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DIRECT TAXES

Judicial Pronouncements

Dilip N. Shroff v. JCIT (2007) 291 ITR 519 (SC)

Penalty u/s 271(1)(c) - Where the disclosure in the return of income is based on the expert opinion, who has been appointed as per statutory scheme, merely because his opinion is not accepted or some other expert has some other opinion, the same by itself may not be sufficient to arrive at the conclusion that the assessee has furnished inaccurate particulars of his income.

IMT Labs (India) Pvt. Ltd. (AAR No. 676 of 2005 dated Nov 06, 2006

DTAA – The AAR held that the periodical payments made to non-residents person having no office/establishment in India, in connection with the use of the software developed by him on internet are in nature of royalty and are subject to tax deduction at source under DTAA with USA. The AAR rejected the contention of the assessee that software information like business information is available to anybody on internet on payment of some fee hence it should be treated as business income instead of Royalties.

CIT v. Saravana Spg. Mills (P.) Ltd. (SC)

Section 31 of the Income-tax Act, 1961, Repairs and insurance of machinery, plant and furniture. Section 31(i) limits scope of allowability of expenditure as deduction in respect of repairs made to machinery, plant or furniture by restricting it to concept of current repairs and all repairs are not current repairs. To decide applicability of section 31(i) test is not whether expenditure is revenue or capital in nature, but whether expenditure is current repairs. Basic test to find out as to what would constitute current repairs is that expenditure must have been incurred to preserve and maintain an already existing asset, and object of expenditure must not be to bring or new asset into existence or to obtain a new advantage. All repairs do not attract section 31(i) even though expenditure is revenue in nature. Assessee manufacturer of yarn replaced old 3 ring frames by new ones and claimed expenditure incurred in said activity as current repairs contending that whole textile mill was a 'Plant' and ring frames was one of 25 machines which constituted one single process and, therefore, replacement of the frames be treated as replacement of part of the plant/total machinery and not replacement of a machine. Assessing Officer held that each machine including ring frame was an independent and separate machine capable of independent and specific function and, therefore, expenditure incurred for replacement of entire machine would not come within meaning of words 'current repairs' and AO was justified in holding so.

CIT v. Century Building Industries (P.) Ltd. (SC)

Section 194A, read with section 201 of the Income-tax Act, 1961 TDS on Interest other than interest on securities

Whenever interest is credited to account of payee payer has to deduct tax deductible at source (TDS) under section 194A(1). Assessee-company's directors took loans in their individual capacities from creditors in name of assessee. Loan amounts received by way of cheques in name of assessee were deposited in bank account of assessee and transferred to account of directors on same day by issuing corresponding cheques. When directors repaid loan amount or interest thereon such payments were also routed through assessee. Directors issued cheques in favour of assessee and assessee in turn issued cheques to creditors/lenders of such directors. AO on finding

when interest was paid by cheques issued by company to creditor, TDS was not deducted at source by assessee on interest payments as required under section 194A(1) applied provisions of section 201(1) declaring assessee as assessee-in-default and also applied section 201(1A) imposing interest for not deducting TDS at source. Assessee's case was that company was merely a medium through which borrowings and repayments were routed; that loans were taken by directors and not by company and company was merely disbursing repayments of loans along with interests and, therefore, it was not liable to deduct TDS under section 194A. Since there was no resolution of assessee whereby company had agreed to act as a medium for routing borrowings and repayments it could not be said that assessee was incharge of disbursing repayments made by directors in their individual capacities, therefore, Assessing Officer was right in invoking provisions of section 201 and 201(1A).

Hindustan Coca Cola Beverage (P.) Ltd. v. CIT (SC)

Section 201 of the ITA, 1961 - Deduction of tax at source - Consequence of failure to deduct or pay.

Where deductee recipient of income, has already paid taxes on amount received from deductor, department once again cannot recover tax from deductor on same income by treating deductor to be assessee-in-default for short-fall its amount of tax deducted at source.

ITO v. Madan Lal Singhal & Sons (Jodh.) (URO) (2007) 16 SOT

Assessee was running a car on hire and had shown certain profit in profit and loss account in respect of car hiring charges received. Assessee claimed deduction of certain expenditure incurred on repair of car and on diesel. Assessing Officer denied deduction as assessee could not file proof of expenditure. Since there was a profit from hiring, it could be said that diesel might have been consumed and repairs might have been done, however, as assessee had not filed proof of expenditure, in such circumstances, half of expenditure in question was to be allowed in interest of justice.

Eli Lilly & Co. (India) (P.) Ltd. v. DCIT (2007) 16 SOT 20 (DELHI) (URO)

Section 194-I, r.w.s. 194C of the Income-tax Act, 1961 - Deduction of tax at source from Rent.

Words any other agreement or arrangement used in Explanation to section 194-I have to be read *ejusdem generis* with expression lease, sub-lease or tenancy. Assessee-company, which imported pharmaceuticals and undertook their marketing, appointed clearing and forwarding agents (C&FRs) to conduct its operation of distribution, sales, packing, re-packing, storage, etc. Agents not only stored goods but also rendered certain other professional services like inventory management on behalf of assessee, packing goods in required quantity according to requirement of stockist/ dealers, follow up collection, maintaining bank accounts of sale proceeds, etc. In consideration of services to be rendered by C&FR agents, remuneration was payable at 1.85% of amount of invoice raised per month for gross value of goods sold. Assessee did not have any interest whatsoever in various places where his goods were stored. On payments made to C&FRs, assessee deducted tax at source under section 194C on basis that payments made to C&FRs were in nature of payments made to contractors. However, Dy. Commissioner held that in essence agreement was for safe storage of goods and, therefore, payment made to C&FR agents was payment of rent for warehouse facility provided by them and, as such, assessee ought to have deducted tax at source under section 194-I.

Held that payment by assessee to its C&FR agents was not in nature of rent and, therefore, provisions of section 194-I were not applicable.

CIT v. Morgan Securities & Credits (P.) Ltd. (2007) 162 Taxman 124 (Delhi)

Section 36(1)(vii) Bad Debts

Where assessee had written off a debt as irrecoverable, it was allowable as bad debt; Assessing Officer was not justified in adding back bad debt holding, inter alia that their writing off as bad was not predicated on an honest opinion formed by assessee and further that provisions could not be used as a carte blanche to treat any debt as bad during year in which it had become exigible to tax.

Pardeep Kumar Dhir v. Asstt. CIT (2007) 107 ITD 118 (Chd.)(TM)

Section 199 Deduction of tax at source - Credit for tax deducted

If instead of entire income referable to amount of tax deducted, only a portion of income is found assessable in assessment year in question benefit has to be allowed only on such portion shown as income and credit for balance TDS can be allowed only in future when balance of such income is assessable.

Pal Synthetics Ltd. V. JCIT (ITA No. 1310/Mum/2003 dated 06-02-2007)

Computation of Book Profit - Receipt of capital subsidy credited to Profit & Loss account exempt from tax could also not form part of Book profit.

Circulars / Notifications

Notification No. 216/2007 [F. No. 142/11/2007-TPL], dated 7-8-2007

Wealth-tax (First Amendment) Rules, 2007 - Amendments in rule 4A, substitution of rule 4AA and Form DA; insertion of Form DAA

Notification No. 215/2007 [F. No. 142/11/2007-TPL], dated 7-8-2007

Income-tax (Ninth Amendment) Rules, 2007 - Amendments in rule 44C; substitution of rule 44CA and Form No. 34B; insertion of Form No. 34BA

INDIRECT TAXES

Judicial Pronouncements

CCE v. N.H.K. Springs Ltd. (2007) 9 STT 548 (New Delhi-CESTAT)

Rule 2(l) of the Cenvat Credit Rules, 2004 - Cenvat credit - Input service.

In view of expanded meaning of expression place of removal, outward transportation up to place of removal has been recognized as input service.

Where goods manufactured by assessee were removed for sale from factory, service tax paid on transportation of finished goods from factory to premises of customer could not be taken as Cenvat credit by assessee.

Circulars / Notifications

Circular No. 96/2007 dated 23-08-2007

Clarification on technical issues relating to taxation of services and list of three digit codes

Circular No. 97/2007dated 23-08-2007

Comprehensive circular on procedural issues under Service Tax.

OTHER LAWS

Judicial Pronouncements

M/s Bhandari Construction Company v. Narayan Gopal Upadhey Appeal (Civil) 866 of 2007

The appellant is a construction company. The respondent has entered into an agreement with the appellant company for purchase of shop for Rs. 9,00,000/-. The said amount was paid to the company in 2 cheques. It was admitted by the respondent that the same has been returned. Another agreement was entered into with the company for purchase of shop at Rs. 7,75,000/- and an amount of Rs. 5,00,000/- was paid as advance. The respondent was contending that he has also made a payment of Rs. 4,00,000/- in cash for which he does not have any acknowledgement/evidence.

Held

When the terms of the transaction are reduced to writing, it is impossible to lead evidence to contradict its terms in view of section 91 of Evidence Act. The court clearly held that mere suspicion that builders in the country are prone to take a part of the sale amount in cash is no ground to accept the story of the payment of Rs. 4,00,000/-. There should be an independent evidence for proving the payment of such sum.

Om Metals Infraprojects Ltd., In re (2007) 78 SCL 14 (RAJ)

Section 394 of the Companies Act, 1956 - Amalgamation. Where share capital of transferor-companies become authorised capital of transferee company, no fee to registrar of companies or stamp duty to State Government is payable. When there is no legal impediment to grant of sanction to scheme of amalgamation between transferee and transferor companies, same is to be sanctioned but subject to fulfilling of condition of enhancing authorised capital after following procedure under Act.

I.B. Rao v. Registrar of Companies (2007) 77 SCI 182 (AP)

Section 63 - Criminal liability for misstatement in Prospectus

For filing complaint under sections 63 & 628, period of limitation would commence from date on which such offence first came to knowledge of complainant.

Circulars / Notifications

A.P. (DIR SERIES) Circular No. 7, Dtd. 22-8-2007

Rupee Loans to NRI Employees of Indian Companies under Employees Stock Option (ESOP) Scheme

1. As you are aware, banks are allowed to extend loans in Rupees to resident employees of an Indian company to purchase shares of the company under Employees Stock Option (ESOP) Scheme, to the extent of 90 per cent of the purchase price of the shares or Rupees 20 lakh, whichever is lower. Rupee loans extended by banks under ESOP Scheme is treated as bank's exposure to capital market, within the overall ceiling of 40 per cent of its net worth.

2. In terms of Regulation 7 of FEMA Notification No. 4/2000-RB dated 3rd May, 2000 [Foreign Exchange Management (Borrowing and Lending in Rupees) Regulations, 2000] as amended from time to time, AD banks are allowed to grant Rupee loans to Non-Resident Indians (NRIs) for certain purposes, subject to conditions.

3. We have been receiving requests from banks for allowing them to grant Rupee loans to NRI employees of Indian companies for the purpose of buying shares of the companies under the ESOP scheme. The requests have been examined and it has been decided to allow Authorised Dealer Category I (AD Category I) banks to grant Rupee loans to NRI employees of Indian companies for acquiring shares of the companies under the ESOP Scheme. The loan scheme should be as per the policy approved by the banks Board and would further be subject to the following conditions :

   (i) The loan amount should not exceed 90 per cent of the purchase price of the shares or Rupees 20 lakhs per NRI employee, whichever is lower.

   (ii) The rate of interest and margin on such loans may be decided by the banks, subject to the directives issued by the Reserve Bank from time to time.

   (iii) The amount shall be paid directly by the bank to the company and should not be credited to the borrowers non-resident accounts in India.

   (iv) The loan amount should be repaid by the borrower by way of inward remittances or by debit to his NRO / NRE / FCNR(B) account.

   (v) The loans will be included for reckoning capital market exposures and the bank will ensure compliance with prudential limits, prescribed by the Reserve Bank (DBOD) from time to time, for such exposure to capital market.

4. Necessary amendments to the Foreign Exchange Management (Borrowing and Lending in Rupees) Regulations, 2000 are being issued separately.

5. AD Category I banks may bring the contents of this circular to the notice of their constituents and customers concerned.

6. The directions contained in this circular have been issued under Sections 10 (4) and 11(1) of the Foreign Exchange Management Act, 1999 (42 of 1999) and is without prejudice to permissions/approvals, if any, required under any other law.

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

5th Sept.	**Payment of Service Tax & Excise for August**
7th Sept.	**TDS/TCS Payment for August**
10th Sept.	**Excise Return ER1 / ER2 /ER6**
15th Sept.	**Advance Income Tax for Companies & non-corporate assessees**
	Advance FBT for Quarter ending September
	PF Contribution for August, Excise payment by SSI
21st Sept.	**ESIC Payment for August**

NEWS FLASHES

- The CBDT is considering a proposal to restrict the exemption of long term capital gain only to companies constituting the BSE-500 index.
- 9.4% - GDP growth rate
- 3.94% - Inflation based on the wholesale price index (WPI) for the week ended August 18
- Rs. 40,000 crore – The amount companies have mobilized through public issues in India so far in 2007.
- Rs. 61,500 crore – Total size of the domestic FMCG market
- 16 – The total number of Indian companies listed in the US. The total market cap of these companies is $120 billion (Rs. 4,92,000 crore)
- $ 643 billion (Rs. 26,36,300 crore) – The size of the global pharmaceuticals market.
- 12% - The growth in the Indian general insurance industry during then 1st quarter of 2007-08
- Over 1,00,000 – The number of dollar millionaires in India

Happy Janmashtami

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.

Trust your hopes, not your fears.