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## DIRECT TAXES

### Judicial Pronouncements

#### ***CIT v. Nevendram Ahuja (MP) 290 ITR 453***

Deposit against tenancy: Landlord need not prove capacity of tenant to make deposit

#### ***Mohanlal M. Shah v. DCIT, Cen. Circle-11, Mumbai (Mumbai ITAT)***

Expenditure incurred in relation to income not includible in total income

Assessee had invested borrowed funds for purchase of shares in domestic companies. Interest paid on such borrowings was claimed as deduction. It was held that-

- by virtue of section 10(33) dividend income was exempt from tax during previous year, interest paid on such borrowings utilized for purpose of investment in shares was not to be allowed as an expenditure in view of provisions of section 14A.
- interest paid was also not to be allowed as part of cost of acquisition of shares.

#### ***CIT v. Varinder Agro Chemicals Ltd. (P & H) 290 ITR 147***

Sales tax subsidy is a revenue receipt.

#### ***CIT v. Thirani Chemicals Ltd. (Delhi) 290 ITR 196***

Expenses on issue of debentures are not required to be amortised over the useful life of debentures.

#### ***CIT v. South India Corporation (Agencies) Ltd. (Mad) 290 ITR 217***

Debenture issue expenditure is deductible as revenue expenditure.

#### ***Embee Clearing and Shipping Services (P) Ltd. v. ACIT (2007) 12 SOT 227***

Sec. 69 and Sec. 158B(b) of the Act, Unexplained investments - Jottings in codified form on loose sheet

The amounts mentioned on loose sheet of paper seized during a search could not be added to the assessee's income without considering its explanation that the figures in the sheet represented a rough list of its debtors and their addresses along with a request to call them for verifying the genuineness of the transactions and without examining the parties who had filed their affidavits.



#### ***Mukesh R. Marolia v. Addl. CIT (2006) 6 SOT 247 (Mum. ITAT)***

Unexplained cash credits - Gifts from NRE accounts

The assessee's daughter had received certain amounts as gifts from his non-resident brother through the NRE account. No addition to the assessee's income could be made in respect of the gifts received, as the amount deposited in the daughter's bank account had been remitted through the bank. Therefore, the gifts could not be considered as non-genuine.

#### ***CIT v. Sri Meenakshi Mills Ltd. (2007) 290 ITR 107 (Mad)***

Upfront fee paid to the financial institution is in the nature of bank charges and the same cannot be regarded as capital expenditure and is to be construed as revenue expenditure.

***CIT v. Southern Roadways Ltd. (2007) 288 ITR 15 (Mad)***

Replacement of part of the machinery is a revenue expenditure. It was further held that the up-gradation of computer systems done by enhancing the configuration of the computers was to improve the efficiency and as no structural modifications having lasting effects were made the expenditure is to be treated as revenue expenditure.

***CIT v Vijay Kumar Adukia & Ors., (2007) 208 CTR (Jharkhand) 291***

Income from undisclosed sources-addition-alleged suppression of sales- on the basis of information from commercial tax department, CIT (A) held that no addition can be made unless the department proves on the basis of material facts, that the sales tax was in fact, realized and not paid, and permitted the department to make an enquiry regarding the quantum of sales from the concerned parties and to make addition if any discrepancy is found.

***Dy. CIT v. Allied Construction (2007) 106 TTJ (Del.) (SB) 595***

Interest income form FDRs is assessable as income from other sources. Even though the FDRs were offered as security to banks, interest paid to banks cannot be allowed as deduction against such income.

***Sonata Information Technology Ltd. v. Addl. CIT (2007) 106 TTJ (Bang.) 797***

The assessee was carrying on the business of trading in software packages. Amount paid by assessee for acquisition of copyrighted article and not for acquisition of the copyright. Such payment was not royalty and no tax was to be deducted at source u/s. 195.

***In re, 159 Taxman 243 (AAR)***

Payments made by Indian subscribers to the Singapore Company for providing access to the server located outside India would be taxable in

India and would be covered by the expression 'royalty', being consideration received for right to use industrial, commercial or scientific equipment (namely the portal on server platform).

[Source: The Economic Times]



***SET India Pvt. Ltd. (AAR)***

The entire operation of a foreign company in India is liable to be taxed even if the company makes an 'arms-length payment' to its agent.

According to this ruling, foreign companies having local agents with Permanent Establishment (PE) will have to pay taxes in India.

[Source: The Economic Times, 27-04-07]

***Pal Synthetics Ltd. v. JCIT (ITA Nos. 1310/Mum./2003***

Receipt of capital subsidy credited to profit and loss account could not form part of book profit for the purpose of Sec. 115JA of the IT Act.

***A. A. Salam v. ACIT (2007) 106 TTJ (Coch.) 1140***

Sec. 2(ea) of the Wealth Tax Act, 1957

Cash in hands of an Individual / HUF doing business is not an asset within the meaning of sec. 2(ea).

**"Reputation is what other people know about you. Honour is what you know about yourself."**



## INDIRECT TAXES

### Judicial Pronouncements

#### ***CEx. v. Bombay Soap Factory (2005) ITS 2435 (SC) (ELT-189/A148)***

Quantity / Trade discounts and discount for damage to goods in transit are admissible for deduction from wholesale price while determining the assessable value.

#### ***CEx. v. Lloyds Steel Industries (2005) ITS 2432 (SC) (ELT-189/A67)***

Valuation (Central Excise) - notional interest computed on the interest on advance taken by the appellant from its buyers would not be includible in the assessable value in the absence of any nexus between the fact of advance and depression in price.

### Circulars / Notifications

#### ***Notification No. 25/2007 - Central Excise (N.T.)***

Procedure for claiming refund of unutilised CENVAT credit notified, subject to fulfillment of certain conditions mentioned therein.

## OTHER LAWS

### Judicial Pronouncements

#### ***State of Arunachal Pradesh v M/s Damani Construction Co. [JT 2007 (4) SC 118]***

Section 33 and 34 of Arbitration and conciliation Act, 1996.

Arbitral award. Review sought after 6 months from the date of award. Objections to award filed after 10 months of the date of the award. The Court dismissed the application as time barred. The appellant appealed to the Supreme Court. The appeal was dismissed.

### Circulars / Notifications

#### ***Notification No. 48/2007-Cus dt. 29-3-2007***

The DEPB Scheme has been extended upto 31-03-2008.

#### ***RBI/2006-2007/345 DNBS (PD) CC.No.92 /03.02.089/2006-07***

Interest rate on deposits accepted by NBFCs (other than RNBCs) increased to 12.5% from the present limit of 11% and such interest would be paid or compounded at rests which should not be shorter than monthly rests.



#### ***SEBI/CFD/DIL/LA/2/2007/ 26/4***

Amendments to Clause 32 of Equity Listing Agreement

Having regard to the above, SEBI has decided to amend Clause 32 of the Equity Listing Agreement to align it with the provisions of Section 219(iv) of the Companies Act i.e. to permit listed companies to send a statement containing the salient features of the (i) Balance Sheet, (ii) the Profit and Loss Account and (iii) the Auditors' Report instead of sending full Balance Sheet and Annual Report. The revised Clause 32 of Equity Listing Agreement shall come into force with immediate effect.

#### ***MRD/DoP/Cir- 05/2007***

The permanent account number (PAN) will be the sole identification number for all stock market transactions from July 2, 2007.

**Press Release No. - 154/2007**

Securities and Exchange Board of India (SEBI) has amended the Disclosure and Investor Protection (DIP) guidelines as follows:

1. Grading of all Initial Public Offerings (IPO) made mandatory. The grading will be applicable to all IPOs for which draft offer documents are filed with SEBI after April 30, 2007;
2. Existing practices followed by SEBI regarding processing of draft offer documents incorporated in the DIP guidelines;
3. Companies having listing history of one year or more, only to be allowed to make Qualified Institutions Placement(QIP);
4. Companies having listing history of less than six months to be enabled to make preferential allotment, subject to certain conditions;
5. More clarity on provisions relating to minimum promoters' contribution for the purpose of public issues.

**FOR YOUR INFORMATION****Press Release**

The CBDT has notified following eight draft return forms for assessment year 2007-08 under a new series:

ITR-1 - for Individuals having salary and interest income and no other income

ITR-2 - for Individuals and HUFs having income from any source except from business or profession

ITR-3 - for Individuals and HUFs being partners in firms and not having proprietary business or profession

ITR-4 - for Individuals and HUFs having proprietary business or profession

ITR-5 - combined form for return of income and fringe benefits for Firms/AOP/BOI

ITR-6 - combined form for return of income and fringe benefits for Companies

ITR-7 - combined form for return of income and fringe benefits for Charitable / religious trusts, political parties and other non- profit organizations

ITR-8 - stand alone form for return of fringe benefits for persons who are not liable to file return of income but are liable to file return of fringe benefits

ITR-V - Indian Income Tax Return Verification Form [Where above mentioned forms (except ITR-7) are transmitted electronically without digital signature]

Further, for firms liable to tax audit under section 44AB it would be mandatory to file their returns electronically.

The formal notification for the above will be made on 14.5.2007.

**Credit Policy highlights**

The RBI governor Dr Y V Reddy fine tunes micro policies as follows:

- GDP growth projection for 2007-08 at around 8.5%.
- Risk weight on home loan to individuals reduced to 50% for loans upto Rs. 20 lakh.
- Risk weightage for loans up to Rs 1 lakh against gold and silver ornaments reduced to 50%,
- Price risk hedging may be allowed in commodities such as aluminium, copper, lead, zinc and nickel in international commodity exchanges

- Working group to be set up to look into the development of interest rate futures market
- Credit guarantee scheme for distressed farmers introduced
- Aviation turbine fuel users may be allowed to hedge their economic exposure international commodity exchanges
- Resident individuals to be permitted to book forward contracts without production of underlying documents up to an annual limit of \$100,000 which can be freely cancelled and rebooked.
- Permit Indian companies to remit up to US \$ 10 million as against the current limit of US \$ 1 million for consultancy services for executing infrastructure projects.

### Credit Policy on Forex usage limits

- The overseas investment limit (total financial commitments) for Indian companies investments in joint ventures (JVs)/ wholly owned subsidiaries (WOS) abroad to be enhanced from the existing 200 per cent of net worth to 300 per cent of net worth, as per the last audited balance sheet.
- It has been decided to introduce a revised reporting framework on overseas investments for monitoring capital flows.
- Listed companies can invest up to 35% of net worth abroad as against 25% earlier
- Overseas investments ceiling for mutual funds increased to \$4 billion from \$3 billion
- External Commercial Borrowings prepayment to be allowed up to \$400 million as against the existing limit of \$300 million by authorised dealer banks without prior approval of the Reserve Bank, subject to compliance with stipulated minimum average maturity period as applicable to loans.
- The present remittance limit of \$50,000 to be enhanced to \$100,000 per financial year for any permitted current or capital account transaction or a combination of both by individuals.

[Source: The Economic Times & The Business Standard]

### Competition Commission of India (CCI)

It will be mandatory very soon for the Corporate to notify the CCI about their mega mergers. The CCI will have jurisdiction over a deal if the combined entity has assets worth Rs. 1000 crore or a turnover of Rs. 3000 crore in India. It will also investigate combinations having assets worth \$500 million or turnover of \$ 1500 million in India and abroad put together in the case of cross border mergers. The government intends to give the CCI 210 days to complete its inquiry as to whether the deal would affect competition in the sector.

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

5 <sup>th</sup> May	Payment of Service Tax and Excise for April
7 <sup>th</sup> May	TDS Payment and Filing 15G/15H for April
10 <sup>th</sup> May	Excise Return ER1 / ER2 /ER6
15 <sup>th</sup> May	PF Contribution for April, Excise payment by SSI
20 <sup>th</sup> May	ESIC Payment for April
31 <sup>st</sup> May	Profession Tax Payment for April TDS payment for the credit on 31 <sup>st</sup> March

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.