



Just 5 Minutes

TAXCONTM INDIA PRIVATE LIMITED

INCOME TAX ACT

1. AO can withhold the refund for outstanding demand

Assessing Officer can withhold a refund under section 245(2) if there's an outstanding demand or pending assessment proceedings and AO believes the grant of refund is likely to affect the revenue adversely. The CBDT has notified that the monetary limit for applying provisions of said section will be where the refund value is Rs. 10 lakhs or more.

2. Reg - applicable interest on premature withdrawal of NSTD

The Government has notified the National Savings Time Deposit (Fourth Amendment) Scheme, 2023, amending the National Savings Time Deposit Scheme 2019. It has been provided that if a deposit in a five-year account is withdrawn prematurely after four years from the date of opening of an account, interest shall be payable at the rate applicable to Post Office Savings Account.

GST

1. *Amnesty Scheme to file Appeal*

Following the recommendations made in the 52nd meeting of the GST Council, the Central Board of Indirect Taxes and Customs (CBIC) has issued a notification¹ introducing an Amnesty Scheme for filing appeals against demand orders in cases where an appeal could not be filed within the stipulated period.

Under the Amnesty Scheme, taxable individuals who were unable to file an appeal against an order issued by the proper officer on or before 31 March 2023 in Form GST-APL-01 within the stipulated time, can file the appeal till 31 January 2024.

To benefit from this Amnesty Scheme, appellants must pay –

- i. the admitted portion of tax, interest, fine, fee and penalty in full; and
- ii. an amount equal to 12.5% of the remaining disputed tax, up to a maximum of INR 250m, for the appeal, with a minimum of 20% paid from the Electronic Cash Ledger.

The Amnesty Scheme also extends to taxable individuals whose appeals were rejected solely because they failed to file within the stipulated time mentioned under section 107 of the CGST Act.

No appeal under this scheme will be admissible for a demand not involving tax. Moreover, no refunds will be made until the appeal is disposed of for any amount paid by the appellant, either voluntarily or as per the direction of any authority or court, exceeding the above-mentioned amount when filing an appeal under section 107(1) of the CGST Act.

GST

2. *GSTN Advisory for Online Compliance Pertaining to ITC mismatch*

GSTN has developed a functionality to generate automated intimation in Form GST DRC-01C which enables the taxpayer to explain the difference in Input tax credit available in GSTR-2B statement & ITC claimed in GSTR-3B return online. If the claimed ITC in GSTR 3B exceeds the available ITC in GSTR-2B by a predefined limit or the percentage difference exceeds the configurable threshold, taxpayer will receive an intimation in form of DRC-01C.

The taxpayer is required to file response in Part B of Form DRC-01C. The taxpayer has the option to either provide details of the payment made to settle the difference using Form DRC-03, or provide an explanation for the difference, or even choose a combination of both options.

In case, no response is filed by the impacted taxpayers in Form DRC-01C Part B, such taxpayers will not be able to file their subsequent period GSTR-1/IFF.

COMPANIES ACT/LLP ACT

1. *Rules on Significant Beneficial Owner for Limited Liability Partnerships released*

The Ministry of Corporate Affairs (MCA) has recently published the Limited Liability Partnership (Significant Beneficial Owner) Rules, 2023 (SBO Rules), which requires all SBOs identified under the SBO Rules, to file a declaration with the LLP in the respective form within 90 days from the notification of the said rules, i.e. from Nov 09, 2023.

All the LLPs are also required to take steps and give notice(s) to persons with the objective of identifying such SBO(s).

LABOUR LAWS

1. HC quashes Haryana law providing 75% quota in private sector jobs

The 75% quota for Haryana's locals in private sector jobs has been held unconstitutional by Punjab & Haryana High Court recently. The court said that the Haryana State Employment of Local Candidates Act, 2020 is unconstitutional and that the act is violative of Part 3 of the constitution.

CASE LAWS - INCOME TAX

1. *Principal CIT 3 v. Fujitsu India (P.) Ltd. - [2023]*

It has been held that RPM was most appropriate method in case of distribution and marketing activities especially when goods are purchased from associated entities and there are sales to unrelated parties without any processing and value addition.

2. *DCIT v. CEVA Asia Pacific Holdings Company Pte. Ltd. - [2023]*

It has been held that where assessee, a Singapore based company, had entered into intra-group services agreement with its India affiliates, services provided in relation to marketing and sales services and operations and standardization services could not be regarded as FTS under article 12(4) of India-Singapore DTAA since said services did not 'make available' technical knowledge, experience, skill, know-how or processes and there was no transfer of technology.

CASE LAWS - INCOME TAX

3. *Infor (India) (P.) Ltd. v. DCIT, Circle-2(1) - [2023]*

It has been held that where TPO determined NIL ALP on ground that assessee had not derived any benefit from payment of management fee to its AE, since it is not within TPO's domain to ascertain or apply "benefit" test and further assessee's AE had in fact made payment to another company on cost to cost basis without involving any profit element for said service, matter was restored to TPO.

4. *Bangabasi Collage v. Union of India - [2023]*

It has been held that where case of assessee was selected for faceless assessment and assessee prayed for personal hearing through video conferencing, however opportunity of personal hearing could not be availed due to technical difficulties and Assessing Officer passed assessment order, since for technical fault assessee could not be made to suffer, matter was to be remanded to Assessing Officer to pass fresh assessment order after giving opportunity of hearing to assessee.

CASE LAWS - INCOME TAX

5. *D.N. Homes (P.) Ltd v. Union of India - [2023]*

It has been held that where petitioners had deducted TDS but not deposited same during statutory time limit but had deposited after substantial period of delay ranging from 31 to 214 days delay, they had committed default which comes under offence as provided in section 276B , however, since failure on part of petitioners to deposit deducted TDS was on account of reasonable causes for prevalence of COVID-19 Pandemic standing on their way, Trial Court ought not to have taken cognizance of offences under section 279B, sections 2(35) and 278(B).

CASE LAWS - INDIRECT TAX

1. *Madras HC on power of GST Council to determine rate*

In a recent decision, the Madras High Court, while limiting the powers of the GST Council in determining the classification of a product, held that the role of the GST Council is only recommendatory in nature. While analysing the relevant tariff chapters in detail, the Madras High Court held that 'flavoured milk' would be classified under tariff heading 0402, attracting a lower GST rate of 5% (and not under tariff heading 2202 as was decided in the GST Council meeting held on 22 December 2018, which would be taxable at 12%).



Fortnightly Update No : 409th

Disclaimer: This is for private circulation only. Every effort has been made to provide the correct information for the facility of our clients. Specific advice/clarification should be obtained in case there is any doubt relating to the aforesaid