinformation.cbic.gov.in/view-pdf/1009835/ENG/Notifications>

Indirect Tax Circulars & Notifications

S. No Notifications

8. Seeks to extend the due date for furnishing FORM GSTR-3B for quarter ending June 2023 for registered persons whose principal place of business is in the State of Manipur.

CBIC vide Notification No.43/2023-Central tax dated 25th August 2023, has extended the due date till the 25th Aug 2023 for filing GSTR-3B for the registered person filing return under section 39(6) in the state of Manipur w.e.f. 31th July 2023.

Link: <https://taxinformation.cbic.gov.in/view-pdf/1009836/ENG/Notifications>

9. Seeks to extend the due date for furnishing FORM GSTR-7 for April, May, June and July , 2023 for registered persons whose principal place of business is in the State of Manipur.

CBIC vide Notification No.44/2023-Central tax dated 25th Aug 2023, has extended the due date till the 25th Aug 2023 for filing GSTR-7 for the registered person filing return under section 39(6) in the state of Manipur.

Link : <https://taxinformation.cbic.gov.in/view-pdf/1009837/ENG/Notifications>

10. Electronic Credit and Re-claimed Statement

A new Electronic Credit and Re-claimed Statement ledger will be introduced on the GST portal to help taxpayers accurately report ITC reversal and re-claimed amounts starting from the August-23 return period. The due date for reporting the opening balance is November 30, 2023. Monthly filers should consider reversals until July 2023, while quarterly filers should include reversals up to Q1 of the 2023-24 fiscal year; otherwise, the portal will set the balance to NIL. Corrections can be made until December 31, 2023, with a maximum of 3 amendments, after which the balance will be locked and reviewed by jurisdictional officers.

Legal & Regulatory Notifications



S. No Notifications

1. Companies (Incorporation) second amendment rules, 2014

(Notification dated August 02, 2023)

Ministry of Corporate Affairs, vide its Notification dated August 02, 2023, has issued notification and informed about the amendment in the e-form RD-1 [form for filing application to Central Government (Regional Directors)]

Link:

<https://www.mca.gov.in/bin/dms/getdocument?mds=jYQ0wTBvMQwmTluXHncG0A%253D%253D&type=open>

2. Condonation of delay in filling of form 3 form 4 and form 11 under section 67 of limited liability partnership ACT, 2008 read with section 460 of the companies act, 2013

(Notification dated August 28, 2023)

Ministry of Corporate Affairs, vide its Notification dated August 28, 2023, has issued notification stating that no additional fees shall be applicable in respect of filing of Form 3, Form 4 and Form 11 which could not be filed within the due date.

The following are the important points mention therein:

- Form 3 and Form 4 will be under the straight through processing (STP) mode for all purposes except for change in business activities.
- Pre-filled data in the forms will be editable.
- No additional fees will be applicable in filing of Form 3 and Form 4 for event dates 01.01.2021 onwards. For events prior to this date, forms can be filed with 02 and 04 times of the normal fees.
- No additional fees will be applicable in filing of Form 11 for the Financial Year 2021-22 onwards. For prior year, same can be filed with 02 and 04 times of the normal fees.
- These are available for filing from 01.09.2023 to 30.11.2023 (both days inclusive).

Link:

<https://www.mca.gov.in/bin/dms/getdocument?mds=Zt6foWsl%252BABAbU7Pid9NGg%253D%253D&type=open>

Legal & Regulatory

3. Limited liability partnership (second amendment) rules, 2023

(Notification dated September 01, 2023)

Ministry of Corporate Affairs, vide its Notification dated September 01, 2023, has issued notification and informed about the amendment in the following forms:

1. Form 3 (Information with regard to LLP Agreement and changes, if any, made therein)
2. Form 4 (Notice of appointment, cessation, change in name/address/designation of a partner/designated partner and consent to become a partner/designated partner)

Link:

<https://www.mca.gov.in/bin/dms/getdocument?mds=ywlii5hvZvLAByIQ7KmtNA%253D%253D&type=open>

Column



REFUND UNDER GST

By – Sakshi Sachdeva

IBA

Overview & Concept :

The concept of refund under GST relates to any amount returned by the government that was paid by the registered taxpayer either in excess or not liable to be taxed or process in which registered taxpayer could claim excess amount if they paid more than the GST liability. Any person claiming a refund of any tax or interest if any, may make an application before the expiry of two years from the relevant date in such form and manner may be prescribed.

Scope of Refund under GST :

Explanation to section 54 of the CGST act 2017 defines the term “refund” which includes: (i) Refund of tax (output tax) paid on zero-rated supplies of goods and/or services, or (ii) Refund of tax (input tax) on inputs or input services used in making zero-rated supplies, or (iii) Refund of tax in pursuance of section 77, or (iv) Refund of the unutilized input tax credit as provided under section 54(3) of the CGST Act 2017 i.e., due to inverted duty structure. The aforesaid explanation prescribes the situations in which the refund can be granted as the term used in the aforesaid explanation is that refund ‘includes’. It clearly means that there can be various other situations under the above provisions wherein a refund can be granted to the person and/or the registered persons.

Filing for GST Refunds :

Once you have identified that you have a GST claim for a refund then you need to file your claim through GST Refund Form RFD-01 and this GST claim needs to be made within 2 years of the “relevant date” of the GST refunds application. The term “relevant date” is defined for different GST Refund scenarios.

In case you fail to file your GST claim within mentioned timelines then it could be possible that a GST refund may have lapsed. When the assessee submits his GST Refund form he gets an acknowledgment form GST RFD-02 which is auto-generated. This GST Refund form RFD-02 helps

the assessee for any future reference related to their GST refund and it is also communicated to taxpayers through email or as an SMS.

After submission of GST RFD-01, If the department concerned officers found any deficiencies, then the concerned officer will raise a deficiency letter in the form of RFD-03 and the assessee needs to reply to these deficiency letters within the prescribed time mentioned under RFD-03. The concerned officer may raise the Deficiency memo a maximum of 2 times thereafter the filed application may be rejected by the concerned officer.

Processing of GST Refunds :

GST refunds are processed normally within a period of 30 days from filing a GST refund application. This period may alter in some cases depending on the amount of GST refunds to be processed. The GST claim application shall undergo scrutiny or audit as may be applicable and the said amount shall be processed to the taxpayer's account when found eligible. In case the adjudicating body finds that the taxpayer comes under the category of being "unjustly enriching" then the GST refunds amount shall be transferred to the Consumer Welfare Fund.

The GST Refund process is thorough and effective. It follows the trail of invoices to process the GST claim and is designed by keeping in mind the ease for manufacturers and exporters. Previously tax refunds that used to take years to pass is now being processed within not more than sixty days.

Functionality to withdraw Refund Application :

The functionality to withdraw a Refund Application filed by the taxpayer is given on GST Common Portal w.e.f. February 2021 in Form GST RFD-01W until the Refund Processing Officer issues an acknowledgment in Form GST RFD-02 or a deficiency memo in Form GST RFD-03. Earlier the taxpayers had no option to withdraw their refund applications if they have committed any mistakes while filing the application. A functionality has now been implemented for the taxpayer, to withdraw an already filed refund application, by filing Form GST RFD-01W.

Below are the important points that we need to remember or consider before filing GST

RFD-01- :

- Verification of the relevant invoice on which ITC has been claimed is reported and the corresponding tax is paid by the supplier (2A vs 3B)
- Verification of Annexure-B with reference to the GSTR-2A for the corresponding period
- Bifurcation of the Input tax credit as the refund of ITC paid on capital goods is not allowed
- Verify whether the outward sales are reported in GSTR-1 and GSTR-3B return for the relevant period
- Verify whether any input credit is claimed for the items mentioned in Sec 17(5)
- Ensure that the statement 3 (Invoice details) & 3A (Calculation of refund amount) are filed in case of Exports without payment of tax.

Independence Day Celebration



The Independence Day celebration on August 15th was a resounding success. The Tambola game infused an extra layer of excitement, while the Best Dressed competition elegantly showcased our patriotic spirit.

Offsite - 2023



The recent offsite was a multifaceted event. It featured a productive Townhall Meeting, impactful teambuilding exercises, and exciting offsite adventures. These activities not only contributed to strengthening team cohesion and our shared mission, but also, the remarkable achievement of 20 years of excellence at IBA.

Upcoming Compliances

Date	Compliance
September 11, 2023	Due Date for filing of Form GSTR-1 for the period August 2023 for the registered taxpayers who have opted for monthly filing of GST Returns.
September 13, 2023	Due Date for submission of invoices through IFF under QRMP scheme for the period August 2023 for the registered taxpayers who have opted for quarterly filing of GST Returns.
	Due Date for filing of Form GSTR-6 for the period August 2023 for the registered taxpayers who have obtained Input Service Distributor (ISD) registration.
September 14, 2023	Due date for issue of TDS Certificate for tax deducted under section 194-IA, 194-IB, 194M, 194S in the month of July, 2023.
September 15, 2023	Second instalment of advance tax for the assessment year 2024-25.
	Due date for furnishing of Form 24G by an office of the Government where TDS/TCS for the month of August, 2023 has been paid without the production of a challan.
	Due date for furnishing statement in Form no. 3BB by a stock exchange in respect of transactions in which client codes been modified after registering in the system for the month of August, 2023
September 20, 2023	Due Date for filing of Form GSTR-3B for the period August 2023 for the registered taxpayers who have opted for monthly filing of GST Returns.
September 25, 2023	Due Date for Challan Payment for the period August 2023 for the registered taxpayers who have opted for QRMP scheme.
September 30, 2023	Due date for furnishing of challan-cum-statement in respect of tax deducted under section 194-IA, 194-IB, 194M, 194S in the month of August, 2023

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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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