

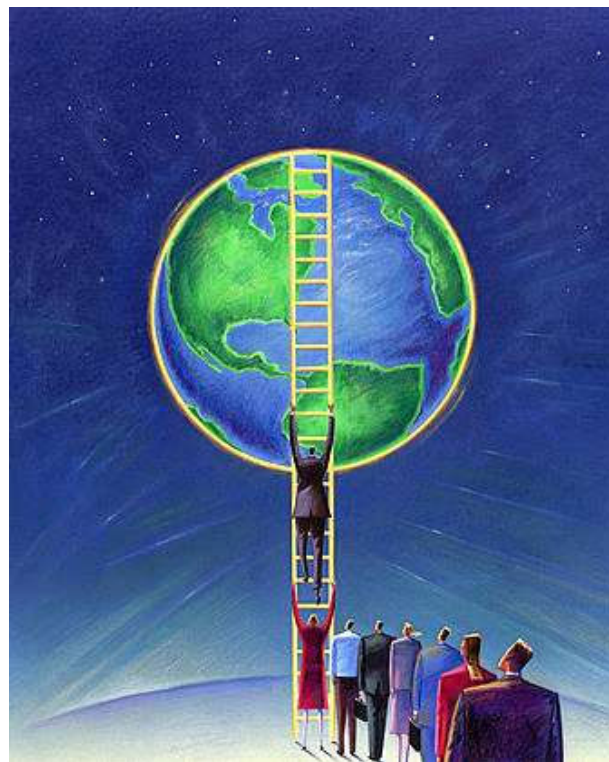
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DIRECT TAXES

Judicial Pronouncements

JCIT v. Usha Martin Industries Ltd. (2007) 288 ITR (AT) 63

Section 115JA of Income tax Act, 1961 and Schedule VI of Companies Act, 1956 - Whether doubtful debts, advances and investments be treated as unascertained liabilities? Provision for Doubtful debts had been deducted by the assessee for Computation of book profit as per Sec. 115JA and charged the tax on the book profit as per sec. 115JA. Commissioner of income Tax reversed the action of the Assessing Officer – Whether the Provisions made for the doubtful debts, advances and investments fall within the purview of adjustments under section 115JA – Appellant submitted that the provision for doubtful debts has rightly been deducted by the assessee for computation of book profit under Sec.115JA and, therefore, the action of the AO in adding back such provision holding the same as unascertained liability was not correct. It was held that sec.115JA has an overriding effect upon the other provisions of the Income Tax Act. AO does not have the jurisdiction to go behind the net profit shown in the profit and loss account except to the extent provided in the explanation and thereafter the AO has to make adjustment permissible under the explanation given in Sec. 115JA. Provision for bad and doubtful debt is the provision for diminution in value of asset. Once the provision is not for any liability, the question whether the liability is ascertained or unascertained does not arise. Clause (c) of the explanation to Sec. 115JA would not be applicable in respect of provision for bad and doubtful debts. If the provisions made by the assessee for depreciation, renewals and diminution in the Value of the assets are for any known liability and if it is in excess of the amount which is reasonably necessary for the purpose for Which the provision is made, the excess shall be treated as a 'reserve' and not a 'provision'.



ACIT v/s Videocon VCR Ltd. (2007) 106 TTJ 474 (Pune)

Section 36(1)(vi)

For the purpose of Allowability u/s 36(1)(iii) only requirement is that Capital must be borrowed for the purpose of business and it is immaterial whether borrowing is utilised for acquisition of Capital asset or for revenue purposes.

Section 43

The deduction u/s 43(b) is not applicable to employees' contribution to P.F. and E.S.I.C.

The assessee had deposited employees' contribution to P.F. and E.S.I.C. after the due dates as prescribed under respective legislations. As per the provisions of Sec. 2(24) (10) of the Act, the employees contribution is deemed to be income of the assessee and corresponding deduction is allowable u/s 36(1)(va) of the Act if the same is deposited within prescribed time. Therefore, time limit cannot be extended beyond the due dates prescribed under the respective Acts. Therefore, deduction for employees' contribution deposited belatedly but before the due date of filing return cannot be allowed.

Bajaj Auto Ltd. v/s. DCIT (2007) 106 TTJ 333 (Mumbai)

Deduction u/s 80HH

While computing deduction u/s 80HH and 80I, depreciation of eligible unit has to be taken into account, notwithstanding introduction of concept of block of assets.

While computing Profits and gains of eligible business, in accordance with the provisions of the Act, the impact of Section 32 cannot be excluded. For this purpose the profits and gains of industrial undertaking is quantified as the only source of income of the assessee during the relevant PY. This concept is known as standalone unit.

It is legally impermissible to split and divide the total block of assets of the assessee and work out the depreciation of individual units. Therefore, for the purpose of deduction, profits and gains have to be computed as if it is the only business of assessee and needed to be computed after providing for depreciation allowance.

CIT v/s Idhaym Publication's Ltd (2006) 285 ITR 221 (Mad)

Is it that every receipt of money is loan or deposit so as to attract the provisions of Sec. 269SS?

In order to impose penalty u/s 271D of the IT Act 1961, the revenue should establish that what was received by assessee was a loan or deposit within the meaning of Sec. 269SS.

Under the Companies (acceptance of Deposits) Rules, 1975, under Rule 2 (B)(9), Deposit does not include any amount received from a director or shareholder of a Pvt. Ltd.

Tribunal has found that the proprietor of a sister concern from whom cash loan was received was one of the Directors of the Company and there was a running account in his name. The transaction between the assessee and the Director cum Shareholder was not a loan or deposit and was only a current account in the nature and no interest was being charged for the above transaction.

High Court held that the deletion of penalty by tribunal was justified.

CIT v. Adidas India Marketing (P.) Ltd. (2007) 288 ITR 379 (Del.),

When tax is paid by deductee, deductor cannot be held to be in default and interest u/s 201 cannot be levied.



A perusal of Section 191 of the act shows deducted in accordance with the provisions of chapter XVII, income tax is to be paid by the assessee direct, i.e., the payee. It is to be borne in mind that the tax being deducted by the assessee is the tax on the income on the income of the deductee and not on the income of the assessee - deductor. Therefore, what Section 191 provides for is that in case deductor fails to make the requisite deduction of tax at source, the deductee would be liable to pay income tax on the amount received by him as income. Section 191 does not cast a dual and simultaneous obligation on both – the deductor and the deductee; to pay tax on the said income in the hands of the deductee. Tax on the said income in the hands of the deductee is to be paid only once; primarily by the deductor and, upon his failure, by the deductee. If the tax is deducted at source and paid by the deductor, the deductee gets credit for it and amount deducted is treated as his income as per Sections, 198 and 199 of the Act.

The period for which interest can be claimed under Section 201(1A) is from the date on which such tax was deductible to the date on which such tax is actually paid". Consequently no interest beyond the date of actual payment of the tax can be claimed by the Department. This Section does not state that the tax should have been paid by the assessee alone. The tax may be actually paid by

the assessee or the deductor. What is of relevance is the actual payment of the tax.

The issue whether the assessee is an “assessee in default” is wholly academic since the liability to deduct tax at source and to pay interest thereon for the period from the date of deductibility till the date of payment of tax was not in dispute and stood settled.

M/s Jubilant Enpro Pvt Ltd v. DCIT (2007) ITS 532 ITAT

Income derived from fluctuation of foreign exchange is also derived from exports and hence the assessee is eligible for Sec 10A benefits.

Madhumilan Syntex Ltd. & Ors v. Union of India & Anr (2007) ITS 630 (SC)

Company and directors liable for prosecution u/s 279 for delayed crediting of TDS deducted u/s 194C and 200 .It is no doubt true that Company is not a natural person but 'legal' or 'juristic' person. That, however, does not mean that Company is not liable to prosecution under the Act. 'Corporate criminal liability' is not unknown to law.

Shri Janak S Rangwalla v. ACIT (2007) ITS 222 ITAT

There is no basis for treating the assessee as a trader in shares, when his intention was to hold the shares in Indian companies as an investment and not as stock in trade. The more magnitude of the transaction does not change the nature of transaction, which are being assessed as Income from Capital Gains.

M/s. Jindal Tractabel Power Company Limited v. DCIT (2007) ITS 220 ITAT

As per section 9(1)(vii) payments made for technical services provided by the US company in India are taxable and subject to TDS u/s 195

Circulars / Notifications

Notification no. 83/2007, dated 26-3-2007

In exercise of the powers conferred by section 295 of the Income-tax Act, 1961 (43 of 1961), the Central Board of Direct Taxes hereby makes the

following rules further to amend the Income-tax Rules, 1962, namely:-

1. (1) These rules may be called the Income-tax (Third Amendment) Rules, 2007.

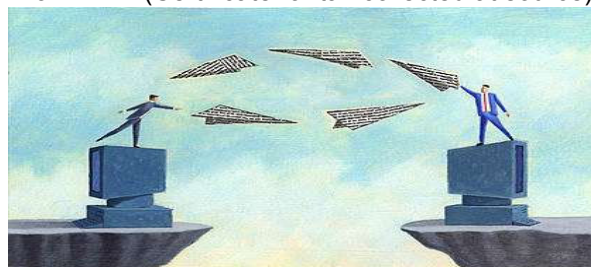
(2) They shall come into force on the date of their publication in the Official Gazette.

2. In the Income-tax Rules, 1962, in APPENDIX II, for Form No. 16, Form No. 16A and Form No. 27D, the following Forms shall be substituted, namely:-

Form 16 (Certificate for tax deducted at source from income under the head 'Salaries')

Form 16A (Certificate of TDS for tax deducted under other head of income)

Form 27D (Certificate for tax collected at source)



INDIRECT TAXES

Judicial Pronouncements

Suchitra Components Limited v. CCE., Guntur (SC) (17/01/2007)

A beneficial circular has to be applied retrospectively while oppressive circular has to be applied prospectively-when the circular is against the assessee, they have right to claim enforcement of the same prospectively.

Grasim Industries v. CCE., Indore 2007 (78) RLT 476 (CESTAT-LB)

Remission of duty – Rule 49 of C.Ex. Rules,1944 and Rule 21 of C.Ex. Rules, 2002-Modvat/Cenvat credit on inputs-final product Destroyed in fire –on grant of remission of duty on final product, modvat/cenvat credit on input used in manufacture of such final product is not to be reversed as neither Modvat/Cenvat Credit Rules nor Rule 49/21 of C.Ex. Rules Provide for reversal of input credit.

Circulars / Notifications**RBI/2006-2007/268 A. P. (Dir Series)
Circular No. 33 dtd. February 28, 2007**

Liberalization of Export and Import procedures.

The circular intends to liberalise various areas like extension of time for realization of export proceeds, write-off of unrealized bills, reduction in invoice value etc.

**Notification No. 1/2007-ST dated 1st
March, 2007**

Central Government has inserted Rule 6(4A) whereby adjustment of excess service tax paid is permitted against liability for succeeding month/quarter subject to conditions:

- 1) excess payment is not on account of reasons involving interpretation of law , taxability , clarification , valuation or any exemption notification;
- 2) assesses holding centralized registration may adjust excess payment without any monetary limit if it is on account of delay in receipt of details of payment from branches ;
- 3) In case of other assesseees, adjustment is restricted upto Rs. 50,000/-;
- 4) the details and reasons of such adjustment to be intimated to superintendent within 15 days from the date of making such adjustment.

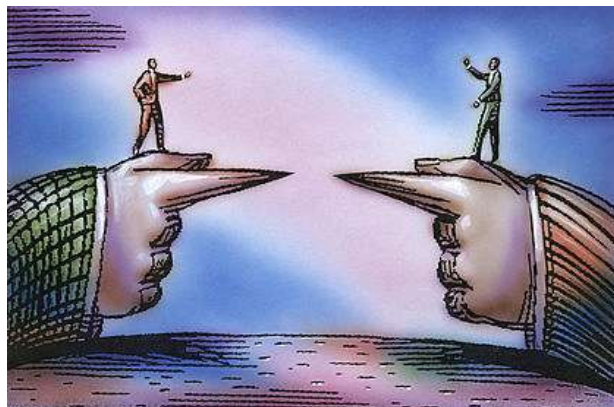
**Notification No.1/2007-ST dated 1st
March, 2007**

Central Government has inserted Rule 7B to The Service Tax Rules, 1994, whereby assessee can revise Service tax return to correct mistake or omission within 60 days from date of submission of return.

**Notification No.31/2006-ST dated 11th
December, 2006**

Services provided by an insurer, carrying on general insurance Business, to a policy holder for insurance of sheep is exempted from whole of

service tax leviable thereon under section 66 of the Act, up to 31-12-2009.

**OTHER LAWS****Judicial Pronouncements****Lal Mohammand & Ors. V. Indian Rly
Cons. Co. Ltd. (JT) 2007 (2) SC 458.**

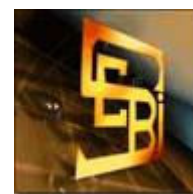
Industrial Disputers Act 1947 – Sections 25F, 25FFF, 25L and 25N – Retrenchment Employees were recruited for a specific project. On completion of the project they were retrenched, employees claimed regularization. Whether employees of the project are entitled for regularization? Held - No.

Sutlej Ind. Ltd. (2007) 76 CLA 227

Section 391 and 394 of the Companies Act, 1956 – Amalgamation scheme provided to consider any capital reserve as free reserves and the scheme was approved by the share holders and creditors of both the cos. The Regional Director took objection but the scheme was sanctioned because it was in the interest of the shareholders.

Circulars / Notifications**Circular No.****SEBI/CFD/DIL/A/1/2007/20/03 dated
20.03.07**

Pursuant to the amendment, issuers whose debentures have been issued on private placement basis shall submit unaudited half-yearly results subject to a limited review instead of half-yearly audited results, as required at present.



FOR YOUR INFORMATION

National Tax Tribunal (Amendment) Ordinance, 2007 (158 Taxman (ST) 55)

The President of India, in exercise of the power conferred by clause (1) of the consultation, promulgated the ordinance to amend the ordinance to amend the National Tax Tribunal Act, 2005, on 29/01/2007. It is called National Tax Tribunal (Amendment) Ordinance, 2007

It amends sections 5, 6, and 13 of the National Tax Tribunal Act, 2005.

SMS based Service for PAN & TAN Application Status (158 Taxman (ST) 58)

Press Release dated 16/01/2007.

With view to keep the applicant updated about the status of his application, NSDL has launched a short message service (sms) based facility. The applicant can send an SMS to 3030 with a message containing the word PAN followed by a space and 15- Digit Acknowledgement Number provided at the time of submission of application; i.e., Pan Acknowledgement Number. Similarly to know the status of TAN application, same procedure is to be followed.

Converting a running partnership into a Company

There are 3 methods of converting a running partnership into a Company:

1. Under Part IX of Companies Act 1956(Section 565 to Sec 581).Sec 565 defines a Company in a much wider parlance and includes a Partnership Firm. Relevant Forms for such conversion would be Form No.s 37,38,39,40, 41 and 42.
2. The Second option would be sale of partnership firm's business to a Company.(most popular method).Only a sale deed is required for such transaction and the partners are issued shares in the Company. A partnership agreement is also made regarding internal agreement among all the partners for such conversion.

3. Admission of a Limited Company as a partner in the Firm and then letting the company Partner to acquire the shares of the remaining Partners. Sec 45(4) of Income Tax Act should also be referred for taxation aspect.

Changes in Central Sales Tax

1. Rate of CST for inter-state sales against Form 'C' has been reduced from 4 % to 3 % CST w.e.f. 01-04-07
2. Provision for inter-state sales against Form-'D' is has been deleted. Therefore now instead of 'D' form 'C' Form is required to be obtained from Govt. Department. That is possible only if Govt. Department is a registered dealer.
3. With effect from 1-4-2007 rate of CST would be as under.

Particulars	Against 'C' Forms	Without 'C' Forms
If the goods are tax free or exempted unconditionally in state	N.A. (No Need for C-Form)	NIL
If rate of tax under State VAT/Sales Tax Act is 3% or less than 3%	N.A. (No Need for C-Form)	Instead of 10% CST, only rate according to Local VAT/Sales Tax Act will be levied
If rate of tax under State VAT/Sales Tax Act is more than 3%	3%	Rate according to Local VAT/Sales Tax Act

Due to the above amendment if the local rate of Vat is 4%, then without 'C' Form CST will be levied @ 4% and if the local VAT rate is 12.5% then sales without 'C' Form will be taxed @ 12.5% CST.

4. Tobacco is removed from the list of declared goods. Now the state can levy tax on tobacco at higher rate. State amendments are awaited. It may be levied @ 12.5%.

Limited Liability Partnership Bill, 2006

The Government has introduced in Parliament the captioned Bill to make provisions for the formation and regulation of limited liability partnerships.

The Bill shall extend to whole of India and shall come into force on such date as may be notified by the central Government in this behalf.

Due Dates of key compliances pertaining to the month of April-07:

7 th April	TDS Payment for March Filing 15G/15H for March
10 th April	Excise Return ER1 / ER2 /ER6
15 th April	PF Contribution for March Quarterly excise return for March

20 th April	Excise return ER3 for quarter ended March
21 st April	ESIC Payment for March
25 th April	Half-yearly return of Service Tax
30 th April	Profession Tax Payment



Changes in Due Dates for Advance Tax & FBT

Quarter ended	Old Due dates	New due dates			
		Companies		Other than companies	
		% of advance tax	Due dates	% of advance tax	Due dates
June	15 th July	15	15 th June	--	--
September	15 th October	45	15 th September	30	15 th September
December	15 th January	75	15 th December	60	15 th December
March	15 th March	100	15 th March	100	15 th March

Relevant TDS provisions at glance

Section	Section applicable to	Up to 31-5-2007	From 1-6-2007 onwards
194A	Payment of interest on term deposits by a bank, Co-operative bank or Post Office (Specified Schemes)	TDS @ 10/20% if interest exceeds Rs. 5,000/- p.a.	TDS @10/20% if interest exceeds Rs. 10,000/- p.a.
194C	Payment to contractors for commercial purposes by individual / HUF to whom Tax Audit is applicable	No TDS	TDS @ 2%
194H	Payment of commission by MTNL/BSNL to PCO franchisees	TDS @ 5%	No TDS
194H	Payment of Any other commission	TDS @ 5%	TDS @ 10%
194 I	Payment of Rent for Machinery, Equipment and Plant	TDS @ 15/20%	TDS @ 10%
194 J	Payment of Professional / Technical fees and royalty	TDS @ 5%	TDS @ 10%

Note:

1. Surcharge and education cess is not included in above rates.
2. It would be applicable even to the delayed payments of TDS of earlier years made on or after 1.04.2008.

The information contained in this newsletter is of a general nature and it is not intended to address specific facts, merits and circumstances of any individual or entity. We have tried to provide accurate and timely information in a condensed form however, no one should act upon the information presented herein, before seeking detailed professional advice and thorough examination of specific facts and merits of the case while formulating business decisions. This newsletter is prepared exclusively for the information of clients, staff, professional colleagues and friends of SNK.

Find solutions at the roots of the problems rather than giving piecemeal dosages to treat symptoms.