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SEMINAR ON VAT

We had organized full day interactive seminar on VAT for our clients to deliberate on issues related to accounting, record keeping, documentation, auditing & certification, availing of tax credit, legality and litigations under VAT on June 2, 2007.

Persons interested may please send us e-mail to receive the copy of power point presentation made by our partners and associates at the seminar.

DIRECT TAXES

Judicial Pronouncements

SECTION 2(47) r.w.s. 2(14)

CIT v. Sujatha Jewellers (2007) 16 TAXMAN 183 (MAD.)

Capital gains – Transfer of leasehold rights in a property by an assessee by way of a sub-lease to another person would amount to transfer of capital asset within meaning of section 2 (47) and, therefore, consideration received by assessee would partake character of capital gains liable to tax.

SECTION 145

CIT v. Anand Kumar Deepak Kumar (2007) 160 TAXMAN 206(DELHI)

Method of accounting – Rejection of books of account – Merely because there were some discrepancies in pre-search period, it could not lead to any presumption that discrepancies would have continued in post-search period, particularly when Assessing Officer could not find any defect in books of account relevant to post-search period and rejection of books of account by Assessing Officer for post-search period was not warranted.

SECTION 64

Satish Chand Gupta v. CIT (2007) 160 TAXMAN 224 (ALL.)

Transfer of assets for benefit of spouse, etc. Where a person is a partner in a partnership firm, not in his individual capacity but as karta of HUF, income accruing to his wife on account of her



being a partner in same partnership, cannot be included in total income of such person in an individual assessment or in an assessment of HUF,

SECTION 158B r.w.s. 40A(2)

T.C.V. Engineering Ltd. v. ACIT (2007)160 TAXMAN 226 (MAD.)

Block assessment in search cases. Mere disallowance made under section 40A(2) could not be treated as undisclosed income. Disallowance made under section 40A(2) would not be considered for purpose of making block assessment unless revenue gives a categorical finding that whole expenditure of deduction is totally false.

DCIT v. Mc Dowell & Company Ltd. (2007)197 Taxation 467 (Kar.)

Interest on advances given by the respondent for the purported purchase of a coffee estate was allowable business expenditure, notwithstanding the fact that such advance was not in the line of business of the respondent and even if such estate were purchased the income therefrom would be purely agriculture in nature.

Payment of Corporate guarantee devolution and Non-compete fee are held to be allowable business expenditure.

Section 115J

CIT v. M/s Sona Wollen Mills (p) Ltd. (2007) 197 Taxation 538 (P.& H)

Assessee company debited depreciation in the P&L account as per provisions of the IT Act. AO recalculated depreciations as per Schedule XIV of the Companies Act, 1956 & worked out book profit. CIT (A) & Tribunal allowed assessee's claim holding that the depreciation under companies Act was minimum & claiming higher depreciation is no bar. On Revenue's appeal, the High court answered the question against the Revenue & in favour of the assessee.

CIT v. M/s. Kartar Colonizers Pvt. Ltd. (2007) 197 Taxation 569 (P & H)

Advances and earnest money received on agreement to sell plots were treated as trading/revenue receipt, though the sale deed were not executed to avoid provisions of Urban Land (Ceiling and Regulation) Act, 1976.

Section 245

Glaxo Smith Kline Asia (P.) Ltd. v. CIT (2007) 160 TAXMAN 259 (DELHI)

The power given u/s 245 to set off the refunds due to the assessee against the tax liability payable by the assessee for other A.Y. is a discretionary power which has to be exercised only after giving an written intimation to the assessee, merely because there existed a tax liability is not the sufficient cause to invoke section 245.

CIT v. Hoshiari Krishnan (2007) 160 Taxman 96 (Punj. & Har.)

Where amount paid is in nature of compensation, same will be allowable irrespective of nomenclature used

ACIT v. Wyeth Lederle Ltd. (2007) 108 TTJ (Mumbai) 889

An advance license cannot be said to be a benefit of income nature for purposes of deduction u/s 80HHC. Under the advance licensing scheme, an exporter is allowed to import duty free input components on a legally binding obligation that the exporter will export specified quantity of specified nature of goods and failure to do so results in recovery of applicable import duty plus other



additional levies. Duty free import of inputs, by itself, does not amount to a benefit of income nature and the question of parity with DEPB is also irrelevant. Profits could not therefore be reduced by the value of advance license.

Dy. CIT v. Jet Satellite (Singapore) Pte. Ltd. (2007) 106 ITD (Mum.) (175)

Dependent agent and dependent agent permanent establishment (PE) cannot be one and same thing, but on contrary, it is by virtue of an enterprise having a dependent agent, that enterprise is deemed to have PE. As per Article 7 of Tax treaty, what is to be taxed, is income of foreign enterprise attributable to PE in host country, agency remuneration paid by foreign enterprise to its dependent agent is not its income but an expenditure and, therefore, it cannot be said that by payment of tax liability by dependent agent, tax liability of foreign enterprise is also discharged, therefore, in addition of taxability of dependent agent in respect of remuneration earned by him, which is in accordance with domestic law and which has nothing to do with taxability of foreign enterprise of which he is dependent agent, foreign enterprise is also taxable in India, in terms of provisions of article 7 in respect of profits attributable to dependent agent PE.

CIT v. Glen View Rubber Co.(P.) Ltd. (2007) 160 Taxman 154 (Ker.)(FB)

When water treatment plant is installed permanently in factory in compliance with statutory requirement for preventing pollution only, expenditure on its installation would be treated as capital expenditure, and not as revenue expenditure

ITO v.Girish M.Mehta(2007) 105 ITD 585 (Rajkot)

Best Judgment Assessment

Order under section 144 is to be made to the best of judgment of Assessing Officer, which means that order has to be rational and is to be based on an honest guess work for which some valid basis is available to Assessing Officer ;by rejecting book result ,Assessing Officer does not get absolute & unbridled powers to estimate whatever profit he wants, as per his sweet will

Laukik Developers v. Dy.CIT(2007)105 ITD 657 (Mum.)

Construction of shops or commercial places cannot be considered a 'housing project' for purposes of application of provision of section 80-IB (10)

Power Grid Corpn.of India Ltd. v. Asstt.CIT (2007) 13 SOT 347 (Hyd.)

If equipments are manufactured by supplier as per design,engineering,etc.,specified by customer, it would not result in a works contract ,especially when all materials belong to supplier, even though it has produced a tailor-made product.

Kalpataru Construction Overseas (P.) Ltd. V.Dy.CIT (2007)13 SOT 194 (Mum.)

All expenses connected with exempt income have to be disallowed under section 14A regardless of whether they are direct or indirect ,fixed or variable and managerial or financial in accordance with law.

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

Provisions of section 14A cannot be applied to provisions of Chapter IV-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.

D.N.Thakur v.ITO (2007)105 ITD 692 (Chd.)(SMC)

Where assess had purchased a refrigerator and as per scheme attached with its purchase assessee received a scratch card on basis on which he was declared winner of a Matiz car and he received car from manufacturer of refrigerator and claimed that said car was received as a gift and not by way of winnings from lottery ,said Matiz car would fall within definition of 'lottery'as given in Explanation to Section2(24)(ix)

Circulars / Notifications***CIRCULAR NO. 2/2007, Dtd. 21-5-2007*****Option to certify TDS Certificates by way of Digital Signatures (Circular u/s 119)**

The Central Board of Direct Taxes have, in exercise of powers under section 119 of the Income-tax Act, 1961, decided for the proper administration of this Act to allow the deductors, at their option, in respect of the tax to be deducted at source from income chargeable under the head Salaries to use their digital signatures to authenticate the certificates of deduction of tax at source in Form No.16. The deductors will have to ensure that TDS certificates in Form No.16 bearing digital signatures have a control No. with log to be maintained by the employer (deductor). The

deductor will ensure that its TAN and the PAN of the employee are correctly mentioned in such Form No.16 issued with digital signatures. The deductors will also ensure that once the certificates are digitally signed, the contents of the certificates are not amenable to change by anyone. The income-tax authorities shall treat such certificate with digital signatures as a certificate issued in accordance with rule 31 of the Income-tax Rules, 1962.

INDIRECT TAXES

Circulars / Notifications

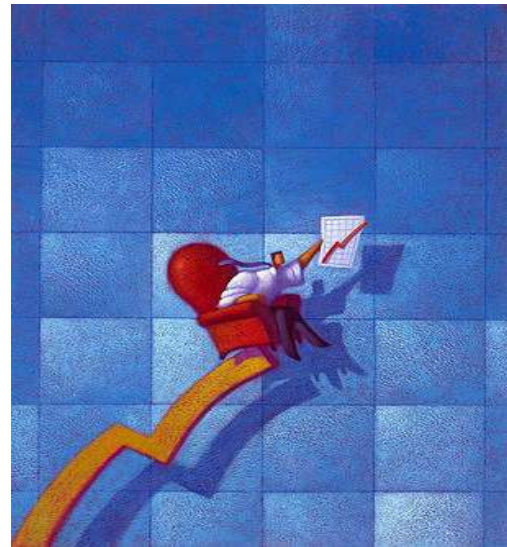
Notification No. 32/2007-Service Tax, dtd. 22-05-07

Works Contract (Composition Scheme for Payment of Service Tax) Rules, 2007, effective from 01-06-07 (extract of rule 3)

- (1) Notwithstanding anything contained in section 67 of the Act and rule 2A of the Service (Determination of Value) Rules, 2006, the person liable to pay service tax in relation to works contract service shall have the option to discharge his service tax liability on the works contract service provided or to be provided, instead of paying service tax at the rate specified in section 66 of the Act, by paying an amount equivalent to two per cent. of the gross amount charged for the works contract.

Explanation.- For the purposes of this rule, gross amount charged for the works contract shall not include Value Added Tax (VAT) or sales tax, as the case may be, paid on transfer of property in goods involved in the execution of the said works contract.

- (2) The provider of taxable service shall not take CENVAT credit of duties or cess paid on any inputs, used in or in relation to the said works contract, under the provisions of CENVAT Credit Rules, 2004.
- (3) The provider of taxable service who opts to pay service tax under these rules shall exercise such option in respect of a works contract prior to payment of service tax in respect of the said works contract and the



option so exercised shall be applicable for the entire works contract and shall not be withdrawn until the completion of the said works contract.

Notification No. 29/2007-Service Tax, dtd. 22-05-07

Service Tax (Determination of Value) (Amendment) Rules, 2007, effective from 01-06-07 (extract)

In the said rules, after rule 2, the following rule shall be inserted, namely:-

“2A. Determination of value of services involved in the execution of a works contract:

- (1) Subject to the provisions of section 67, the value of taxable service in relation to services involved in the execution of a works contract (hereinafter referred to as works contract service), referred to in sub-clause (zzzza) of clause (105) of section 65 of the Act, shall be determined by the service provider in the following manner:-

- (i) Value of works contract service determined shall be equivalent to the gross amount charged for the works contract less the value of transfer of property in goods involved in the execution of the said works contract.

Explanation.- For the purposes of this rule,-

- (a) gross amount charged for the works contract shall not include Value Added Tax (VAT) or

sales tax, as the case may be, paid, if any, on transfer of property in goods involved in the execution of the said works contract;

- (b) value of works contract service shall include,-
- (i) labour charges for execution of the works;
 - (ii) amount paid to a sub-contractor for labour and services;
 - (iii) charges for planning, designing and architect's fees;
 - (iv) charges for obtaining on hire or otherwise, machinery and tools used for the execution of the works contract;
 - (v) cost of consumables such as water, electricity, fuel, used in the execution of the works contract;
 - (vi) cost of establishment of the contractor relating to supply of labour and services;
 - (vii) other similar expenses relating to supply of labour and services; and
 - (viii) profit earned by the service provider relating to supply of labour and services;
- (ii) Where Value Added Tax or sales tax, as the case may be, has been paid on the actual value of transfer of property in goods involved in the execution of the works contract, then such value adopted for the purposes of payment of Value Added Tax or sales tax, as the case may be, shall be taken as the value of transfer of property in goods involved in the execution of the said works contract for determining the value of works contract service under clause (i).

Notification No. 24/2007 – Service Tax, dtd. 22-05-07, effective from 01-06-07

Service Tax on Renting of Immovable Property

In exercise of the powers conferred by sub-section (1) of section 93 of the Finance Act, 1994 (32 of 1994) (hereinafter referred to as the Finance Act), the Central Government, on being satisfied that it



is necessary in the public interest so to do, hereby exempts the taxable service of renting of immovable property, referred to in sub-clause (zzzz) of clause (105) of section 65 of the Finance Act, from so much of the service tax leviable thereon as is in excess of the service tax calculated on a value which is equivalent to the gross amount charged for renting of such immovable property less taxes on such property, namely property tax levied and collected by local bodies:

Provided that any amount such as interest, penalty paid to the local authority by the service provider on account of delayed payment of property tax or any other reasons shall not be treated as property tax for the purposes of deduction from the gross amount charged:

Provided further that wherever the period for which property tax paid is different from the period for which service tax is paid, property tax proportionate to the period for which service tax is paid shall be calculated and the amount so calculated shall be excluded from the gross amount charged for renting of the immovable property for the said period, for the purposes of levy of service tax.

OTHER LAWS

Judicial Pronouncements

E.Shanmugam v. A.P.S Cam-O-Matec(P.)Ltd.(2007)75 SCL 47 (Delhi)

Appeal under section 10F is maintainable only on a question of law and not on a question of fact.

Durga Hotel Complex v. Reserve Bank of India(2007)75 SCL 406(SC)

When one of parties in a complaint before Banking Ombudsman takes subject –matter to a Court, arbitrator, Tribunal or forum, Banking Ombudsman gets divested of his jurisdiction to pass any order or award on complaint.

Manager,ICICI Bank Ltd. V. Prakash Kaur(2007)75 SCL 433(SC)

Bank should resort to procedure recognized by law to take possession of vehicles in cases where borrower may have committed default in payment of installments instead of taking resort to strong arm tactic; practice of hiring recovery agents ,who are musclemen, needs to be discouraged.

UTI Bank Ltd. v. Dy.CCE (2007) 75 SCL20 (mad)(FB)

Securities and Reconstruction of Financial Assets and Enforcement of Security interest Act, 2002.

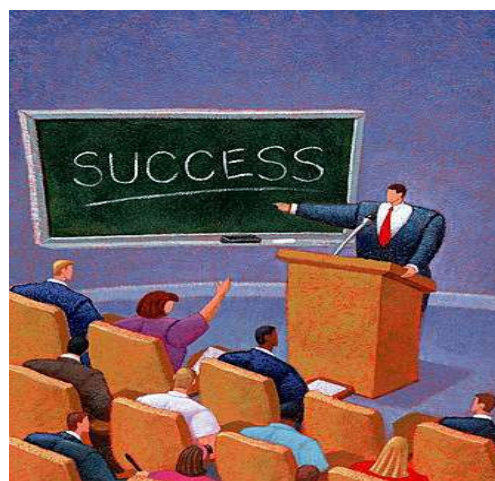
Since there is no specific provision claiming ‘first charge’ in Central Excise Act and Customs Act, claim of Department of Central Excise cannot have precedence over claim of secured creditor, viz., petitioner bank ,who had taken possession of property of borrower under section 13.

Syed Musharraf Mehdi v. Frontline Soft Ltd. (2007) 75 SCL 329 (CLB-Chennai)

Oppression and mismanagement – Right to apply u/ss 397 and 398. Requirements of section 399 are mandatory and therefore CLB has no option but to reject application made u/s 397/398, not being supported by requisite number of members at time of filing such application before CLB.

Food Corporation of India Ltd Vs. Ramkesh Y adav 27.02.2007 JT(2007)(4) SC 1

Employment in Govt. Corporation. Employee



agreed to premature retirement on the condition that his son would be given job. Employer accepted the offer but went back on the condition Held that the employer is not right in refusing to offer of employment to the respondent’s son.

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

5 th June	Payment of Service Tax and Excise for May
7 th June	TDS/TCS Payment for May
10 th June	Excise Return ER1 / ER2 /ER6
14 th June	TDS Return of Other than Salary to a Non-resident for Quarter ending March 31 in Form 27Q
15 th June	<ul style="list-style-type: none"> - Advance income tax for Companies (Quarter I) - TDS Return of Other than Salary for Quarter ending March 31 in Form 26Q - TCS Return for Quarter ending March 31 in Form 27EQ - PF Contribution for May, Excise payment by SSI
21 st June	ESIC Payment for May