

R.C. JAIN AND ASSOCIATES LLP

NEWSLETTER

May 2024

*“The art
Is not in making money,
But the art is in keeping it.”*



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Notification No. 44/2024

The Ministry of Finance, through the Central Board of Direct Taxes (CBDT), issued **Notification No. 44/2024** -Income-Tax on May 24, 2024, detailing the Cost Inflation Index (CII) for the financial year 2024-25 i.e. Assessment Year 2025-26. Same has been mentioned below.

Financial Year	Cost Inflation Index
2024-25	363

The notification will come into effect from **April 1, 2025** and shall accordingly apply to the assessment year 2025-26 and subsequent assessment years.

Notification No. 43/2024, F. No.300196/32/2024-ITA-I

In exercise of the powers conferred by **clause (46) of section 10** of the Income-tax Act, 1961, in computing the total income of a previous year of any person, any income falling within any of the following clauses shall not be included. The Central Government hereby notifies for the purposes of the said clause, ‘**Tamil Nadu Water Supply and Drainage Board, Chennai**’ in respect of the following specified income arising to the said Board, namely

- a) Water charges for supply of water to recover the maintenance cost
- b) Centage charges received from local bodies work like water supply scheme and sewerage scheme to compensate for establishment charges
- c) Investigation and Detailed Project Report preparation charges for water supply and drainage scheme for establishment charges;
- d) Interest earned on Bank Deposits.

Subject to the following conditions that the Tamil Nadu Water Supply and Drainage Board, Chennai:

- a) shall not engage in any commercial activity;
- b) its activities and the nature of the specified income shall remain unchanged throughout the financial year(s); and
- c) Shall file return of income in accordance with the provision of clause (g) of sub-section (4C) of section 139 of the Income-tax Act, 1961.

Notification No. 42/2024 F. No. 300196/40/2019-ITA-I

In exercise of the powers conferred by **clause (46) of section 10** of the Income-tax Act, 1961- In computing the total income of a previous year of any person, any income falling within any of the following clauses shall not be included, the Central Government hereby notifies for the purposes of the said clause '**Tamil Nadu Electricity Regulatory Commission**' respect of the following specified income arising to that Commission, namely:

- a) Government Grants;
- b) fees levied under clause (g) of sub-section (1) of Section 86 read with Section 181 of the Electricity Act, 2003;
- c) penalties levied u/s 146 of the Electricity Act, 2003; and
- d) Interest earned on bank deposits.

Subject to the following conditions that the Tamil Nadu Water Supply and Drainage Board, Chennai:

- a) shall not engage in any commercial activity;
- b) its activities and the nature of the specified income shall remain unchanged throughout the financial year(s); and
- c) shall file return of income in accordance with the provision of clause (g) of sub-section (4C) of section 139 of the Income-tax Act, 1961.

~ Compiled by Yash Agrawal

CASE LAWS

1) Issue Involved:

Where reassessment proceedings were initiated by non-jurisdictional Assessing Officer, and later on, the case was transferred to jurisdictional Assessing Officer for completion of reassessment, since non-jurisdictional Assessing Officer had no jurisdiction over assessee, reassessment made by jurisdictional Assessing Officer on basis of notice issued under section 148 by non-jurisdictional Assessing Officer was to be quashed.

IN THE ITAT DELHI BENCH 'SMC'

Saroj Sangwan

v.

Income-tax Officer*

CHALLA NAGENDRA PRASAD, JUDICIAL MEMBER

IT APPEAL NO. 2428 (DELHI) OF 2023
[ASSESSMENT YEAR 2011-12]

MAY 17, 2024

Case Summary:

Assessee was resident of Gurgaon. - Assessing Officer, Ward 69(1), New Delhi issued reopening notice in name of assessee - Subsequently, case of assessee was transferred to Assessing Officer, Ward 4(1), Gurgaon who completed reassessment - Assessee contended that since Assessing Officer, Ward 69(1), Delhi who issued reopening notice did not have jurisdiction to issue reopening notice, reassessment completed by Assessing Officer, Ward 4(1), Gurgaon was bad in law - Whether Assessing Officer, Ward 69(1), Delhi who issued reopening notice had no jurisdiction over assessee, assumption of jurisdiction by him for reopening assessment by issue of notice under section 148 was bad in law - Held, yes - Whether since Assessing Officer, Ward 4(1), Gurgaon who had jurisdiction over assessee had not issued any notice under section 148, reassessment completed by Assessing Officer, Ward 4(1), Gurgaon was bad in law - Held, yes [Para 5] [In favour of assessee]

Facts of the Case:

The Assessee was resident of Gurgaon. The Assessing Officer, Ward 69(1), New Delhi issued reopening notice in name of assessee. Subsequently, case of assessee was transferred to Assessing Officer, Ward 4(1), Gurgaon who completed reassessment.

The assessee filed instant appeal contending that the assumption of jurisdiction by the non-jurisdictional Assessing Officer for issue of notice under section 148 was bad in law and, therefore, the consequential assessment made pursuant to such notice was also bad in law.

Held:

Notice under section 148 dated 30.03.2018 was issued by ITO, Ward 69(1), Delhi for reopening of assessment of the assessee. Later on the case was transferred to the ITO, Ward 4(1), Gurgaon, by way of letter dated 12.11.2018 by ITO, Ward 69(1), New Delhi for completion of reassessment. It is very much clear that at the time of issue of notice under section 148 by ITO, Ward 69(1), New Delhi he has no jurisdiction over the assessee as the jurisdiction over the assessee was vested with ITO, Ward 4(1), Gurgaon, therefore, it can be safely concluded that the assumption of jurisdiction by ITO, Ward 69(1), New Delhi for reopening of assessment by issue of notice under section 148 is bad in law. There is nothing on record to suggest that the Assessing Officer who has jurisdiction over the assessee i.e. ITO, Ward 4(1), Gurgaon, had issued any notice under section 148. The assessment was completed under section 143(3) read with section 147 on 28.12.2018 by ITO, Ward 4(1), Gurgaon on the basis of notice issued under section 148 by ITO, Ward 69(1), New Delhi who had not validly assumed jurisdiction to initiate reassessment proceedings. [Para 5]

In view of the above, the reassessment made by the ITO, Ward 4(1), Gurgaon on the basis of notice issued under section 148 by non-jurisdictional Assessing Officer i.e. ITO, Ward 69(1), New Delhi, is hereby quashed. [Para 7].

2) Issues Involved:

Where Commissioner (Appeals) had not issued notice to email address provided by assessee in Form 35 or on email address in profile information but notices were sent to email of former CA of assessee and further order was passed, same tantamounted to issue of notice on wrong and invalid address and as such no service of notice, therefore, impugned ex-parte order passed by Commissioner (Appeals) was to be set aside and matter was to be remand back to him to adjudicate appeal afresh.

IN THE ITAT AMRITSAR BENCH

Farhan Majid Dar

v.

Income-tax Officer*

DR. M.L. MEENA, ACCOUNTANT MEMBER
AND UDAYAN DASGUPTA, JUDICIAL MEMBER

IT APPEAL NOS. 304 & 305 (ASR.) OF 2023 & 99 & 101 (ASR.) OF 2024
[ASSESSMENT YEAR 2012-13, 2015-16 AND 2016-17]

MAY 6, 2024

Case Summary:

Whether rejection of appeals without valid service of notice either by postal address or electric communication and further without discussing merits of case would be held to be in gross violation of principles of natural justice – Held, yes -Commissioner (Appeals) had passed an order ex-parte qua assessee - Assessee while filling Form 35, provided an email address - However, in return, email address of former Chartered Accountant (CA) of assessee was indicated – Commissioner (Appeals) had not issued notice to email address provided by assessee in Form 35 or on email address in profile information but notices were sent to email of former CA – It was noted that it was evident that assessee had not been given sufficient opportunity to put up pleas/submissions with regard to compliance of notices issued by Commissioner (Appeals) as he was not served any of notices - Whether issue of notice by CIT(A) on email address other than email address given in Form 35 of appeal tantamount to issue of notice on wrong and invalid address and as such no service of notice – Held, yes – Whether matter was to be remand back to CIT(A) to adjudicate appeal afresh after granting sufficient opportunity of being heard – Held, yes [Paras 6 and 7] [In favour of assessee]

Facts of the Case:

The Commissioner (Appeals) had passed the order ex-parte qua the assessee. The assessee while filling Form 35, provided an email address. However, in the Income Tax Return (ITR), the email address of the former Chartered Accountant (CA) was indicated. The CIT(A) had not issued notice to the email address provide by the assessee in Form 35 at column no. 17 or on the email address in profile information but notices were sent to the email of the former CA.

Held:

Admittedly, the CIT(A) has issued notice on the email address of the former CA given in the Income Tax Return (ITR). It is undisputed fact on record that the CIT(A) has neither issued notice on the email address given in the profile information as or alternate email address given in column no. 17 of Form 35 of appeal memo. As per clause 11 of the CBDT Notification No. 139 dated 28.12.2021, the CIT(A) is required to communicate the notice through the email id available in Form 35 of the appeal memo. The issue of notice by the CIT(A) on the email address other than the email address given in Form 35 of the appeal, tantamount to issue of notice on wrong and invalid address and as such no service of notice. Rejection of appeals without valid service of notice either by postal address or electric communication and further without discussing merits of the case would be held to be in gross violation of principles of natural justice. This issue of ex-parte order passed by the CIT(A) due to lack of proper service of notice has been settled by various courts, acknowledging that it is impractical for the assessee to consistently monitor the e-portal of the Income Tax department.

The department must communicate notices in accordance with the provisions of law and tax-payers are not accepted to keep the department e-portal open in all the times. Before any action is taken by the department, the communication of notice must be in terms of provisions of law. The provisions do not mention that communication to be presumed by placing notice on the e-portal. A pragmatic view has to be adapted always in these circumstances and individual or company is not accepted to

keep the e-portal to the department open in all the times to have the knowledge of what the department supposed to be doing with regard to the submissions of Forms etc. The principles of natural justice are inherent in the Income Tax Provisions and same are required to be necessarily followed.

From the record, it is evident that the appellant has not been given sufficient opportunity to put up pleas/submissions with regard to the compliance of the notices issued by the CIT(A) as he was not served, any of the notices. The assessee would be entitled to be granted sufficient opportunity of being heard to file his reply and the CIT(A) of course be entitled to examine the same and pass afresh order thereafter. In view of natural justice, it deem fit to remand back to the matter to the file of the CIT(A) to adjudicate the appeal afresh after granting sufficient opportunity of being heard and considering the submissions made by the appellant assessee.

Accordingly, the matter is restored back to the file of the CIT(A)

~ Compiled by Amrit Bodwani

CASE LAW

Goods & Service Tax

Rajshi Processors Raebareli Vs State of U.P.

(Allahabad High Court)

Appeal Number – Writ Tax No 128 of 2024

Date of Judgment/Order - 14/05/2024

Issues Involved

Rajshi Processors Raebareli filed a petition under Article 226 of the Constitution of India seeking to challenge an order passed by the Deputy Commissioner, Commercial Tax, imposing tax liability and penalty on the petitioner for allegedly claiming false Input Tax Credit (ITC). The petitioner also challenged the dismissal of their appeal against this order by the Additional Commissioner.

Facts of the case

1. **Survey Conducted:** The petitioner, engaged in manufacturing and sale of Aluminum Casting & Machinery Parts, had filed GSTR 3B for certain months. A survey conducted by the Special Investigation Branch (SIB) revealed that the petitioner claimed to have received inward supplies from three firms namely, M/s Riddhi Siddhi Enterprises (GSTIN-09FDTPD8965GIZQ), M/s Siddhartha Trading Company (GSTIN-09HUCPK4270H1Zf) & M/s Satvik Enterprises (GSTIN-09GSRPK8763F1ZV) which were later found to be non-existent and bogus.

2. **Fraudulent ITC Claims:** The petitioner allegedly claimed ITC benefits without any actual supply of goods, based on fake invoices from these non-existent firms, amounting to Rs. 10,12,491/-.

3. **Adjudication and Appeal:** The adjudicating authority issued a notice under Section 74 of CGST Act, 2017 and the petitioner submitted explanations and evidence. However, the authority did not accept the petitioner's explanation and imposed tax liability, penalty, and interest. The petitioner appealed against this decision, but the appellate authority upheld the adjudicating authority's order.

LEGAL ARGUMENTS

➤ **Petitioner's Contentions:**

The petitioner argued that they had actually received inward supplies, supported by records submitted to the adjudicating authority. They also contended that the cancellation of GST registration of the supplier firms subsequently (i.e. after the year under consideration in which the petitioner had engaged in transactions with the alleged parties who were declared to be bogus) should not penalize them.

➤ **Provision of the GST Act:**

The petitioner referred to Section 16(2) of the CGST Act, emphasizing the conditions for claiming input tax credit, and Rule 36 of CGST Rules, 2017 regarding documentary requirements and conditions for claiming ITC.

COURT'S ANALYSIS

- **Eligibility for ITC:** The court emphasized that Section 16(2)(b) of the CGST Act specifies that a registered person must have actually received the goods to claim input tax credit. Mere production of documents is insufficient if no actual supply of goods occurred.
- **Existence of Supplier Firms:** Despite the firms having GST registration at the time of transactions, subsequent investigation revealed they were non-existent. Hence, the petitioner's claim of having received goods from these firms was considered fraudulent.
- **Fraudulent Transactions:** The investigation findings supported the conclusion that the inward supplies claimed by the petitioner were from non-existent firms, constituting fraud against the department and public exchequer (i.e Department in Charge of Public Revenue)

CONCLUSION

The court found no illegality in the orders passed by the adjudicating authority and upheld the tax liability, penalty, and interest imposed on the petitioner. The petition was dismissed, affirming the department's right to recover fraudulent ITC claimed on the basis of transactions with the said non-existent and bogus firms.

~ Complied by Sanish Naik

RBI/2024-25/38

DOR.RET.REC.23/12.07.160/2024-25

May 24, 2024

Exclusion of "Fincare Small Finance Bank Limited" from the Second Schedule to the Reserve Bank of India Act, 1934 and cessation as a banking company

As a part of the following notification, it is informed that "Fincare Small Finance Bank Limited" has been excluded from the Second Schedule to the Reserve Bank of India Act, 1934 with effect from April 01, 2024, as the bank has ceased to carry on banking business with effect from April 01, 2024 vide Notification "DOR.HOL.No.S173/16-02-003/2024-25" dated April 08, 2024, which is published in the Gazette of India (Part III - Section 4) dated May 14, 2024.

Notification No. FEMA 5(R)/(4)/2024-RB

May 06, 2024

Foreign Exchange Management (Deposit) (Fourth Amendment) Regulations, 2024

- The regulations, titled Foreign Exchange Management (Deposit) (Fourth Amendment) Regulations, 2024, are a new addition to the Principal Regulations.
- The regulations come into effect from the date of their publication in the Official Gazette.
- A new sub-regulation is inserted in Regulation 7, allowing a person resident outside India to open, hold, and maintain an interest-bearing account in Indian Rupees or foreign currency for posting and collecting margin in India for a permitted derivative contract, entered into by persons as stated in the terms of Foreign Exchange Management (Margin for Derivative Contracts) Regulations, 2020, dated October 23, 2020.

~ Complied by Prachi Dubey

CASE LAW

Violations of section 89 (declaration in respect of beneficial interests in any share) and Section 90 (Register of significant beneficial owners in a company)

Registrar of Companies, NCT of Delhi & Haryana vs. LINKEDIN TECHNOLOGY INFORMATION PRIVATE LIMITED (CIN-U72900DL2009PTC197503)

Order No. :ROC/D/Adj/Order/Section 89&90/2246- 2256 Date: 22.05.2024

Case Summary

The order issued by the Office of Registrar of Companies, NCT of Delhi & Haryana, dated 22.05.2024, pertains to penalizing LinkedIn Technology Information Private Limited (hereafter referred to as “LinkedIn India”) for violations under Sections 89 and 90 of the Companies Act, 2013. The violations relate to the incorrect filing of forms regarding beneficial ownership and significant beneficial ownership.

Facts of the Case

1. **Violations under Section 89:** LinkedIn India filed an e-form MGT-6 stating that LinkedIn Technology Unlimited Company is the registered holder and LinkedIn Ireland Unlimited Company is the beneficial owner of 01 share, with the date of creation of beneficial interest as 11.01.2024. However, financial statements filed earlier indicated that the beneficial interest had arisen much earlier. Additionally, LinkedIn India failed to declare its significant beneficial owner as required by Section 90 of the Act. LinkedIn India argued that the beneficial ownership always vested with LinkedIn Ireland, reaffirmed during an amalgamation in 2014. They claimed the filing was made to err on the side of caution due to the ambiguous language of Section 89(2). However, the reply was deemed unsatisfactory, and LinkedIn India was asked to provide reasons for the incorrect information. They reiterated their stance during a hearing.

2. **Violations under Section 90:** NCT through an analysis examined beneficial ownership through holding subsidiary relationships, reporting channels, and financial control. It found that Mr. Satya Nadella and Mr. Ryan Roslansky were significant beneficial owners due to their ability to control the subject company, as indicated by their positions within LinkedIn Corporation and Microsoft Corporation. The analysis also highlighted the appointment patterns of directors, suggesting their allegiance to Microsoft and LinkedIn.

NCT Analysis

The analysis done by NCT found LinkedIn India's response inadequate. It was concluded that both LinkedIn Technology Unlimited Company and LinkedIn Ireland Unlimited Company failed to make accurate declarations, rendering them liable for penalties.

Legal Implications

- **Penalties Imposed:** LinkedIn Technology Unlimited Company and LinkedIn Ireland Unlimited Company were penalized under Section 89(5) for violations between 21.12.2020 and 15.02.2024. Mr. Satya Nadella, Mr. Ryan Roslansky, and other directors were penalized under Section 90(10) and Section 90(11) for violations between 01.07.2020 and 15.02.2024. The penalties ranged from Rs. 50,000/- to Rs. 5,00,000/- to be paid within 90 days of receipt of the order.

Conclusion

The order underscores the importance of accurate filings regarding beneficial ownership and significant beneficial ownership. It reflects a meticulous examination of corporate structures and relationships to ensure compliance with the Companies Act, 2013. LinkedIn India's attempts to justify its actions were deemed insufficient, leading to penalties for various entities and individuals involved.

~Compiled by Ankita Jain

#HUNAAR ART



~ By Ananya Poojari

Allow us to tell you more!



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