

Religious saying:

Life without goals & expectations of attaining them would be dull and dreary like a football game without any goal posts. Life without goals would be aimless wandering. It would be like a rudderless ship, drifting directionless in the ocean of life. In life, one has to accept challenges, set great goals and do one's best to achieve them.— Shrimad Bhagwad Gita.

DIRECT TAXES**Judicial Pronouncements**

G.E. Capital Services India v. DCIT (2007) 106 TTJ (Del) 65

Software is a field of fast changing technology which needs updates and upgradation recurrently; therefore the expenditure on software is an allowable as revenue expenditure.

Aspinwall & Co. Ltd. v. DCIT (2007) 207 CTR (Ker) 475

After the insertion of sub-section 9 of Sec. 40A, no deduction is to be allowed in respect of any sum paid by the assessee as an employer towards contribution to unrecognized Provident fund, except, where such amount is paid for the purposes of and to the extent provided by, or u/s 36 (1)(iv). No deduction can be allowed by taking recourse to the residuary Section 37(1), therefore, no deduction can be allowed in respect of contribution to unrecognized Provident Fund.

DCIT v. Rakesh Kumar 157 Taxman (Mag.) 71 (Chandigarh)

When the assessee had surrendered the income suo-moto and paid the tax thereon before the date of personal attendance or before any enquiry by the Assessing Officer, but after issuance of the summons, it cannot be said that the assessee has concealed any income and hence penalty under section 271(1)(c) cannot be levied.

Usha Martin Industries v. JCIT (2003) 81TTJ 518 (Cal.)

The provision for bad And Doubtful debts is made to cover up the probable diminution in the vale of the asset and cannot be said to be provision for liability because even if debt is not covered, no liability would be fastened upon the assessee. The Debt is amount receivable by the assessee rather than any liability payable and, therefore any



provision towards any irrecoverably of the debt cannot be said to be provision for liability. Once it is held that such provision is not a provision for any liability, the question whether the liability is ascertained or unascertained does not arise. Therefore clause (c) of the explanation to section

115JA would not be applicable in respect of provision for bad & Doubtful debts

Gillette India Limited v. JCIT 156 Taxman (Mag.) 236 (Jaipur)

Condition of write off is satisfied once there is debt in the profit and loss and the debtors are reduced to the extent. In the instant case, amount had been debited in the profit and loss account and the debtors had been reduced to that extent. Now there was no requirement to establish that the debt has become bad. Therefore the claim of the assessee is admissible.

ACIT v. Priya Paper Works [2007]106 TTJ 234(ITAT-Jab)

Since the stock found in the excess and disclosed in the income was not on account of income derived from the industrial undertaking, the action of the CIT (A) in directing the AO to allow the relief under section 80-I on such amount was neither correct nor justified because the excess stock of paper, which was a raw material for the manufacturing of the products of the assessee, had rightly been held by the AO to be not income derived from industrial undertaking. The derivation of the income must be directly connected with the business activities in the sense that income is derived from such undertaking. It would not be sufficient if it is generated by exploitation of a business asset. Hence the assessee was not entitled to get relief under section 80-I of the IT Act with respect to such income.

IMT Labs (India) (P.) Ltd. In re.[2006] 157 taxman 213 (AAR-New Dehli)

A plain reading of article 12 of DTAA shows that where profits include items of income which are dealt separately in other articles of the convention, then the provision of those articles shall not be affected by the provision of this article. In as much the periodical payments made by the applicant were in the nature of

“royalties and fees for included services” and taxable under article 12 of DTAA, the said payment therefore, could not be treated as business income. Thus, periodical payment (being ‘royalties and fees for included services’), made to non resident person, having no office/establishment in India. In connection with the use of software developed by him on internet are subject to tax deduction at source, under DTAA with USA.

Bangalore District Co-operative Milk Producers Societies Union LTD. v. ITO (TDS) (2007) 11 SOT 539 (Bang.)

A.Y. 2000-01 to A.Y. 2004-05 Section 194C, read with section 201, of the Income-tax Act, 1961 – Deduction of tax at source from payments to Contractors / subcontractors. If a manufacturer purchases material on his own and manufactures a product as per requirement of a specific customer, it is a case of sale and not a contract for carrying out any work. Also where assessee produced packing material from various suppliers as per his specification, it was a case of purchase of material and not a case of making payment towards work contract and, therefore, assessee was not required to deduct tax at source under section 194C on payment made to suppliers of packing material.

Moser Baer India (11 SOT 715)

In this case, Delhi Tribunal held that it was open for an assessee not to claim tax holiday benefit under section 10B for any one year or more out of the block of five assessment years by filing a necessary declaration.

Kotak Mahindra primus LTD. v. DDIT, TDS (2007) 11 SOT 578 (Mum.)

Income – Deemed to accrue or arise in India

Section 9 of the Income-tax Act, 1961, read with articles 7 and 12 of the India Australia DTAA. Assessee, a non-banking finance company, was jointly formed by an Indian company and an Australian company. Assessee sought for permission to remit certain amount to Australian company without any deduction of withholding tax. Assessee had made those payment in consideration of its processing of data.

Impugned payment could not be held to be recovered by scope of expression ‘royalty’ under article 12(3) of DTAA.



Since Australian company did not have any permanent establishment in India, impugned payment in view of provisions of article 7(1) of DTAA could not be taxed as a business profit of Australian company in India. Since Australian company did not have any tax liability in India and as tax withholding liability

is only a vicarious and substitution liability, assessee did not have any tax withholding liability so far as impugned payment to Australian company was concerned.

CWT v. Rakesh Mohan (2007) 196 Taxation 440 (All.)

Clubbing of net wealth – Section 3 & 21 of the W.T. Act Trust created for the benefit of the unborn child and share transferred in favour of the trust. AO including the value of shares in the hands of the assessee treating the trust invalid as sole beneficiary not in existence and basic condition of section 6 of the Indian Trust Act not satisfied. It was held that the value of shares cannot be included as the trust was validly created.

Circulars / Notifications

INDIRECT TAX

Judicial Pronouncements-Excise

Castrol India LTD. v. Union of India & ORS. 2007 (78) RLT 357 (Bom.)

Recovery of Bank guarantee u/s 11 of CEA, 1944 – Revenue to wait till time limit for filing appeal and stay application is over for recovery of dues by way of encashment of bank guarantee and not to encash bank guarantee immediately on passing of adjudication order – communication to bank for encashment of bank guarantee set aside.

CCE, Chandigarh v. Sadashiv Structural PVT. LTD. 207 (78) RLT 374 (CESTAT-DEL.)

Confiscation and penalty – Non-accountal – Rule 25 of C.Ex. Rules, 2002 – goods in excess of RG-1 balance found in factory – no evidence of intention/attempt to remove them clandestinely – no past instance of clandestine removal – confiscation and penalty under Rule 25 not warranted – Revenue’s appeal dismissed.

Aurobindo Pharmed LTD. v. CCE, Hyderabad 2007 (78) RLT 396 (Cestat-Ban.)

Caenvat credit – Rule 6 of cenvat credit Rules, 2002 – cenvat credit taken on input exclusively used in manufacture of exempted final product as well as on common inputs used in manufacture of both dutiable and exempted final products – 8% amount paid on exempted final product. Credit on inputs used exclusively in manufacture of exempted final product is admissible.



Kedia Electricals LTD. v. CCE, Hyderabad. 2007 (78) Rlt 417 (Cestat-Ban.)

Cenvat credit – Rules 3 of cenvat credit Rules, 2002 – Invoice – appellants availed cenvat credit on basis of invoice which indicated actual duty paid by supplier – later supplier gave discount to appellant but had not claimed refunds of excess duty paid on account of reduction in prices – credit of excess duty refundable on account of discount, not deniable.

CCE, Surat v. Varun DYG. & PTG. Mills & ORS. And Vice Versa. 2007 (78) RLT 438 (Cestat-Mum.)

Appeal – Section 35B of CEA, 1944 – Appeal by the Department is to be filed by an officer authorised by Commissioner and not by Commissioner himself – appeals filed by Commissioner are dismissed.

CCEx., Aurangabad v. Dhanlaxmi re-rolling Mills. 2007 (208) E.L.T. 104 (Tri.- Mumbai).

Clandestine removal

Difference in stock weight over a period of time does not amount to clandestine removal (Rules 9 and 173Q of erstwhile Central Excise Rules, 1944 and Rules 4 and 25 of Central Excise Rules, 2004)

OTHER LAWS

Circulars / Notifications

SEBI - Circular No. SEBI/CFD/DIL/CG /1/2006/13, dtd. 13-1-2006

Certain changes in the revised clause 49 are made by the said circular The changes are as under-

1. Payment of sitting fee to non-executive directors within the limits prescribed under the Companies Act, 1956 will not require prior approval of shareholders.
2. The Maximum gap between two board meetings has been increased to 4 months from 3 months.
3. It has been specified that the certification regarding internal controls and internal control systems, forming part of overall certification by CEO & CFO, would be for the purpose of financial reporting.

Notification No. GSR 739(E), Dated 7-12-2006, effective from 7-12-2006.

The Companies (Accounting Standards) Rules, 2006

In exercise of the powers conferred by clause (a) of sub-section (1) of section 642 of the Companies act,1956(1 of 1956),read with sub-section (3C) of section 211 and sub-section (1) of section 210A of the said Act, the central Government, in consultation with National advisory Committee on Accounting Standards, hereby makes the following rules, namely:

1. Short title and commencement-
 - (1) These rules may be called the companies (Accounting Standards)Rules, 2006
 - (2) They shall come in force on the date of their publication in the official Gazette.
2. Definitions: - (1) In these rules unless the context otherwise requires, -
 - (a) "Accounting Standards" means the accounting standard as specified in Rule 3 of these rules.
 - (b) "Act" means companies act,1956 (1 of 1956);
 - (c) "Annexure" means annexure to these rules;
 - (d) "General Purpose Financial Statements" includes Balance sheet, Statement of Profit And Loss Account, Cash Flow Statement, (wherever applicable), and other statements and explanatory notes which form part thereof.
 - (e) "Enterprise means a company as defined in Section 3 of the Companies Act, 1956.

(f) "Small and Medium Sized Company" (SMC) means, a company-

(i) whose equity or debt securities are not listed or are not in the process of listing on any stock exchange, whether in India or outside India;

(ii) which is not a bank, financial institution or an insurance company;

(g) whose turnover(excluding other income) does not exceed rupees fifty crores in the immediately preceding accounting year;

(iii) which does not have borrowings(including public deposits) in, excess of rupees ten crores at any time during the immediately preceding accounting year;

(iv) which is not a holding or subsidiary company which is not a small and medium sized company.

Explanation: For the purpose of clause(f), a company shall qualify a Small And Medium Sized company if the conditions mentioned therein are satisfied as at the end of relevant accounting period.

(2). Words and Expressions used herein and not defined in these rules but defined in the Act shall have the same meaning respectively assigned to them in the Act.

3. Accounting Standard: -

(1) The Central Government hereby prescribes Accounting Standards 1 to 7 and 9 to 29 as recommended by the institute Of Chartered Accountant Of India, which are specified in the annexure to these rules.

(2) The Accounting Standard shall come into effect in respect of accounting periods commencing on or after the publication of these Accounting Standards.

4. Obligation to comply with the accounting standards. -

(1) Every Company and its auditor(s) shall comply with the Accounting Standards in the manner specified in Annexure to these rules.

(2) The Accounting Standards shall be applied in the preparation of General Purpose Financial Statements.

5. An exciting company, which was previously not a small and medium Sized Company (SMC) and subsequently becomes an MC, shall not be qualified for exemption or relaxation in respect of accounting standards available to SMC until the company remains an SMC for two consecutive accounting period.

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

5 th March	Service tax and excise payment - Form TR6
7 th March	TDS Payment
10 th March	Excise Return ER1 / ER2 /ER6
15 th March	Payment of last installment of Advance Tax and FBT
15 th March	PF Contribution, Excise Payment by SSI
21 st March	ESIC Payment
28 th March	Profession Tax Payment
31 st March	Professional Tax payment for the month/quarter/ Annual ended Service Tax payment for Individual/HUF for the period Jan to March Excise/Service Tax payment for March Filing of belated pending returns



Queries & response:

Your response and queries may kindly be forwarded to: newsletter@snkca.com

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The present is the point at which time touches eternity.