



India TaxHour

Quarterly India tax updates

April – June 2024

3 July 2024

Subject matter experts

We will discuss...

- **Economy/International tax/Regulatory updates**
- **Direct tax updates**
 - Protocol amending India Mauritius Tax Treaty
 - Taxation and Other Laws (Relaxation and Amendment of Certain Provisions) Act, 2020 (TOLA) - Update on controversy
 - Issues under new reassessment regime
- **Indirect tax updates**
 - GST Updates
 - Key recommendations arising from the 53rd GST Council Meeting and Related Circulars
- **Recent judicial pronouncements**

Economy/Regulatory updates

Indian Economy - Growth and Inflation indicators; Tax collections

International Taxation

Base Erosion and Profit Shifting (BEPS) Project - Pillar 1 and Pillar 2 under G20/OECD Inclusive Framework (IF) :

Pillar 1 – An agreement by the IF will not be finalised by June'24 as previously planned, as the United States, India and China have reservations over its terms.

Pillar 2 – IF released a Consolidated Commentary to the Global Anti-Base Erosion Model Rules (GloBE) Model Rules in April. Till date 27 jurisdictions have introduced domestic tax legislation to implement a Global Minimum Tax for fiscal years beginning on or after 1 January 2024.

India-Regulatory Updates

- International Financial Services Centres Authority (IFSCA) issues IFSCA (Book-keeping, Accounting, Taxation and Financial Crime Compliance Services) Regulations, 2024
- RBI issues a circular on Investment in Overseas Funds under its existing 'Foreign Exchange Management (Overseas Investment) Directions, 2022',
- SC rules that the Consumer Protection Act does not cover professions or services rendered by professionals including Advocates

Direct tax updates

Protocol amending India Mauritius Tax Treaty



Amendment to India-Mauritius tax treaty

- Agreement seeking to amend the India-Mauritius tax treaty was signed on 7 March 2024 – PIB release



Key highlights

The Protocol contains three Articles:

- Replacement of Preamble to the tax treaty – purpose of tax treaty is elimination of double taxation without creating opportunities for non taxation or reduced taxation through tax evasion or avoidance
- New Article relating to Entitlement to benefits – Principal Purpose Test to tackle abusive practices
- Date of entry into force of the Protocol - *The provisions of this Protocol shall have effect from the date of entry into force of the Protocol, without regard to the date on which the taxes are levied or the taxable years to which the taxes relate*



Points for Consideration

- Protocol is pending for ratification and notification for application
- Impact of the Protocol on grandfathered investments (*acquired prior 1 April 2017*)
- Applicability of Protocol – prospective or retrospective

Taxation and Other Laws (Relaxation and Amendment of Certain Provisions) Act, 2020 (TOLA) - Update on controversy



4 May 2022

SC decision in Union of India & Ors. vs. Ashish Agarwal



11 May 2022

CBDT Instruction No. 1 of 2022 for uniform implementation of SC ruling on reassessment notices

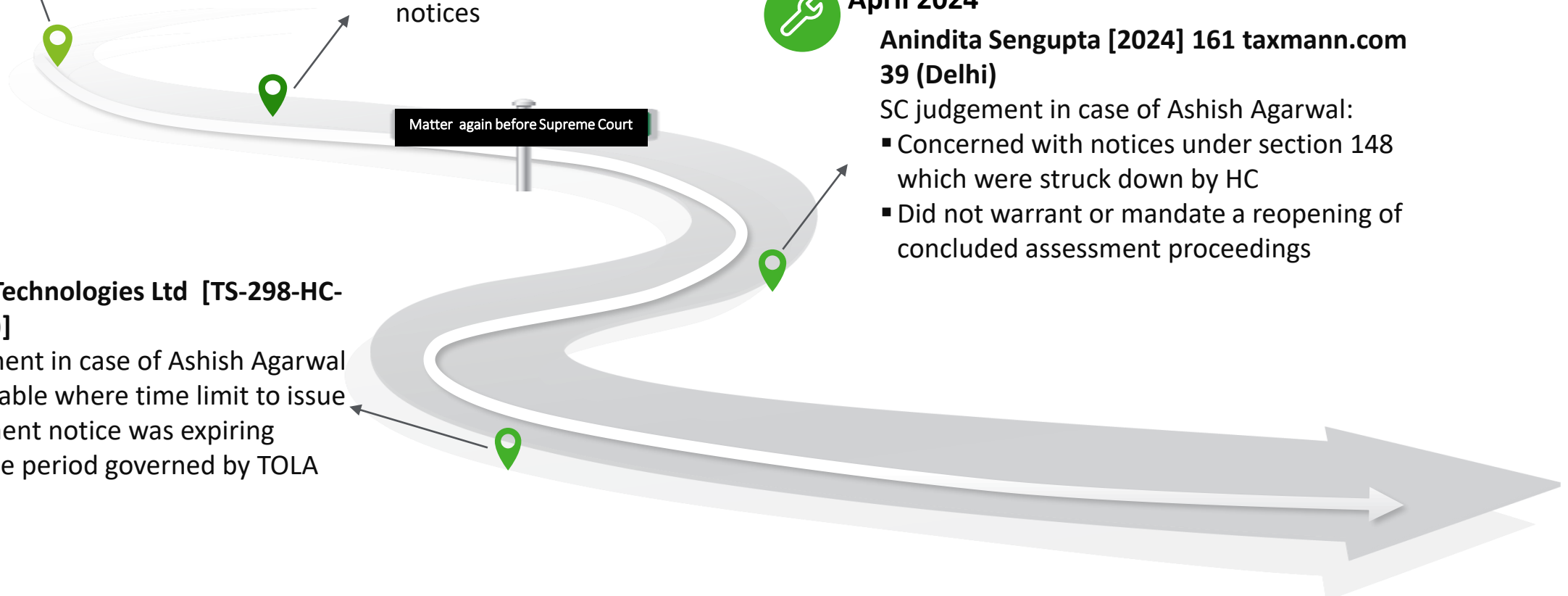


April 2024

Anindita Sengupta [2024] 161 taxmann.com 39 (Delhi)

SC judgement in case of Ashish Agarwal:

- Concerned with notices under section 148 which were struck down by HC
- Did not warrant or mandate a reopening of concluded assessment proceedings



Matter again before Supreme Court



May 2024

Hexaware Technologies Ltd [TS-298-HC-2024(BOM)]

- SC judgement in case of Ashish Agarwal not applicable where time limit to issue reassessment notice was expiring beyond the period governed by TOLA

Issues under new reassessment regime



Revenue Audit
Objection

**Sree Narayana Guru Memorial
Educational And Cultural Trust
[TS-226-HC-2024(KER)]**

- Revenue audit objection is one of the statutory ground / reason for re-opening of the assessment in the amended section 148
- Rejects change of opinion contention because of statutory prescription

DIN

Faceless
Assessment



Hexaware Technologies Ltd [TS-298-HC-2024(BOM)]

- Reassessment notice invalid in absence of Document Identification number (DIN)
- Reassessment notice issued manually by jurisdictional AO - not valid under faceless assessment scheme.



Faceless
Assessment

**Ram Narayan Sah [2024] 163
taxmann.com 478 (Gauhati)**

- E-Assessment of Income Escaping Assessment Scheme, 2022 applicable to reassessment proceedings
- Reassessment notice issued reflecting name of the AO - not valid under faceless assessment scheme.

Indirect tax updates

GST Updates

CBIC instruction on Investigations by DGGI - Instruction No. 01/2024-GST (Inv.) dated 30th May 2024

CBIC has issued the following guidelines for initiating early recovery proceedings (before completion of 3 months from date of service of order):

- 01 Assistant Commissioner or Deputy Commissioner will first present the matter to **Principal Commissioner/Commissioner** with reasons and justifications.
- 02 Principal Commissioner/Commissioner will then **examine these reasons**.
- 03 If satisfied that early payment is in the **interest of revenue**, Principal Commissioner/Commissioner must **record specific reasons in writing**, based on credible evidence.
- 04 After recording the reasons in writing, the **Principal Commissioner/Commissioner will issue directions** to the concerned taxable person to pay the demand amount within less than 3 months from the date of the service of order considering various factors.
- 05 Failure to pay tax may result in the Assistant Commissioner or Deputy Commissioner initiating recovery proceedings for recovering the demand amount through various modes.

Key recommendations arising from the 53rd GST Council Meeting and Related Circulars

Pertaining to adjudication and appeals

01

Section 128A to be inserted to waive interest and penalties on tax demands raised under Section 73 for FY 2017-18, FY 2018-19 and FY 2019-20, if full tax is paid by 31st March 2025. However, this waiver will not apply to demand for erroneous refund.

02

Fixing monetary limits for filing appeals by the GST Department: INR **20 lakhs** for GST Appellate Tribunal (GSTAT), INR **1 crore** for High Court, and INR **2 crores** for Supreme Court

03

Section 112 would be amended. The period of 3 months for filing **appeals before Appellate Tribunal** would start from a notified date. Government will issue a notification specifying the new date from which the 3-month period for filing appeals will begin.

04

Amendments in Section 73 and Section 74 of CGST Act, 2017 and **insertion of a new Section 74A in CGST Act**, to provide for common time limit for issuance of demand notices and orders irrespective of whether case involves fraud, suppression, willful misstatement etc., or not

Key recommendations arising from the 53rd GST Council Meeting and Related Circulars

Pertaining to adjudication and appeals (contd)

05

Amendment proposed in the GST law for reduction in the amount of pre-deposit required to be paid for filing of appeals as per below:

Maximum Amount of Pre- Deposit	Existing (CGST & SGST)		Proposed (CGST & SGST)	
	Percentage	Amount	Percentage	Amount
First appellate authority	10%	25 Cr each under CGST & SGST	10%	20 Cr each under CGST & SGST
Appellate Tribunal	20%	50 Cr each under CGST & SGST	10%	20 Cr each under CGST & SGST

06

Amendment in **rule 142 of CGST Rules** and issuance of a circular to prescribe a mechanism for adjustment of an amount paid in respect of a demand through FORM GST DRC-03 against the amount to be paid as pre-deposit for filing appeal

Key recommendations arising from the 53rd GST Council Meeting and Related Circulars Pertaining to Technical Issues

07

Clarification proposed to be issued on taxability of re-imbusement of securities/shares as **ESOP/ESPP/RSU** provided by a company to its employees

08

Clarification proposed to be issued on **Warranty/ extended warranty** provided by manufacturers to end customers

- Circular 216/10/2024 –GST Clarifies the GST treatment in warranty services and stock replenishments, specifying conditions where no GST or ITC reversal is required without additional consideration.
- Addresses the taxability of extended warranties as separate service.

09

Clarification **on import of services by related domestic entity from foreign affiliate:**

- If invoice is raised by the domestic entity: Value declared in the invoice may be deemed the open market value as per second proviso to Rule 28(1)
- No invoice is raised by the domestic entity: Value may be deemed to be declared as nil which will also considered as the open market value per the second proviso to Rule 28(1) of the CGST Rules.

10

Valuation under rule 28(2) of CGST Rules, **valuation of services of providing corporate guarantees between related parties** would not be applicable in case of export of such services and in case of inward supplies where the recipient is eligible for full ITC.

11

Supplies received from unregistered suppliers, where tax paid under RCM and invoice is to be issued by the recipient only, the relevant financial year for calculation of time limit for availment of ITC under the provisions of **section 16(4) of CGST Act** is the financial year in which the invoice has been issued by the recipient.

Key recommendations arising from the 53rd GST Council Meeting and Related Circulars

Pertaining to GST Compliance

12

An optional facility by way of FORM GSTR-1A to facilitate the taxpayers to amend the details in FORM GSTR-1 for a tax period and/ or to declare additional details, if any, before filing of return in FORM GSTR-3B for the said tax period.

13

Threshold for reporting of B2C inter-State supplies invoice-wise in Table 5 of FORM GSTR-1 was recommended to be reduced from Rs 2.5 Lakh to Rs 1 Lakh

14

Time limit to avail the ITC in respect of invoices/debit notes for FY 2017-18 to FY 2020-21 proposed to be considered as 30 November 2021, if ITC is availed in any return filed up to the said date. Retrospective amendment effective 1 July 2017 proposed.

15

To strengthen the registration process and combat fake ITC, biometric-based Aadhaar authentication of registration applicants is proposed pan-India, in a phased manner.

16

Place of supply of goods (particularly being supplied through e-commerce platform) to unregistered persons where billing address is different from the address of delivery of goods has been clarified

Key recommendations arising from the 53rd GST Council Meeting and Related Circulars Others

16

Give powers to the government for allowing regularization of non-levy or short levy of GST, where tax was being short paid or not paid due to common trade practices.

17

Amount available in the **Electronic Cash Ledger** on due date of filing of FORM GSTR-3B, which is debited while filing FORM GSTR-3B, will not be included in **calculation of interest u/s 50** for delayed filing of FORM GSTR-3B

18

Reduce TCS rate u/s 52(1) **from present 1%** (0.5% CGST + 0.5% SGST/ UTGST, or 1% IGST) **to 0.5 %** (0.25% CGST + 0.25 SGST/UTGST, or 0.5% IGST).

19

For the period FY 2017-18 to 2020-21, if GSTR-3B has been filed before 30.11.2021, time limit to avail ITC would be 30.11.2021.

20

Mechanism introduced by Circular no 212/6/2024-GST for providing evidence of reversal of input credit by the recipient in case of tax credit notes issued for post-sale discounts by the supplier

Judicial pronouncements – Direct Tax

Telangana High Court| GAAR can take precedence over SAAR (1/2)

Ayodhya Rami Reddy Alla [TS-398-HC-2024(TEL)]



Facts of the case

- The Petitioner /Shareholder sold some shares of a group company, A Co. to another related company. Prior to such sale, A Co. issued shares to the Petitioner on private placement basis and further followed up with issuance of bonus shares owing to which the value of each share was reduced.
- For AY 2019-20, the Petitioner incurred a short- term capital loss on sale which was set off against long term capital gain earned by the Petitioner on another transaction
- During assessment, the tax officer sought to treat the transaction of STCL as Impermissible Avoidance Agreement ('IAA') and made reference to the Principal Commissioner for declaring the arrangement as IAA under General Anti – Avoidance Rule (GAAR)
- Additionally, the revenue alleged round tripping of funds with no commercial substance in respect of a transaction involving inter corporate deposit of Rs 350 crs in Feb 19 to a related entity and write off the loan to the tune of Rs 288.50 crs
- A writ was filed for quashing of the GAAR proceedings initiated by the Principal Commissioner [on the basis that transaction is covered SAAR]



Issue

- Whether Revenue authorities rightly initiated the GAAR provisions in presence of an enabling SAAR provision

Telangana High Court | GAAR can take precedence over SAAR (2/2)

Ayodhya Rami Reddy Alla [TS-398-HC-2024(TEL)]



Decision of High Court

- Applicability of either GAAR or SAAR would be determined on a case by-case basis. GAAR provisions have an overriding effect over the existing provisions of the Act
- For the relevant period, the SAAR provision only dealt with buying and selling of units and not shares and thus the contention that SAAR provision should take precedence over the GAAR, was fundamentally flawed
- Hon'ble court recognized that the principle of '*substance over form*' established through judicial anti avoidance rule has been codified under GAAR in a comprehensive manner.
- The Court observed that issuance of bonus shares in the present case was evidently an artificial avoidance arrangement lacking any logical or practical justification
- The series of transactions undertaken (round tripping of funds, bonus issuance, write off of loans) created rights and obligations which were not in line with the principles of fair dealing. Consequently, the transaction squarely fell within the purview of GAAR
- Writ was dismissed and revenue could proceed with the proceedings initiated

Delhi High Court | Corporate guarantee charges not taxable as interest

Johnson Matthey Public Limited [TS-365-HC-2024(DEL)]



Facts of the case

- Appellant, UK tax resident, earned Guarantee fee from its Indian subsidiary w.r.t corporate guarantee provided to branches of foreign banks pursuant to an Intra Group Agreement ('IGA')
- Guarantee fee was offered to tax in India as interest income under Article 12 of the India-UK tax treaty
- Revenue authorities held such income to be 'Other Income' taxable under Article 23 of the India- UK tax treaty
- Before the tribunal, it was contended that the Guarantee fee is taxable as interest or alternatively not taxable as source of income is outside of India. Additionally, the fee should be characterized as business income and not taxable in absence of permanent establishment in India
- Tribunal concurred with the revenue's view on taxability as other income under Article 23



Issue

- Characterization of corporate Guarantee fee as Interest Income
- Whether guarantee fee accrues or arise in India



Decision of High Court

- Interest is income from debt-claims of every kind
- Guarantee fee was remuneration for the assurance offered to lenders who have extended credit facilities
- Guarantee fee do not qualify as Interest both under the domestic tax law and India- UK tax treaty - no debt was owed to the Appellant
- Income had accrued and arisen in India as the IGA was the foundational source of Guarantee fee
- Taxability of Guarantee fee as business income was left open as no question was framed by the Appellant

Bombay High Court | Subsequent liability paid from escrow account to be reduced while computing capital gains

Gopal Vazirani [2024] 161 taxmann.com 120 (Bombay)



Facts of the case

- Taxpayer (promoter) offered to tax capital gains on sale of shares after including the amount kept in escrow against specific promoter indemnification obligations
- After sale of shares certain liabilities arose in the company for the period prior to the sale
- The amount in escrow was withdrawn by the purchaser



Issue

- Whether amount withdrawn from escrow should be reduced for computing capital gains?



Decision of High Court

- Liability contemplated at the time of sale should be taken into account to determine the full value of consideration
- Real income (capital gain) can be computed only by considering the real sale consideration (i.e. excluding amount withdrawn from the escrow account)

Judicial Pronouncements - Indirect tax

Kerala High Court | Power to extend time limit | Faizal Traders Pvt. Ltd., Versus Deputy Commissioner



Facts of the case

- Faizal Traders Pvt. Ltd., challenged Order-in-Original where the Deputy Commissioner claimed that the petitioner had not paid GST on outwards supplies made from the period from **July 2017 to September 2017**.
- The denial was accompanied by levied interest and penalties.



Issue

- The petitioner has challenged the assessment order on the ground that the same is barred by limitation as any proceedings under **Section 73** are required to be concluded within 3 years from last date of filing of GSTR-9 for the relevant year.



Decision of High Court

- The court upheld the validity of the notifications extending the time limit due to the COVID-19 pandemic, which constituted **force majeure**.
- As defined in **Section 168A**, government is empowered to extend the time limitation period for taking actions which could not be completed due to force majeure.
- The court also directed the Assessing Authority to reconsider the assessment order in light of Circular No. 183/15/2022-GST and assessment order to be passed afresh.

Thank you!

Kindly spare a minute to help us with your valuable feedback for today's session...
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Annexure

Annexure to 53rd GST Council Meeting

01

Clarification regarding **ITC on ducts and manholes** used in the laying the network of Optical Fiber Cables: Council clarified that ITC is not restricted in respect of ducts and manhole used in network of optical fiber cables, under section 17(5)(c) or 17(5)(d).

02

Proposals for rate rationalisation of goods and services for e.g., Carton, boxes and cases of corrugated/ non-corrugated paper/ paperboard (covered under specified HSNs) reduced from 18% to 12%

03

Amendment in section 122(1B) of CGST Act retrospectively w.e.f. 01.10.2023, to clarify that the said penal provision is applicable only for those e-commerce operators, who are required to collect tax and not for other e-commerce operators.

04

Section 9(1) will be amended to exclude rectified spirit/**extra neutral alcohol** which is used for the manufacture of alcoholic liquor for human consumption, from the levy of GST.

05

If there is an **upward revision in price of the goods after their export**, a mechanism would be prescribed for claiming refund of additional IGST paid on account of such upward revision.



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