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DIRECT TAXES

Judicial Pronouncements

Kashmir Trading Co. v. CIT (2007) 291 ITR 228 (Raj)

Bad debt – Condition precedent for allowance – Mere writing-off of sums in books, not sufficient. Requirement of section 36(2) that sums written off in books are shown to be irrecoverable comes into play only after write off in books. No write off of debts in books, process of examining claim in terms of section 36(2) does not commence.

Bad debt – Search and Seizure. Books seized four months after close of previous year, however, debts not written off when books in possession of assessee, claim of bad debt not tenable.

ITO v. Laxmi Packers [IT Appeal No. 7878 (Mum) of 2003]

Section 80-IB, A.Y. 2001-02, Profits and gains from industrial undertakings other than infrastructure development undertakings.

It is not intention of Legislature that even after formation of industrial undertaking, it should not purchase any second hand machinery to meet its future demands and only prohibition is against formation of industrial undertaking using second hand machinery.

Where at time of commencement of production, assessee was not using any plant or machinery previously used for any purpose and purchased second hand machinery subsequently to meet its additional, requirement, assessee was entitled to deduction under section 80-IB.

Asstt. CIT v. Tamil Nadu Silk Procedures Federation Ltd. (2007)105 ITD 623 (Chennai)

Provisions of section 14A cannot be applied to provisions of Chapter VI-A (sections 80A to 80U) where deductions are to be made in computing total income and in no way, that can be compared with exempted income which does not part of total income, as provided in chapter III containing sections 10 to 13A.

Jt. CIT v. Milton's Ltd. (2007) 106 ITD 478 (MUM.)

An order passed by Tribunal based upon an interpretation or application of law, which is ultimately found to be wrong in light of judicial pronouncements rendered subsequently by jurisdictional High Court or Supreme Court, would always disclose a mistake apparent from record.



Sri Balaji Agencies v. ITO (2007) 106 ITD 419 (CHENNAI)

Interest, Salary, etc. paid by firm to partner

Section 40(b)(v), while dealing with payment of remuneration to partners, provides framework under which such partners' remuneration is to be paid & allowed & same cannot be interpolated to provide for allowance of remuneration with complete disregard to books of accounts. Assessee claimed Rs 83,995 as salary to working partners in their statutory limit under section 40(b)-Assessing Officer found that actual payment was only Rs 48,000 & allowed deduction only to that extent. When partnership deed stipulated that salary to working partners was to be decided by mutual understanding in case there was no sufficient profit & when assessee was neither paying nor making provision to extent permissible under partnership deed, it was implied that partners has agreed to take a lower sum as appearing in partnership accounts &, therefore, assessee was entitled to deduction u/s 40(b) only to the extent of Rs 48,000.

“Whenever I find the key to success, someone changes the lock.”

Kwality Fun Food & Restaurants (P) Ltd. v. DCIT (2007) 109 TTJ (Chennai) 112**Business income- Business loss or capital loss**

Irrecoverable advance for construction of plant. Assessee advanced certain amount to a contractor for construction of cold storage plant. Work could not be executed, part of the amount was received back and the balance was claimed by assessee as business loss or bad debt - Not allowable. Expenditure was incurred towards cost of profit-earning apparatus and was in the capital field. Since it was not a debt, it could not be allowed as bad debt either.

KLM Royal Dutch Airlines v. ADIT (2007) 292 ITR 49 (Delhi)

If Inquiry u/s 143(2) is made, Order u/s 143(3) is a mandatory requirement.

SGS India P. Ltd. v. Asst. CIT (2007) 292 ITR 93 (Bom)

Fresh notice based on change in law in succeeding assessment year is not valid

Sm Energy Teknik & Electronics Ltd. v. DCIT (2007) 109 TTJ (Mumbai) 34**Section 80HHC;**

Export vis-à-vis third country trade. Assessee, an Indian company, purchasing machinery from Germany & selling it directly to purchaser in Bangladesh without bringing the machinery to India, is entitled to deduction under s. 80HHC. Documents show that assessee had purchased machinery from Germany on its own name & assessee was its owner, hence direct shipment to Bangladesh should not be an impediment in claiming benefits of s. 80HHC—"Export" literary means sending goods to another country not only sending goods out of one's own country to another. Wordings of section 80HHC do not provide for such an interpretation at all, as distinguished from the expression, 'from India to a place outside India' as appearing in section 80HHE(1).

CIT v. First Leasing Co. of India Ltd. (2007) 292 ITR 110 (Mad)

Premium payable on actual redemption of debentures in future years, provision to be spread over the life of the debentures and part of it deductible in relevant assessment year.

**Jindal Tractebel Power Co. Ltd. v. DCIT (TDS) (2007) 106 ITD 227 (Bang.)**

Section 9 read with article 12 of DTAA between India and USA, Income deemed to accrue or arise in India

Assessee entered into an agreement with an American company 'R' for setting up power plant in India. Total consideration payable to 'R' under agreement was bifurcated as (a) for supply of equipment and essential parts, (b) for technical services, and (c) for start up services and turnkey responsibility. Assessee claimed that it was not liable to deduct tax at source from amount paid to 'R' towards technical services and start up services, as said amount was not chargeable to tax in India u/s 9(1)(vii) and as per article 12(5), same also could not be treated as 'Fees for included services'. From the facts of the case it was held that, amount paid for technical services and start up services, etc. was to be treated as fees for technical services u/s 9(1)(vii) and as fees for included services under article 12(4)(b) of DTAA and, therefore, same was chargeable to tax in India. Since technical services and start up/turnkey responsibility services were not only in respect of equipment supplied by 'R' but its technical services were also to be applied to equipment supplied by other contractors including

"In order to get a Loan, you first need to prove that you don't need it."

'R' alone and, therefore, article 12(5)(a) would not be applicable to facts of the case.

Circulars / Notifications

Circular No. 4/2007, Dtd. 15-6-2007 (Extract)

Distinction between shares held as stock-in-trade and shares held as investment - tests for such a distinction

8. The Authority for Advance Rulings (AAR) (288 ITR 641), referring to the decisions of the Supreme Court in several cases, has culled out the following principles :-

(i) Where a company purchases and sells shares, it must be shown that they were held as stock-in-trade and that existence of the power to purchase and sell shares in the memorandum of association is not decisive of the nature of transaction;

(ii) the substantial nature of transactions, the manner of maintaining books of accounts, the magnitude of purchases and sales and the ratio between purchases and sales and the holding would furnish a good guide to determine the nature of transactions;

(iii) ordinarily the purchase and sale of shares with the motive of earning a profit, would result in the transaction being in the nature of trade/adventure in the nature of trade; but where the object of the investment in shares of a company is to derive income by way of dividend etc. then the profits accruing by change in such investment (by sale of shares) will yield capital gain and not revenue receipt.

10. CBDT also wishes to emphasise that it is possible for a tax payer to have two portfolios, i.e., an investment portfolio comprising of securities which are to be treated as capital assets and a trading portfolio comprising of stock-in-trade which are to be treated as trading assets. Where an assessee has two portfolios, the assessee may have income under both heads i.e., capital gains as well as business income.

11. Assessing officers are advised that the above principles should guide them in determining whether, in a given case, the shares are held by the assessee as investment (and therefore giving rise to capital gains) or as stock-in-trade (and therefore giving rise to business profits). The assessing officers are further advised that no single principle would be decisive and the total effect of all the principles should be considered to determine whether, in a given case, the shares are held by the assessee as investment or stock-in-trade.

12. These instructions shall supplement the earlier Instruction no. 1827 dated August 31, 1989.

Notification SO No. 861 (E), dated June 1, 2007

Tax exemption limit enhanced under senior citizens savings scheme

The Government has enhanced the threshold limit for exemption from deduction of tax at source from Rs. 5,000 to 10,000 on interest on any deposit under Senior Citizens Savings Scheme, 2004. The enhanced threshold limit of ten thousand rupees has come into force from June 1, 2007.

This notification has been issued pursuant to an amendment made to section 194A of the Income-tax Act, 1961 by the Finance Act, 2007.



NOTIFICATION NO. 208/2007, dated 27-6-2007

In exercise of the powers conferred by section 295, read with proviso to sub-section (3) of section 40A 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 :-

“If you do not stand for something, you will fall for anything”

1. (1) These rules may be called the Income-tax (8th Amendment) Rules, 2007.

(2) They shall come into force with effect from the assessment year 2008-09.

2. In the Income-tax Rules, 1962, for rule 6DD, the following rule shall be substituted, namely:

'Cases and circumstances in which payment in a sum exceeding twenty thousand rupees may be made otherwise than by an account payee cheque drawn on a bank or account payee bank draft.

6DD. No disallowance under clause (a) of sub-section (3) of section 40A shall be made and no payment shall be deemed to be the profits and gains of business or profession under clause (b) of sub-section (3) of section 40A where any payment in a sum exceeding twenty thousand rupees is made otherwise than by an account payee cheque drawn on a bank or account payee bank draft in the cases and circumstances specified hereunder, namely:

(a) where the payment is made to

(i) the Reserve Bank of India or any banking company as defined in clause (c) of section 5 of the Banking Regulation Act, 1949 (10 of 1949);

(ii) the State Bank of India or any subsidiary bank as defined in section 2 of the State Bank of India (Subsidiary Banks) Act, 1959 (38 of 1959);

(iii) any co-operative bank or land mortgage bank;

(iv) any primary agricultural credit society or any primary credit society as defined under section 56 of the Banking Regulation Act, 1949 (10 of 1949);

(v) the Life Insurance Corporation of India established under section 3 of the Life Insurance Corporation Act, 1956 (31 of 1956);

(b) where the payment is made to the Government and, under the rules framed by it, such payment is

required to be made in legal tender;

(c) where the payment is made by

(i) any letter of credit arrangements through a bank;

(ii) a mail or telegraphic transfer through a bank;

(iii) a book adjustment from any account in a bank to any other account in that or any other bank;

(iv) a bill of exchange made payable only to a bank;

(v) the use of electronic clearing system through a bank account;

(vi) a credit card;

(vii) a debit card.

Explanation.- For the purposes of this clause and clause (g), the term "bank" means any bank, banking company or society referred to in sub-clauses (i) to (iv) of clause (a) and includes any bank [not being a banking company as defined in clause (c) of section 5 of the Banking Regulation Act, 1949 (10 of 1949)], whether incorporated or not, which is established outside India;

(d) where the payment is made by way of adjustment against the amount of any liability incurred by the payee for any goods supplied or services rendered by the assessee to such payee;

(e) where the payment is made for the purchase of

(i) agricultural or forest produce; or

(ii) the produce of animal husbandry (including livestock, meat, hides and skins) or dairy or poultry farming; or

(iii) fish or fish products; or

(iv) the products of horticulture or apiculture,

to the cultivator, grower or producer of such articles, produce or products;

(f) where the payment is made for the purchase of the products manufactured or processed without

“If you want to get something that you never had before, do something that you had never done before.”

the aid of power in a cottage industry, to the producer of such products;

(g) where the payment is made in a village or town, which on the date of such payment is not served by any bank, to any person who ordinarily resides, or is carrying on any business, profession or vocation, in any such village or town;

(h) where any payment is made to an employee of the assessee or the heir of any such employee, on or in connection with the retirement, retrenchment, resignation, discharge or death of such employee, on account of gratuity, retrenchment compensation or similar terminal benefit and the aggregate of such sums payable to the employee or his heir does not exceed fifty thousand rupees;

(i) where the payment is made by an assessee by way of salary to his employee after deducting the income-tax from salary in accordance with the provisions of section 192 of the Act, and when such employee -

(i) is temporarily posted for a continuous period of fifteen days or more in a place other than his normal place of duty or on a ship; and

(ii) does not maintain any account in any bank at such place or ship;

(j) where the payment was required to be made on a day on which the banks were closed either on account of holiday or strike;

(k) where the payment is made by any person to his agent who is required to make payment in cash for goods or services on behalf of such person;

(l) where the payment is made by an authorised dealer or a money changer against purchase of foreign currency or travellers cheques in the normal course of his business.

Explanation.- For the purposes of this clause, the expressions "authorised dealer" or "money changer" means a person authorised as an authorised dealer or a money changer to deal in foreign currency or foreign exchange under any law for the time being in force.'

INDIRECT TAXES

Judicial Pronouncements

Gujarat Ambuja Cements Ltd v. CCE, Ludhiana (2007) 6 STR 249 (Tri- Delhi)

Service Tax credit denied on freight for transportation of cement from factory or depot to buyer's premises. Interpretation of Statutes – Appeal dismissed.



OTHER LAWS

Circulars / Notifications

A. P. (DIR Series) Circular No. 75, Dtd. 14-06-2007 (Extract)

Overseas	Direct	Investment-
Liberalisation		

1. Enhancement of limit for Overseas Direct Investment (para 132)

In terms of Regulation 6 of the Notification *ibid*, the total overseas investment of an Indian party in all its Joint Ventures (JVs) and / or Wholly Owned Subsidiaries (WOSs) abroad engaged in any bonafide business activity should not exceed 200 per cent of its net worth. In order to provide greater flexibility to Indian parties (companies incorporated in India or created under an Act of Parliament) for investments abroad, the existing limit of 200 per cent of the net worth of the Indian party has been enhanced to 300 per cent of the net worth. However, the limit applicable to registered partnership firms for overseas investment will continue to be 200 per cent of their net worth. Accordingly, AD Category – I banks may allow overseas investments under the Automatic Route up to 300 per cent of the net worth of the Indian party (other than registered partnership firms), as on the date of the last audited balance sheet.

“If god brings you to it, he will bring you through it.”

2. Financial Commitment for overseas investment – guarantees issued by an Indian Party to or on behalf of the JV WOS (para 132)

In terms of Regulation 2(f) of the Notification ibid, 'financial commitment' means the amount of direct investment by way of contribution to equity, loan and 50 per cent of the amount of guarantees issued by an Indian party to or on behalf of its overseas Joint Venture Company (JV) or Wholly Owned Subsidiary (WOS). As a measure of rationalisation of the extant norms, it has been decided to reckon 100 per cent of the amount of guarantees issued by an Indian party for determining the 'financial commitment' for overseas investment by an Indian party. Accordingly, 'financial commitment' for overseas investment by an Indian party would, henceforth, mean direct investment by way of contribution to equity, loan and the total amount of guarantees by the investing company / promoter company / group company / sister concern or associate company / partnership firm in India. The revised norms will be applicable, with immediate effect, for both new and existing investments.

3. Portfolio Investment by Listed Indian Companies (para 134)

In terms of Regulation 6B of the Notification ibid, listed Indian companies are permitted to invest up to 25 per cent of their net worth in the equity of listed foreign companies, which are listed on a recognised stock exchange and having shareholding of at least 10 per cent in Indian companies listed on a recognised stock exchange in India and rated bonds / fixed income securities issued by overseas companies, under the portfolio investment scheme. In order to provide greater opportunities to listed Indian companies for portfolio investments, the existing limit of 25 per cent has been enhanced to 35 per cent of the net worth of the investing company as on the date of its last audited balance sheet. All other terms and conditions stipulated in Regulation 6B of the Notification shall remain unchanged.

A.P. (DIR Series) Circular No. 76, Dtd. 19-06-07

Hedging of Overseas Direct Investments By Residents - Liberalisation

1. Attention of Authorised Dealer Category - I (AD Category - I) banks is invited to A. P. (DIR Series) Circular No. 47 dated December 12, 2003, in terms of which resident entities having overseas direct investments (in equity and loan) are permitted to hedge the exchange risk arising out of such investments by entering into forward / option contracts with AD Category – I banks, subject to verification of such exposure. Such contracts must be completed by delivery or rolled over on the due date and not cancelled.
2. As announced in the Annual Policy Statement for the Year 2007-08 (para 141), with a view to provide greater flexibility to residents with overseas direct investments (in equity and loan), it has been decided to allow cancellation of such forward contracts. Accordingly, AD Category – I banks may allow cancellation of forward contracts entered into by residents for overseas direct investments (in equity and loan) for hedging the exchange risk. Further, 50 per cent of the cancelled contracts may be allowed to be rebooked. All other conditions and guidelines contained in A. P. (DIR Series) Circular No. 47 dated December 12, 2003 remain unchanged.

Necessary amendments to Notification No.FEMA25/RB-2000 dated 3rd May 2000, [Foreign Exchange Management (Foreign Exchange Derivative Contracts) Regulations, 2000] are being notified separately.

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

5th July	Payment of Service Tax & Excise for June
7th July	TDS/TCS Payment for June
10th July	Excise Return ER1 / ER2 /ER6
15th July	PF Contribution for May, Excise payment by SSI
21st July	ESIC Payment for June

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