DIRECT TAX UPDATES:

Tax incidence of joint development agreement and subsequent sale of flats is different

During the assessment for AY 2013-14, the Assessing Officer (AO) observed that the assessee had entered into a joint development agreement for a piece of land in AY 2011-12 and supplementary agreement in AY 2012-13. However, the assessee reported the long term capital gains (LTCG) in year in which flats were sold i.e. AY 2013-14. The AO also noted that the assessee, for AY 2013-14, had calculated long-term capital gains from the property development but declared no capital gains due to claiming an exemption under section 54F of the Income-tax Act, 1961. Consequently, the AO recalculated the LTCG by disallowing the deduction claimed under section 54F. The appeal to the CIT(A) was also rejected. As a result, the appeal has been filed to ITAT.

The ITAT Chennai ruled that the tax implications of a Joint Development Agreement (JDA) are distinct from those of the subsequent sale of flats. Hence, individuals should calculate long-term or short-term capital gains for the year corresponding to the JDA i.e. AY 2011-12 and claim deduction under section 54F as per law. Further, Capital gain on subsequent flat sale shall be computed in AY 2013-14. Thus, LTCG will arise in year in which JDA was entered and computation shall be made by AO considering cost of acquisition and other expenses.

Deduction on Income from property held for charitable or religious purposes can't be denied for procedural lapse of non-filing Form 10B (Audit report) with ITR

The Revenue challenged a decision by the CIT(A) where the assessee-trust had not initially filed the audit report in Form 10B along with their income tax return. However, the CIT(A) determined that because the audit report was eventually provided during the assessment proceedings, this constituted sufficient compliance. As a result, the assessee was permitted to claim benefits under sections 11 and 12 of the Income Tax Act.

The ITAT Ahmedabad uphold the decision made by the CIT(A) based on following reasoning:

1. Nature of Requirement: Providing the audit report is a mandatory requirement, but the timing of submission (with the return) is a procedural matter. Therefore, substantial compliance, even if it occurs at a later stage, is considered acceptable.
2. Judicial Support: The ITAT cited a decision from the Sarvodaya Charitable Trust v. Income Tax Officer (Gujarat HC) to support their stance, emphasizing that entities should not be denied benefits solely due to procedural lapses.

Revenue cannot adjust TDS on Salary not deposited by employer against refunds of employee

The case considers the matter of TDS deducted by the employer where both the AO and the CIT(A) rejected the appellant's claims regarding this TDS, focusing on the non-deposition of TDS by the employer into the government account. The appellant's counsel argued, based on past legal precedents and Section 205 of the Income Tax Act, against any adjustments in withheld tax that was not deposited by the employer, contending that this should not affect the refund due to the employee.

The ITAT Delhi, in line with a precedent set by the Sanjay Sudan vs. ACIT (Delhi HC), affirmed the rights of the assessee. It determined that the tax authorities cannot offset withheld tax, which the employer has failed to deposit in the Central Government account, against refunds owed to the employee. Consequently, the AO has been instructed to acknowledge the assessee's claim regarding the TDS amount

deducted by the employer.

INDIRECT TAX UPDATES:

Time Bar provision inapplicable to rectified application for timely filed initial GST Refund Applications

The petitioner, had its claim for a refund of IGST denied by the Department of Trade and Taxes. The reason given was that the petitioner's application was filed after the specified period outlined in Section 54(1) of the CGST Act, 2017. The primary argument made by the petitioner was that, despite the rejection, their initial refund application had been submitted within the prescribed timeframe. Subsequent applications were merely clarifications regarding deficiencies and should not be considered as new applications.

The central issue revolved around whether the petitioner's refund application was considered complete according to Rule 89 of the CGST Rules. The petitioner's application, submitted on 31.10.2019, was not disregarded. They complied with the CGST Act and CGST Rules by submitting their refund application within the stipulated timeframe. Precedent had previously established that if an application is materially complete, it should not be considered void. Any subsequent clarifications or document requests should not nullify the original application.

In the final verdict, the Delhi High Court concluded that a GST refund cannot be denied on the grounds of time limitation if the application for refund is submitted within the prescribed time at the first instance.

GST Registration cannot be cancelled on mere fraud allegation: Delhi HC

The Show Cause Notice proposed the cancellation of their GST registration, alleging fraud, willful misstatement, or suppression of facts, but without providing concrete evidence or specific details. The lack of clarity in the notice made it challenging for the petitioner to understand and respond effectively. Despite a delayed response from the petitioner, where they questioned the validity of the allegations, the respondent proceeded to cancel the GST registration. Notably, the cancellation was applied retrospectively, and the order itself lacked clear and justifiable reasons.

The Delhi HC invalidated both show-cause notice and subsequent cancellation order regarding GST registration. This decision highlights the importance of due process and the need for clear and substantive reasons in legal actions. It emphasizes that entities should not face penalties based on unfounded or vague allegations.

Eligibility of ITC on Motor Vehicles for Women Employee Transportation – Tamil Nadu AAR

The applicant's business model involves shift work, particularly night shifts, requiring transportation for their employees. For the purpose, they have a transportation agreement to hire vehicles with a seating capacity of less than 13 persons, used to transport associates, guests, and employees.

The key question arises from the Tamilnadu Shops and Establishments Act, which mandates employers to provide transportation to female employees working beyond 8.00 PM. The issue at hand is understanding the tax implications for such vehicles.

Tamil Nadu AAR provided that:
Tax paid on input services for leasing/renting/hiring motor vehicles exclusively for transporting women employees during specific hours (from 8.00 p.m. to 6.00 a.m.) can be claimed as Input Tax Credit (ITC) under the CGST Act, 2017.

The ability to claim ITC for this purpose, taxpayer must comply with the conditions outlined in Section 16 of the CGST/TNGST Act, 2017. Therefore, businesses should ensure they meet the requirements of this section when availing the credit.

CONTACT US

JANAKPURI, DELHI
417 JAINA TOWER -I, JANAKPURI
DISTRICT CENTRE , NEW DELHI,
DELHI, INDIA, 110058
e-mail : sachinsharma27@gmail.com
Phone : 9312609350

BENGALURU, KARNATAKA
1605 A GROUND FLOOR, 28TH MAIN
ROAD 29TH CROSS, BANASHANKARI
II STAGE, BENGALURU, KARNATAKA,
INDIA, 560070
e-mail : venkeyca23@gmail.com
Phone : 9448045919

KOLKATA, WEST BENGAL
MERCANTILE BUILDING , B-BLOCK 2nd
FLOOR, 9/12 LAL BAZAR STREET,
KOLKATA,WEST BENGAL, INDIA, 700001
e-mail : rtrsameer@gmail.com
Phone : 9831430350

GURUGRAM, HARYANA
107, PRIYADARSHINI APARTMENTS , PLOT
34A, SECTOR 56, GURGAON, HARYANA ,
GURUGRAM, HARYANA , INDIA, 122003
e-mail : alokca.sr@gmail.com
Phone : 9999029798

DWARKA, DELHI
530 SUN VIEW APARTMENT , SECTOR II
POCKET 4, DWARKA, NEW DELHI,
DELHI, INDIA, 110075
e-mail : gitanjali.geet@gmail.com
Phone : 9818948057

CHENNAI, TAMIL NADU
11, KUMARAN KUDIL,3RD CROSS
STREET, THORAIPAKAM,CHENNAI,
CHENNAI,TAMIL NADU, INDIA, 600097
e-mail : asvaauditdesk@gmail.com
Phone : 7092991112

VASHI, MAHARASHTRA
503, THE CORPORATE PARK, SECTOR
18, VASHI NAVI MUMBAI,MUMBAI,
MAHARASHTRA, INDIA, 400703
e-mail : ca.preeteshmaloo@gmail.com
Phone : 9594228662

SALEM, TAMIL NADU
NO. 1-B ANUGRAHA APARTMENTS ,
BRINDAVAN ROAD,FAIRLANDS, SALEM ,
TAMIL NADU,INDIA, 636016
e-mail : cabaskar1283@gmail.com
Phone : 9443242100

UDUPI, KARNATAKA
VISHAKA 2 78B, SUBRAMANYA NAGAR,
SANTHEKATTE POST, PUTTUR, UDUPI,
KARNATAKA, INDIA, 576105
e-mail : arun@mvca.in
Phone : 9483525378

DHANBAD, JHARKHAND
C/O MADAN LAL AGARWAL , DAL-
PATTI , P O- JHARIA, DHANBAD,
JHARKHAND, INDIA, 828111
e-mail : agar.madhu@gmail.com
Phone : 9311126662

COIMBATORE, TAMIL NADU
11 2C, SHERWOOD APARTMENTS,
RAMALINGA NAGAR , FIFTH CROSS
K K PUDUR POST, COIMBATORE,
TAMIL NADU, INDIA, 641038
e-mail : vmurali2006@gmail.com
Phone : 9600933390

NELLORE, ANDHRA PRADESH
NO4 BIT NO 1, FIRST FLOOR UTC
COMPLEX,, KANAKAMAHAL
CENTRE SUBEDAR PET, NELLORE,
ANDHRA PRADESH, INDIA, 524001
e-mail : mahendra@mvca.in
Phone : 8892015615

HYDERABAD, TELANGANA
3409, SRILA TOWERS, OPP .
CHERMASHYDER NAGAR , KUKATPALLY ,
HYDERABAD, TELANGANA , INDIA, 500085
e-mail : kiran.nannamuri96@gmail.com
Phone : 9743336111

ANDHERI, MAHARASHTRA
ROOM NO 605 SHUBHAM CENTER, B-1
CARDINAL GRACIOUS ROAD, CHAKALA
ANDHERI EAST, MUMBAI,
MAHARASHTRA, INDIA, 400099
e-mail : benaka.tara@gmail.com
Phone : 9619920418

MYSURU, KARNATAKA
NO 304 3RD FLOOR, K R HOSPITAL ROAD,
MYSURU, KARNATAKA, INDIA, 570001
e-mail : caritesh.icai@gmail.com
Phone : 9886075753

CUTTACK, ODISHA
PLOT NO C 1 /34 SECTOR 10, MARKET
NAGAR CDA, CUTTACK, ODISHA ,
INDIA,753014
e-mail : ho@cafirmrkj.com
Phone : 9437064528

CBD BELAPUR, MAHARASHTRA
308 HILTON CENTRE,SECTOR11,
CBD BELAPUR, NAVI MUMBAI,
MAHARASHTRA , INDIA, 400614
e-mail : cadeepaksharma2008@gmail.com
Phone : 9871045153