Select Legal Decisions

DIRECT TAXES

1. *Adityapur Industrial Area Development Authority v. Union of India and Others [2006] 283 ITR 97 (SC)*

(i) Article 289(1) of the Constitution of India discloses that the claim of exemption under it must proceed on the foundation that the exemption is claimed in respect of property and income on State. Even the income of the State within the meaning of the said article may be taxed by law made by the Parliament if such income is derived from a trade or business of any kind carried on by or on behalf of the Govt. of the State or any operations connected therewith.

(ii) The income of an entity, in the instant case, of an Authority Constituted under the Bihar Industrial Area Development Authority Act, 1974 is not the income of the State Govt. and therefore, it cannot claim exemption from Union Taxation under Article 289 of the Constitution of India.

(iii) Held accordingly that in view of omission of Section 10(20A) and an amendment of Sec. 10(20) enumerating local authorities, it did not cover the aforesaid authority and therefore, notices issued by the IT Dept. to its bank that the bank was liable to deduct tax at source on accrued interest were valid.

2. *Commissioner of Income-Tax v. Jamnagar Jilla Sahakari Kharidvechan Sangh Ltd. [2006] 283 Itr 116 (Guj)*

(i) In case of a co–operative society carrying on business which was one and indivisible and having both taxable and non–taxable income, when it was not possible to carve out expenditure attributable to specified activities out of the common overhead expenses, to arrive at the net income of the activities, the deduction u/s 80P(2)(a)(iv) of the IT Act as claimed by the assessee was allowable on gross income and not on net income.

(ii) Section 80P has been introduced in the Act with a view to encouraging and promoting the growth of co–operative sector in the economic life of the country and while interpreting it a liberal construction should be made bearing in mind its objects.

3. *Commissioner of Income-Tax v. Dabur India Ltd. [2006] 283 Itr 197 (Delhi)*

Printing of labels on corrugated boxes did not require any special skill or involve any confidence or secrecy and in the circumstances the predominant object underlying the contract was one for sale of goods which took the contract out of the purview of Section 194C of the Income Tax Act, 1961.

4. *Commissioner of Wealth-Tax v. S.D. Jadeja [2006] 283 Itr 45 (Guj)*

The expression "exclusively used by him for residential purposes" in Section 7(4) of the Wealth Tax Act 1957 means that the property should not be put to any non–residential use and in other words, the property should not be exploited to generate income therefrom.

When it was found on facts that two buildings were contiguous, existed in one compound and within common boundaries, they constituted a "house" belonging to the assessee within the meaning Section 7(4) and therefore the assessee was entitled to exemption in respect of both the houses and they did not constitute distinct and separate house properties.

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5. ***CIT v. Poompuhar Shipping Corpn. Ltd. [2006] 282 ITR 0003 (Mad.)***

The assessee-company was carrying on the business of transporting coal. It entered into a contract with the State Electricity Board for transporting coal from various ports. Since the ships owned by the company were not sufficient for executing the contracts, the company hired ships from other shipping companies and paid hire charges for use of ships. The company did not deduct tax at source under section 194C from payment of hire charges to the shipping companies. Therefore, the Assessing Officer treated the company as an "assessee-in-default". The High Court held that the hiring of ships for the purpose of using the same in assessee's business would not amount to a contract for carrying out any work as contemplated in section 194C and therefore, payment of hire charges would not attract tax deduction under section 194C.

6. ***CIT v. Trivandrum Club [2006] 153 Taxman 481 (Ker.)***

The assessee was a private club, which provided entertainment to its members by offering accommodation, library, reading room etc. The assessee also earned income by letting out its marriage hall to non-members by making them temporary members. The assessee contended that the "doctrine of mutuality" applied in such a case and hence, its income was not taxable. The High Court observed that the marriage hall was being rented out to non-members by making them temporary members only for the purpose of letting out the marriage hall and the amounts received from the non-members formed part of the income of the assessee. The principle of mutuality, therefore, would not apply in such a case.

7. ***CIT v. Brahmi Investments (P.) Ltd. [2006] 153 Taxman 471 (Guj.)***

In this case, the High Court held that if a holding company had received assets on voluntary liquidation of its subsidiary company by virtue of being a shareholder of the subsidiary company, the value of assets received by the holding company on the date of distribution was liable to be taxed under section 46(2). Section 47(v), which provides that transfer of a capital asset by a subsidiary company to its 100% holding company (being an Indian company) would not be regarded as a transfer for the purpose of charge of capital gains tax, is not applicable in this case.

8. ***CIT v. Hari Vignesh Motors P. Ltd. [2006] 282 ITR 0338 (Mad.)***

The assessee was a dealer in two-wheelers manufactured by TVS Suzuki Ltd. It was carrying on its business in leasehold premises. The assessee constructed a ground floor above the existing basement floor according to the specifications given by TVS Suzuki Ltd. to all its dealers. The assessee claimed the expenses incurred for construction as revenue expenditure for the relevant assessment year. The High Court observed that in view of the requirements of the business, the assessee had undertaken the construction. The assessee did not acquire any capital asset by incurring the expenditure. As per the stipulation in the lease deed, reimbursement of such expenditure from the owner of the premises was also not possible. The High Court, therefore, held that the expenditure was revenue in nature and can be allowed as deduction.

9. ***CIT v. Mandovi Hotel (P.) Ltd. [2006] 152 Taxman 361 (Bom.)***

The assessee, along with two other entities, was a partner in a firm, which was engaged in hotel business. A memorandum of understanding was executed by which it was decided that the other partners would disassociate from the firm and the assessee would continue the business of the firm. Accordingly, a dissolution deed was executed by which it was agreed that the assessee would take over all the assets of the firm and in consideration, the assessee would pay to

the retiring partners, 30% of the net profits of the business, subject to a minimum amount of Rs. 60,000 for a period of 7 years. During the relevant previous year, as per the terms of dissolution deed, the assessee paid the said sum to the retired partners and claimed deduction of such sum as business expenditure. The Assessing Officer disallowed the amount paid by the assessee to the retired partners on the ground that the payment was capital in nature.

The Bombay High Court observed that the payment of 30% of net profits was related to annual profits that flowed from the business activities of the assessee-company and not to the capital value of the assets. Further, the dissolution deed did not specify any capital sum payable to the retiring partners. The payment so made was also not related or tied up in any way to any fixed sum agreed between the parties as part of the consideration to the retiring partners for disassociating from the firm. Hence, the expenditure cannot be construed as a capital expenditure.

10. ***CIT v. London Machinery Company [2006] 280 ITR 0271 (All.)***

The assessee-firm had received a certain sum of money towards credit note of excise duty. Out of the said sum, the assessee did not refund a certain amount to its customers and credited the same to its profit and loss account. The amount had also been distributed amongst the partners.

The High Court observed that the provisions of section 41(1) would be attracted if the following conditions are satisfied –

(1) An allowance or deduction has been made in the assessment for any year in respect of loss, expenditure or trading liability incurred by the asssessee.

(2) Subsequently, during any previous year, the assessee must have obtained -

(i) any amount in respect of such loss; or

(ii) any benefit in respect of such trading liability by way of remission or cessation thereof.

In case either of the events mentioned in (2) above happen, the deeming provision enacted in the closing part of sub-section (1) of section 41 comes into play. Accordingly, the amount obtained by the assessee or the value of benefit accruing to him is deemed to be the profits and gains of business or profession and it becomes chargeable to income-tax as the income of that previous year. The transfer of unpaid excise credit to the profit and loss account of the assessee falls under the first clause of section 41(1) and is, therefore, chargeable to tax as profit of the year.

11. ***CIT, Tamil Nadu-I v. V. Pradeep Kumar [2006] 153 Taxman 138 (Mad.)***

For the purpose of exemption of capital gains under section 54F, there must be construction of a residential house and such construction should be real and not symbolic. Exemption would not be available if there has been a mere extension of an existing building. Mere construction by way of extension of the old existing house would not mean constructing a residential house as contemplated under section 54F.

12. ***CIT v. Rochi Ram & Sons [2006] 153 Taxman 338 (Raj.)***

The assessee-firm, an exporter, claimed deduction under section 80-IA and 80HHC. The issue involved is whether once deduction under section 80HHC was allowed, can deduction under section 80-IA be allowed on the same gross total income. The High Court observed that there is no provision or intention of the Legislature to allow deduction under section 80-IA only on the balance amount remaining after deduction under section 80HHC. In the absence of such an intention, deduction under section 80-IA should be allowed on the gross total income, since the words used

in sub-section (1) of section 80-IA, for the purpose of allowing deduction are "gross total income" and not on the balance after any deduction made under any section.

13. *CWT v. Dinesh Kumar [2006] 282 ITR 0271 (All.)*

The assessee was a partner in a firm, which owned a cinema building. The assessee claimed exemption under section 5(vi) of the Wealth-Tax Act, 1957 in respect of his share in the value of the cinema building. The High Court held that cinema building is not a dwelling place and cannot be treated as a house. Exemption under section 5(vi) is available only in respect of a house and not a cinema building.

INDIRECT TAXES

1. *CCEx. & Cus. , Mumbai v. Bell Granito Ceramica Ltd. 2006 (198) ELT 161 (SC)*

(i) Polishing of tiles does not amount to manufacture of glazed tiles as glazed tiles are normally not polished at all. Glazed tiles are produced when a coating of melted glass is applied on the surface of the body of tiles. Thus, mere fact of polishing does not lead to the conclusion that tiles are glazed.

(ii) The Supreme Court has explained the difference between vitrification and glazing. Vitrification is a process to which ceramic body is subjected before it is made, while glazing is a process to which said body is subjected after being made.

2. *CCEx., Mumbai-I v. Parle International Ltd. 2006 (198) ELT 486 (SC)*

The assessee manufactured non-alcoholic beverages and sold it to various bottlers. The bottlers after processing the concentrate, bottled the outcome and sold the same. Under the agreement between the bottlers and the assessee, the assessee was required to advertise the finished products. Subsequently, 'Soft Drinks and Advertising Marketing Services Pvt. Ltd.' (SAMS) was set up by the bottlers as a centralised agency for advertising finished products of the bottlers. The shareholders of SAMS were the representatives of the bottlers and its Directors were also representatives of the bottlers.

The Apex Court held that advertisement expenses incurred by 'Soft Drinks and Advertising Marketing Services Pvt. Ltd.' to advertise aerated products manufactured by third party bottlers is not includible in the assessable value of concentrates manufactured by the assessee, as it is only the advertisement and sales expenses incurred for the goods under assessment (here concentrate) that can be added to the assessable value.

3. *CCEx., Mumbai v. Bharat Bijlee Ltd. 2006 (198) ELT 489 (SC)*

Failure to take into consideration the material evidence, which is present on record, would amount to mistake apparent on face of record and Tribunal has jurisdiction to correct such mistake in exercise of its powers under section 35C(2) of the Central Excise Act, 1944.

Section 35C(2) lays down that the Appellate Tribunal may, at any time within six months from the date of the order, with a view to rectifying any mistake apparent from the record, amend any order passed by it and shall make such amendments if the mistake is brought to its notice by the Commissioner of Central Excise or the other party to the appeal.

4. *CCEx., Pune v. Pudumjee Pulp & Paper Mills Ltd. 2006 (198) ELT 330 (SC)*

Clause (1A) of section 5A introduced by Finance Act, 2005 does not have any retrospective effect. Section 5A empowers the Central Government to grant exemption from duty of excise. Clause (1A) clarifies that when any excisable goods is exempted from the duty of excise absolutely, the

manufacturer of such excisable goods shall not pay the duty of excise on such goods.

5. *Larsen & Toubro Ltd. v. Union of India 2006 (198) ELT 177 (Mad.)*

Ready concrete mix will be eligible for excise duty exemption under Notification No. 4/97-CE, dated 01.03.1997 only if it is manufactured at site by the promoter or builder for use in relation to its own construction at the site of construction. Duty shall be leviable on ready concrete mix if it is manufactured in a ready mix unit and supplied to sites of construction, which are different from the site of mixing plant.

6. *Toppan Plywood Pvt. Ltd. v. Union of India 2006 (198) ELT 495 (Guj.)*

An authority hearing an application for stay should in the first instance consider whether the applicant has a prima facie case in appeal. Only after considering this aspect, should the aspect of financial hardship be delved upon by such authority.

7. *CCEx., Pondicherry v. Indian Bank 2006 (198) ELT 334 (Mad.)*

In view of the law laid down by the Apex Court in Dena Bank v. Bhikhabhai Prabhudas Parekh & Co. (2000) 5 SCC 694, while recovering the dues, the Central Excise Department shall have precedence over the secured creditors.

8. *CCus., Chennai v. Pentamedia Graphics Ltd. 2006 (198) ELT 164 (SC)*

Motion capture animation files are computer software recorded in a machine readable form and capable of being manipulated by means of automatic data processing machines. These files are held to be software and their import is eligible for exemption under Notification No. 20/99-Cus. The fact that these motion capture animation files require another software known as 'soft image' to get final results does not disqualify them from being software. Programming aids are also known as software. [Notification No. 20/99 Cus. inter alia exempts information technology software].

9. *Al-Falah (Exports) v. CCEx., Surat-I 2006 (198) ELT 343 (Tri.-L.B.)*

Penalty under section 114A of the Customs Act, 1962 shall not be levied if the duty amount that is short paid is deposited before the issue of show cause notice. However, penal consequences emerging from other provisions of Customs Act, 1962 viz. penalty leviable under sections 112, 114 or 116 can be separately attracted, on facts of each case. Penalty under section 114A of Customs Act, 1962 is not mandatory. It is a result of an exercise of discretion vested in the assessing authority and is a liability to be imposed, only in such cases where compliance is not exhibited by the liable person.

10. *Malappuram Distt. Parallel College Assn. v. Union of India 2006 (2) STR 321 (Ker.)*

Levy of service tax on services rendered by parallel colleges is patently discriminatory and violative of Article 14 of the Constitution of India as in case of these colleges the burden of levy indirectly falls on the students, while in case of regular affiliated colleges, who have been granted exemption students study free of tax. However, this judgement has been rendered on particular facts applicable to parallel colleges in Kerala and should not be treated as declaring section 65(27) of Finance Act, 1994 unconstitutional in so far as any other category of educational institution or training centre is concerned.

11. *Prachar Communications Ltd. v. CCEx., Mumbai-IV 2006 (2) STR 492 (Tri.-Mumbai)*

Taxable event in the case of service tax is not the time of rendering services but the realisation of payment for services so rendered. Tax liability has nexus with realisation of payments for such services and value of such payments. ❐