Select Legal Decisions

DIRECT TAXES

1. Agricultural Produce Marketing Committee v. Union of India (2006) 155 Taxman 186 (Delhi)

The High Court observed that the legal position regarding the competence of the Assessing Officer to reduce the period for payment of the outstanding dues is clearly stated in section 220. A plain reading of the proviso to section 220(1) makes it clear that while the assessing authority has the power to reduce the period for making the payment specified in the notice of demand under section 156, such reduction must be supported by valid reasons to be recorded in writing. Therefore, whenever the competent authority invokes its powers of reducing the period stipulated under section 220, it must take care not only to pass a proper order but also to support the same by cogent reasons.

Note – The High Court has built in the principles of natural justice into the provisions of section 220(1), by interpreting that the "reason to believe" as required by the proviso to section 220(1), implies that such reasons should be cogent and should be recorded in writing.

2. British Gas India (P.) Ltd. In re. (2006) 285 ITR 218 (AAR)

The applicant, a private company in India, was a part of the BG group, a leading international energy company. One Mr. Gupta, who was employed with the applicant company since February 2002, was deputed to BG, U.K. for 2 years w.e.f 1.7.2005. During the previous year 2005-06, Mr. Gupta worked in India only for 88 days. The applicant sought the ruling of the AAR on whether Mr. Gupta would be a non-resident for the previous year 2005-06.

The AAR observed that since Mr. Gupta's stay in India was for less than 182 days during the previous year 2005-06, he became a non-resident by virtue of the Explanation (a) to section 6(1). The issue in this case is whether a person should be unemployed while leaving India for employment outside India. The AAR observed that the condition of Explanation (a) was not "leaving India for employment" but "leaving India for employment outside India". Therefore, to satisfy this condition, the individual need not be an unemployed person who leaves India for employment outside India. The condition is satisfied even if the individual is employed in India and leaves India for employment outside India. Therefore, it is neither material nor relevant that Mr. Gupta was already an employee at the time of leaving India.

3. CIT, Meerut v. B.L. Garg (2006) 155 Taxman 189 (All.)

The assessee claimed exemption under section 10(16) in respect of the payment made by his employer to his child as scholarship. The Assessing Officer disallowed the assessee's claim, on the ground that the amount given by the employer to the assessee's son as scholarship was a perquisite and liable to be taxed under the head "Salary" under section 17. The Tribunal, however, allowed the assessee's claim holding that payment was made by the employer to the children of the assessee as scholarship and as such, the amount was eligible for exemption under section 10(16).

The High Court observed that from a plain reading of section 10(16), scholarship granted to meet the cost of education is not includible in the total income of the previous year of any person. It was further observed that the Bombay High Court, in CIT v. M.N. Nad Karni (1986) 161 ITR 544, has held that when scholarship was paid entirely gratuitously by the company and in its sole discretion and payment of scholarship amount was never received by the employee but the children concerned, the scholarship amount cannot be treated as a perquisite received by the assessee as contemplated under section 17(2)(iii)(c).

Note – It may be noted that with effect from A.Y.2006-07, fringe benefit tax is payable by the employer on the expenditure incurred or payment made for the purposes of scholarship,

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irrespective of whether the recipient is an employee or his relative or any other person.

4. *CIT v. S.V. Electricals (P.) Ltd. (2006) 155 Taxman 158 (MP)*

In this case, the High Court held that where the assessee has surrendered its full income, though at a later stage, there was no deliberate intention to evade payment of lawful tax by indulging in concealment of true income. When the disclosure was total, even though at a later stage, there was no question of any concealment of income and therefore, no penalty was imposable under section 271(1)(c).

The High Court observed that it is an established rule of commercial practice and accountancy that where there was no discontinuance of business, the closing stock is to be valued at cost or market price, whichever is lower. It is only when the business is closed forever, that the question of valuing the stock at the market price will arise. The High Court, therefore, held that the Tribunal was justified in coming to the conclusion that the closing stock should not be valued at market price.

5. *CIT v. Mahendra N. Shah (2006) 155 Taxman 49 (Guj.)*

The assessee entered into a contract for importing dates from an establishment in Dubai. For this purpose, it opened a letter of credit with the bank. The Dubai establishment presented false documents and collected money without loading and dispatching the corresponding quantity of dates. The assessee took efforts to recover the money from the said establishment. It traced the Dubai party through an intermediary, who forwarded two post-dated cheques to the assessee. However, the cheques were not honoured. Therefore, the assessee claimed a sum of Rs. 3,45,000 as business loss. The Assessing Officer disallowed the same on the ground that the official of the bank, through whom the transactions had been effected, should have been careful to check whether the shipping documents were correct and genuine before releasing the amount in favour of the Dubai party.

The Tribunal recorded a finding that there was evidence in the form of telegrams, correspondence and the assessee's efforts to recover the money through Consulate General of India, though such efforts were not successful. All these prima facie established incurring of a loss by the assessee. The Assessing Officer had placed undue emphasis on the lapse committed by the bank official but the said fact cannot wipe out the loss incurred by the assessee. The High Court held that the Tribunal was right in holding that the assessee was entitled to deduction of the sum of Rs. 3,45,000 as business loss.

6. *CIT, Karnataka-I, Bangalore v. Amco Batteries (2006) 155 Taxman 167 (Kar.)*

The issue under consideration is whether expenditure in connection with the issue of shares is allowable as a business expenditure. The High Court followed the judgment of the Supreme Court in the case of Brooke Bond India Ltd. v. CIT (1997) 225 ITR 798, where it was held that expenditure in connection with issue of shares, with a view to increase its share capital, is directly related to the expansion of the capital base of the company and is a capital expenditure. Hence, expenditure in connection with the issue of shares is not allowable as a business expenditure.

7. *CWT v. Anil Tayal (HUF)(2006) 285 ITR 243 (P & H)*

The issue in this case is whether the Assessing Officer has the power to refer valuation of assets to the Departmental Valuation Officer for the purpose of making an assessment in a case where no return of wealth has been filed by the assessee. The High Court observed that the object of section 16A of the Wealth-tax Act, 1957 is to enable the Wealth-tax Officer (now, Assessing Officer) to refer the issue relating to the value of any asset to a Valuation Officer for the purpose of making assessment. The expression "in any other case" in clause (b) of section 16A(1) is wide enough to include a case where no return has been filed by the assessee. If a narrow view is taken that a reference under section 16A(1) can be made only where the return has been filed, then the expression "in any other case" in clause (b) of section 16A(1) and the expression "where no such return has been made" in sub-section (4) of section 16A would become redundant.

Therefore, a reference under section 16A(1) could be made even where no return has been filed by the assessee under section 14 or section 15.

8. Sanjeevamma Hanumanthe Gowda Charitable Trust v. Director of Income-tax (Exemptions) (2006) 285 ITR 327 (Karn)

The issue under consideration in this case is whether the authorities were justified in denying registration to the assessee under section 12AA, on the ground that the activities of the assessee were purely commercial in nature. The Director of Income-tax (Exemptions) rejected the application of the assessee for registration as a charitable trust on the ground that it was carrying on the activity of letting out the marriage hall on hire. The Tribunal also was of the opinion that the hiring of the marriage hall was not for attainment of other objects, but seemed to be the main object pursued by the appellant. The Tribunal, therefore opined that the trust was not established wholly for charitable purposes. The High Court observed that for the purpose of registration under section 12AA, it is necessary for the authorities to satisfy themselves that the activities of the trust or institution are genuine and that the income derived from the trust property is applied to charitable or religious purpose. It is not necessary to go into the nature of the activity by which the income was derived by the trust. This is because section 12AA(3) provides sufficient safeguard against misuse of beneficial provisions by empowering the Commissioner to cancel the registration already granted to the trust if it is satisfied, inter-alia, that the activities of such trust or institution are not genuine.

9. CIT v. Industrial Credit and Development Syndicate Ltd. (2006) 285 ITR 310 (Karn)

The definition of income in section 2(24), though inclusive, should be construed as including only such things, which are income according to the natural import of the term. It is income, which has really accrued or arisen to the assessee that is taxable. Where there is neither accrual nor receipt of income by the assessee in reality, an entry to that effect in the books of account would not constitute income for the purpose of levy of tax.

The assessee, a finance company, issued redeemable debentures of Rs.10 each at par. During the period of redemption, the assessee-company purchased some of these debentures through a nominee at a price less than the face value and credited the difference between the face value and the cost thereof in its books as surplus arising on redemption of debentures. The assessee had advanced a loan to the nominee for purchase of debentures. Thereafter, on the due dates, the assessee redeemed these debentures. Although the assessee had credited the surplus to the profit and loss account, it claimed deduction of the same on the ground that they did not form part of income. The High Court held that merely because the amount was shown as surplus in the profit and loss account, it would not constitute income under section 2(24), where the assessee did not actually receive any income.

10. Gandamal and Sons v. ACIT (2006) 285 ITR (AT) 163 (Pune)

The assessee-firm was the owner of certain land, which was distributed in connection with the dissolution of the firm. Such a transfer was covered under section 45(4). The assessee-firm had four partners who had retired much before the dissolution. These ex-partners had 38% share in such land. The firm contended that this portion of the value of land should not be taken into account for computing the capital gains, since this portion (i.e. 38%) of the actual distribution which was made on the date of dissolution was to ex-partners and not partners. Therefore, distribution of assets to outsiders for satisfaction of their debts, representing their capital on the date of retirement, was not caught within the mischief of section 45(4). Hence, only 62% of the value of the land should be considered for the purpose of computing capital gains.

11. Jhunjhunu Academy Sammittee v. Income-tax Officer, Jhunjhunu (2006) 155 Taxman 125 (ITAT Jaipur Bench)

The assessee-society was running an educational institute with hostel facility. It had

received donations from students during the relevant assessment years and had declared surplus. The assessee claimed exemption under section 10(23C)(iiiad). The Assessing Officer denied exemption on the ground that the society was formed to earn profit and the surplus was utilized in acquiring assets. Further, from the minutes of the meeting, it was observed that there was no mention about the donations being charged and there was no such clause in the objects of the society to collect donation from the students. The Commissioner (Appeals) also confirmed the denial of exemption under section 10(23C)(iiiad).

The High Court observed that the assessee was not registered under section 12AA and, therefore, the conditions under sections 11 and 13, as referred in section 12(1), had not been fulfilled by the assessee. These conditions have to be fulfilled for claiming an institution to be a charitable institution or an institution not for the purpose of profit. The High Court, thus, held that viewed from any angle, the donations received by the assessee were income from other sources and only the expenses incurred to earn such income would be allowable as deduction against such donations. Therefore, the Assessing Officer was justified in denying the exemption to the assessee under section 10(23C)(iiiad).

INDIRECT TAXES

1. ***South Eastern Coalfields Ltd. v. CCus. & C.Ex., M.P. 2006 (200) ELT 357 (SC)***

Notification No. 63/95-CE, dated 16.03.1995 grants exemption from excise duty to all goods manufactured in a mine. The workshop to facilitate repair of all mining machinery and equipment used in adjacent coalmines and other collieries comes within the ambit of the definition of mine for the purpose of said notification. The fact that the mine is registered as a factory under Factories Act, 1948 shall not defeat the claim for exemption under Central Excise Act, 1944. (As per section 2(m) of the Factories Act, a factory means any premises including the precincts thereof but does not include a mine subject to the operations of the Mines Act, 1952).

The Explanation to the said exemption notification states that "mine" has the meaning assigned to it in Section 2(j) of the Mines Act, 1952. Clause (viii) of section 2(j) of the Mines Act, 1952 defines "mine" to include "all workshops and stores situated within the precincts of a mine and under the same management and used solely for the purposes connected with the mine or a number of mines under the same management".

2. ***CCEx., Chandigarh v. Regal Industries Ltd. 2006 (200) ELT 513 (SC)***

Rubberised coir mattresses and cushion are to be treated as products of the coir industry. To run a coir or rubber industry, a licence has to be taken from a Coir Board or Rubber Board, as the case may be. The Apex Court held that since the assessee was functioning under a licence granted by the coir board and its coir mattresses contained more than 50% (in this case 55.5%) coir, it would be deemed to be a coir industry.

3. ***Mapsa Tapes Pvt. Ltd. v. Union of India 2006 (201) ELT 7 (P & H)***

Section 105 of the Customs Act, 1962 inter alia lays down that if the proper officer has reason to believe that any goods liable to confiscation, or any documents or things useful for or relevant to any proceeding under this Act, are secreted in any place, he may authorise any officer of customs to search or may himself search for such goods, documents or things. Section 110 of the Customs Act, 1962 inter alia lays down that if the proper officer has reason to believe that any goods are liable to confiscation under this Act, he may seize such goods.

The High Court has held that exercise of the abovementioned power of search and seizure is liable to be struck down unless the "reason to believe" is duly recorded before action of search and seizure is taken.

4. ***Maruthi Detective & Security Agency v. CCEx., Belgaum 2006 (3) STR 521 (Tri.- Bang.)***

Works like switching ON and OFF operations of pumps of water supply installations, switching ON and OFF operations of street-light control points and other petty repairs

like replacement of blown off fuse wire, etc. performed along with watch and ward works are not covered under security service.

5. Central Power Research Institute v. CCEx., Bangalore 2006 (3) STR 637 (Tri. – Bang.)

The assessee was a society registered under the Society Registration Act functioning under the Ministry of Power, Government of India. It carried out the activity of testing various instruments and collected charges for the same. The department proceeded against it to levy service tax under the category of 'consulting engineer'. Erstwhile section 65(13) of the Finance Act, 1994 defines consulting engineer as any professionally qualified engineer or an engineering firm who, either directly or indirectly, renders any advice, consultancy or technical assistance in any manner to a client in one or more disciplines of engineering.

The Tribunal held that a society registered under Society Registration Act is not a firm and is thus not liable to service tax under the category of consulting engineer's services. Moreover, the activity of technical testing of instruments is not covered under consulting engineer' services but under scientific and technical consultancy services and as per Board's Circular F-B-11/1/01 TRU dated 09.07.2001 public funded research institutions receiving grants/aids from Government for conducting research/project work do not come within the ambit of service tax.

6. Inani Carriers v. CCEx., Jaipur 2006 (3) STR 640 (Tri.-Del.)

The order-in-original passed by the adjudicating authority on 16.01.2003 demanding service tax and imposing penalty on the assessee was upheld by the Commissioner (Appeals) on 13.10.2004. Thereupon, service tax and penalty was paid by the assessee. However, the Commissioner, in exercise of powers vested in him under section 84 of the Finance Act, 1994, issued a show cause notice to the assessee on 12.08.2005 for review of penalty. The assessee contended that the order-in-original had already merged with the order in appeal dated 13.10.2004 and hence on the date of issue of show cause notice there was no order-in-original which could be reviewed by the Commissioner.

The Tribunal held that reviewing authority could have preferred an appeal against the order-in-appeal instead of resorting to review of an order that was non-existent on date of issuance of show cause notice.

7. V.S. Distributors v. CCEx., Jaipur 2006 (3) STR 649 (Tri.- Del.)

The services of an agent of making arrangement for storage and sale of goods are not that of the clearing and forwarding agent as there is no clearing and forwarding of goods involved in this type of activity.

8. Rampur Engineering Co. Ltd. v. CCEx., Jaipur-I 2006 (3) STR 650 (Tri.- Del.)

In a case where a lump sum amount is charged for the services without collecting service tax thereon, the assessable value of the services should be fixed after deducting the tax element from the entire realization value.

9. Zodiac Advertisers v. CCEx., Cochin 200 (3) STR 538 (Tri.- Bang.)

As per section 65(3) of the Finance Act, 1994 advertising agency means any commercial concern engaged in providing any service connected with the making, preparation, display or exhibition of advertisement and includes an advertising consultant. The Tribunal observed that for an agency to come under advertising agency, execution of all the above-mentioned activities is necessary. Further, making of an advertisement involves conceptualization, visualization, designing etc. and is highly creative.

Therefore, the Tribunal held that persons undertaking printing of stickers, labels and cards as per the directions of advertisers would not come within the ambit of advertising agency as there is no creativity involved in these operations.

10. Hotel Mela Plaza v. CCEx., Ghaziabad 2006 (3) STR 563 (Tri.-Del.)

The hotel charged 10% of the bill amount as service charges from its customers for mandap keeping services. The assessee

(Hotel) contended that the amount @ 10% collected from its customers did not form part of its income as that amount was subsequently disbursed among the staff and hence, was not liable to service tax.

The Tribunal observed that erstwhile section 67 of the Finance Act, 1994 provided that the value of taxable service in relation to the services provided by a mandap keeper shall be the gross amount charged by such keeper from the client for the use of mandap, including facilities provided to the clients in relation to such use and also the charges of catering, if any. Therefore, the Tribunal held that as the assessee was charging this amount from its customers for providing the service, which was taxable as above, hence, the 10% service charges would be liable to service tax.

11. N.C. Maheshwari & Co. v. CCEx., Delhi - I 2006 (3) S.T.R. 584 (Tri.-Del.)

Delay in making payment of service tax on account of error made in the entries in the half yearly return and not on account of any concealing of receipts to evade tax is not liable to penalty.

CIRCULARS

Significant Notifications and Circulars issued by the Government during August 2006 are as follows:

DIRECT TAXES

1. NOTIFICATION NO. 209/2006, DATED 11-8-2006

In exercise of the powers conferred by section 206(2) of the Income-tax Act, 1961 the Central Board of Direct Taxes has made a scheme, namely, "Electronic Filing of Returns of Tax Deducted at Source (Amendment) Scheme, 2006" to amend the Electronic Filing of Returns of Tax Deducted at Source Scheme, 2003.

2. NOTIFICATION NO. 210/2006, DATED 11-8-2006

In exercise of the powers conferred by section 206C(5B) the Central Board of Direct Taxes has made "the Electronic Filing of Returns of Tax Collected at Source (Amendment) Scheme, 2006" to amend the Electronic Filing of Returns of Tax Collected at Source Scheme, 2005.

3. NOTIFICATION NO. 211/2006, DATED 18-8-2006

In exercise of the powers conferred by section 194A(3)(iii)(f) of the Income-tax Act, 1961, the Central Government has notified the Power Finance Corporation Limited, New Delhi. By virtue of this notification the provisions relating to deduction of tax at source in respect of interest other than interest on securities shall not apply to such income credited or paid to the Power Finance Corporation Limited.

Note: The complete text of the above-mentioned notifications can be downloaded from the following link : http://www.taxmann.com/TaxmannDit/DisplayPage/dpage1.aspx?md=31

CENTRAL EXCISE

1. NOTIFICATION NO. 17/2006-CE (N.T.), DATED 01-08-2006

The assesses who pay less than Rs.100 lakhs as excise duty from account current during the financial year to which the Annual Financial Information Statement relates are exempted from filing of such annual information return vide Notification No. 35/2004-CE (N.T.) dated 01.11.2004. Notification No.17/2006-CE (N.T.) dated 01.08.2006 has rescinded the above-mentioned notification and has extended the benefit of exemption of not filing Annual Information Return to Indian Ordnance Factories, Department of Defence Production and Ministry of Defence while keeping intact the exemption in case of assessee who pay duty of excise less than 100 lakh rupees from account current during the financial year to which Annual Financial Information Statement relates.

Note: The complete text of the above circular can be downloaded from the following link: http://www.cbec.gov.in/cae/excise/cx-act/notfns-2k6/cent17-2k6.htm