

DIRECTTAX

Judicial Rulings

Disallowance of Employee's Contribution to PF/ESI u/s 36(1)(va): Outside the purview of 143(1)

- Assessee has filed its tax return for AY 2018-19 and while processing the tax return u/s 143(1), CPC made the disallowance in relation to delay payment of employee's contribution to PF/ESI after the due dates specified in the statutes governing PF/ESI.
- The disallowance was affirmed by CIT(A) and the assessee further appealed to the ITAT.
- ITAT allowed the assessee's appeal on technical ground and held that adjustment on account of employees' contribution to ES/ PF deposited by the assessee after the specified date prescribed under laws governing ES/ PF was beyond the scope of Section 143(1). The ITAT notes the following while deciding the same -
 - Amendment made to Section 36(1)(va), by way of Finance Act, 2021 are retrospective or prospective, is debatable and controversial matter.
 - tax auditor merely reported the details with respect to employee's contribution to ES/ PF as required in Form 3CD
 - Employee's contribution to ES/ PF was duly deposited before the due date of filing of return of income;
 - Relies on Delhi ITAT ruling in Garg Heart Center & Nursing Home -

adjustment on account of addition of employees' contribution to ES/ PF deposited by the assessee after the specified date prescribed under laws governing ES/ PF, was beyond the scope of Section 143(1);

Paris Elysees India Private Limited [TS-77-ITAT-2023(JPR)]

Domestic PLR rate cannot be applied in respect of loans advanced in foreign currency to Associated Enterprises situated outside India

- Assessee is a resident corporate entity and is engaged in manufacture and sale of tractor implements, linkage parts, system an forging.
- Assessee had advanced **foreign currency** loans to two overseas subsidiaries viz. Uniparts USA Ltd. (*Interest @ 8%*) and Uniparts Europe BV, Netherlands (*Interest @ Euribor plus 2%, which works out to interest rate at 3.68%.*)
- TPO accepted all the international transactions to be at arm's length except the above mentioned loans transactions and computed arm's length interest at 14.74%, applying domestic Prime Lending Rate (PLR) applied by Indian banks on commercial borrowings.
- Assessee contested the aforesaid addition before the Commissioner (Appeals) and Commissioner (Appeals) held that domestic PLR cannot be applied to benchmark the rate of interest charged on foreign currency loans advanced to foreign subsidiaries by relying on the decision of jurisdictional High Court in case of CIT vs. Cotton Natural (I) Pvt. Ltd.

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- ITAT rejected the department appeal and domestic PLR to benchmark the foreign currency loan to foreign subsidiaries stating –
 - It is a settled position that rate of interest on loans advanced by assessee to AEs had to be in accordance with the rate of interest prevailing in the country of residence of the AEs wherein the loan was availed, as held in jurisdictional HC's decision in case of Cotton Natural (I) Pvt. Ltd;
 - TPO has himself accepted that foreign currency loan has to be benchmarked using EURIBOR
- ITAT also refrains from restoring the issue to AO since more than 12 years had passed from the end of the relevant AY.

ACIT Vs Uniparts India Ltd (ITA No. 6056/Del/2017)

INDIRECT TAX

Judicial Rulings

Supply of 'readily available ice-cream' from outlet is not restaurant service in Absence of cooking/preparing aspects

- The Applicant runs chain of restaurants/eateries and operates under two business model viz company owned restaurants and franchise restaurants.
- The Applicant is supplying food which is prepared and cooked in the restaurant/eatery in addition to supplying the ice-creams, which are not prepared by it. These ice-cream includes MRP products/pre-packaged products as well as non-MRP products. They are served/packed there and then.
- The Applicant contended that they are liable for GST @ 5% by treating such supply as 'supply of restaurant services' without availing ITC.
- AAR ruled that:
 - The outlets of the applicant is selling already manufactured ice-cream and do not engage in any form of cooking.
 - The restaurant service involves the aspect of cooking/preparing during the course of providing service.
 - As recommended by the GST Council vide circular no. circular No. 164/20/2021-GST dated 6.10.2021, supply of ice-cream, where no cooking or preparing aspect involved during the course of providing services, stands on the different footing than the restaurants. Further, their activity entails supply of ice cream as goods

manufactured item and not as a service, even if certain ingredients of service are involved.

- Hence, AAR ruled that the supply of readily available ice-cream [not prepared in their outlets] sold over the counter cannot be considered as supply of 'restaurant services'. Hence supply of ice cream from the outlets of the applicant is supply of goods, leviable to GST @ 18%.
- Supply of ice cream, as a desert by the outlets of the applicant along with cooked or prepared food is therefore, naturally bundled and supplied in conjunction with the principal supply i.e. cooked/prepared food, in the ordinary course of business. Thus, we hold that the supply of ice cream along with cooked or prepared food, falls within the ambit of restaurant service. Hence, such services are leviable to GST @ 5% with no ITC.

HRPL Restaurants Pvt Ltd [TS-69-AAR(GUJ)-2023-GST]