

TAXTIME

NEWSLETTER

DIRECT TAX NEWS

SC UPHOLDS I-T RE-ASSESSMENT ORDER ISSUED UNDER SECTION 148



The Supreme Court on Wednesday ruled in favour of the Income Tax Department holding all re-assessment notices issued under old Section 148 will be deemed to have been issued under Section 148A.

This ruling has been made on the special review petition filed by the Centre after the High Courts of Delhi, Allahabad and Rajasthan quashed the income tax notices running into hundreds. The Chhatishgarh High Court upheld the I-T notices.

A division bench of Justices MR Shah and BV Nagarathna said the Income-tax Officer would follow the procedure laid down in line with amendments made in the Finance Act, 2021. However, Defense will be available to both the Tax Department and Assessee under the amended Section 149.

In exercise of the power under Article 142 of the Constitution, all High Court orders stand modified and this judgment of the Supreme Court will apply.

The Income Tax Department will not be required to file any more appeals, thus saving filing of more than 9,000 appeals. The apex court ruling will also apply to all pending writs in different High Courts.

GOM FOR FLAT 28% GST ON ONLINE GAMING



Group of Ministers has arrived at a consensus on a flat 28 per cent GST rate for online gaming along with casinos and racing.

The GoM will finalise the report at its next meeting after deliberations on the value, that is, the base on which the GST is to be calculated.

As on date, online gaming has a dual rate of taxation — 18 per cent on games of skill (not involving betting or gambling) and 28 per cent on games of chance (involving betting and gambling). Most online gaming apps pay GST at the rate of 18 per cent. Both casinos and horse racing attract GST of 28 per cent. However, the issue here is more about the value for calculation of GST.

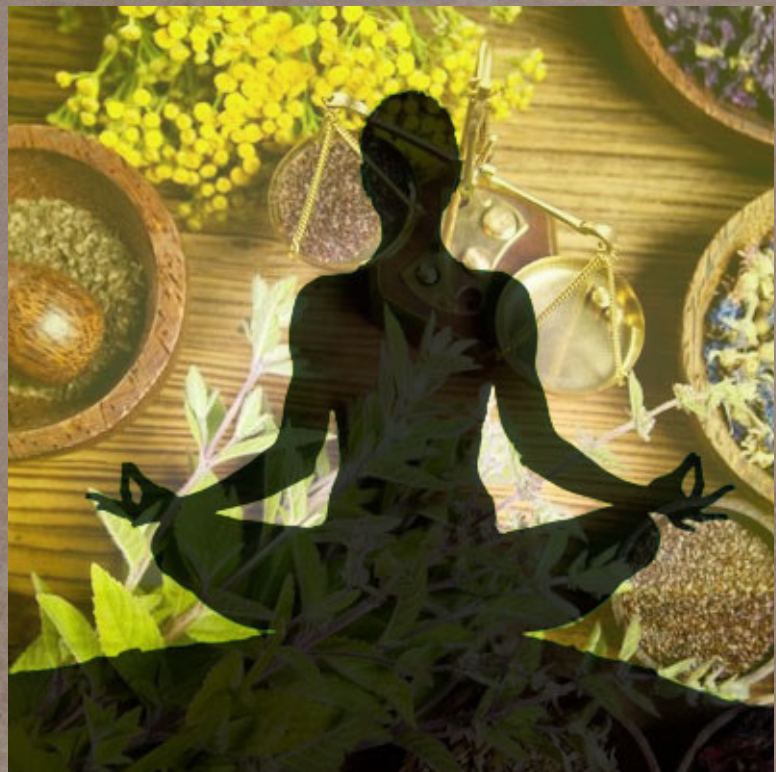
Industry body IndiaTech.org has been pressing for online skill-based gaming to be treated differently from gambling, betting and horse racing. It has been arguing that a clarification must be issued that Rule 31A is not intended to cover games of skill and is, therefore, not applicable to any form of online gaming where there is a preponderance of skill over chance (thereby covering online fantasy sports as well as online skill based casual games and sports).

“Additionally, if there are other formats/revenue models followed by platforms such as subscription fee, in-game revenue, etc, in such cases the GST should be applicable on only the amount received by the platform for providing its services and there should be no levy on the prize pool that is to be distributed among the players,” the industry body had said in a letter to the GoM.

NATUROPATHY, YOGA AS PART OF RESORT PACKAGE WILL ATTRACT GST

Naturopathy and yoga offered as part of a package in a resort will attract Goods and Services Tax. Uttarakhand's Appellate Authority for Advance Rulings (AAAR) even though naturopathy and yoga are exempted from GST, when provided independently.

The Uttarakhand AAAR has held that all services provided in relation to or in addition to accommodation services are liable to GST applicable to 'accommodation service' as all such ancillary/additional activities have a proximal nexus with accommodation services. Accordingly, it rejected the appeal made against the ruling of the Authority for Advance Ruling (AAR). The appellant Corbett Nature Reserve operates a resort, namely "Aahana-The Corbett Wilderness" and also runs an independent unit, namely "Aahana Naturopathy Centre", wherein they provide various services in the form of nature cure (drugless cure) and Yoga therapies (healthcare services), which are not restricted only to the in-house customers, but also open to all. As nature cure and yoga do not attract GST, the appellant moved to AAAR with an appeal against the AAR, which had said that no exemption will be available to the Centre.



SRI LANKA LOST AROUND 1 MILLION TAXPAYERS SINCE 2019 TAX CUTS



Sri Lanka lost around 1 million taxpayers in the last two years after the Gotabaya Rajapaksa regime announced sweeping tax cuts in 2019 in its bid to spur growth, Finance Minister Ali Sabry has revealed, as the island nation faced an unprecedented economic crisis. These tax cuts were introduced in November 2019 in keeping with President Rajapaksa's election pledges. The Cabinet had slashed the value added tax (VAT) to 8 per cent from 15 per cent and also abolished seven other taxes.

These sweeping tax cuts led to a credit rating downgrade in the following year, prompting Sri Lanka to get alienated in international financial markets.

Sabry told Parliament on Thursday that Sri Lanka lost about 500,000 taxpayers each in 2020 and 2021 after the ill-timed tax cuts were delivered.

"From around 1,550,000 taxpayers at the beginning of 2020, the number came down to 1,036,000 in 2020 and to 412,000 in 2021. This is a massive problem for us," Sabry told Parliament on Thursday.

Sri Lanka's foreign reserves dropped sharply from a healthy level of USD 8,864 million in June 2019 to USD 2,361 million in January 2022, according to official estimates.

NO GST ON BUS FACILITY, STAFF SHARE OF CANTEEN CHARGES



Companies are not required to pay Goods and Services Tax on employees' share for canteen services and free transportation services, Gujarat's Authority for Advance Ruling (GAAR) has said. This ruling has been made on two separate applications by pharmaceutical companies, Cadila, relating to canteen services, and Emcure, regarding transportation.

"GST, at the hands of Cadila, is not leviable on the amount representing the employees' portion of canteen charges, which is collected by Cadila and paid to the canteen service provider," GAAR said in its ruling.

Though an AAR ruling is binding on the applicant and jurisdictional tax authorities only, it still has persuasive value in similar matters, and quite often, such rulings compel the Tax Administration to amend the law or rules. Appeals against AAR rulings can be made in Appellate Authority for Advance Ruling (AAAR) and after that in the High Court. Cadila, with an employee strength of over 7,000, submitted before AAR that it is mandated to provide a canteen facility to its employees at the factory. Accordingly, it has appointed a canteen service provider to comply with the statutory requirement laid down under the Factories Act.

The company and the service provider entered into an agreement under which Cadila will pay the full amount to the service provider for the food served. However, a pre-determined percentage of the amount paid by the company is recovered from the employees, while the balance amount is treated as a staff welfare expense towards subsidised food served to the employees. There is no profit involved in the amount being collected from the employees.

The company sought to know whether the subsidised deduction made by it from the employees availing of the canteen facility would be considered a supply under GST law. If yes, whether GST is applicable on the amount deducted from the salaries of its employees? Or on what portion is GST applicable — amount paid by the Applicant to the Canteen Service Provider or only on the amount recovered from the employees?

AAR said that the employees' portion of canteen charges is collected by Cadila and paid to the canteen service provider and the company does not make a profit.

"We are not inclined to accord this canteen service facility provided by Cadila to its employees as an activity made in the course or furtherance of business, deeming it a Supply by Cadila to its employees," AAR said and ruled no GST to be levied.

TODAY'S QUOTE

It is our attitude at the beginning of a difficult task which, more than anything else, will affect its successful outcome.

- William James

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