CIT v. P. V. Kalyanasundaram

Month-Year :	Jun – 2006
Author/s :	282 ITR 259 (Mad.)
Title :	CIT v. P. V. Kalyanasundaram

Details :

On 26-12-1998, the assessee had purchased a land and the same was registered for Rs.4.10 lakhs. Pursuant to a search action u/s.132 of the Income-tax Act, 1961, the Assessing Officer had passed block assessment order u/s.158BC of the Act for the block period from 1-4-1998 to 8-12-1998. During the course of the search, certain noting had been found. The assessee stated that he did not remember for what purpose he had made noting, which was confirmed by the assessee in a subsequent statement recorded on December 11, 1998. The land was purchased from one R. The seller's statement was also recorded on the date of search, *i.e.,* December 8, 1998. R admitted that he had received Rs.34.85 lakhs, but subsequently in an affidavit he mentioned that the sale consideration received was Rs.4.10 lakhs. In a further sworn statement R again stated that he had received Rs.34.85 lakhs. In the cash flow statement for the assessment year 1999-2000, *i.e.,* block period April 1, 1988, to December 8, 1998, the Assessing Officer adopted the sum in the cash flow relating to purchase of land at Rs.35.45 lakhs as against Rs.4,69,995 disclosed by the assessee in his cash flow statement. This resulted in an addition of Rs.30,75,005 as undisclosed income for the block period. The Commissioner (Appeals) noted that due to the conflicting nature of the statements given by the seller, his statement could not be relied upon and hence he deleted the addition made by the Assessing Officer. The Tribunal upheld the decision of the Commissioner (Appeals).

On appeal, The Madras High Court upheld the decision of the Tribunal and held as under :

> "The burden of proving actual consideration in such a transaction was that of the Revenue. The Assessing Officer did not conduct any independent enquiry relating to the value of the property purchased. He merely relied on the statement given by the seller. The deletion of the addition was justified."

Bajaj Sevashram Limited v. DCIT

Month-Year :	Jun – 2006
Author/s :	151 Taxman 233 (Raj.)
Title :	Bajaj Sevashram Limited v. DCIT

Details :

The assessee spread over the expenditure incurred on advertisement in the A.Y. 1993-94 over two years and claimed as deduction in the A.Ys. 1993-94 and 1994-95 equally. The Assessing Officer held that there was no categorization of the deferred revenue expenditure. The Tribunal accepted the spread over of the expenditure, but took the view that the spreading over should be in three years instead of two years. Accordingly, the Tribunal allowed the deduction of a expenditure in A.Y. 1993-94 and a in the A.Y. 1994-95 and disallowed the balance claim.

On appeal, the Rajasthan High Court held as under :

> "(i) Once the Tribunal accepted the spreading over of the expenses to be allowed for three years, notwithstanding the assessee having already claimed the entire expenditure spread over for two years, it ought to have spread over the same for 1995-96.
>
> (ii) Since the assessee had already claimed the deduction u/s.37(1) as per the last practice followed by him and accepted by the Department, he had claimed the expenses in question, up to the A.Y. 1994-95 only. But as a result of the Tribunal's opinion to spread it over three years as part of the allowable expenses, it had to spread over to subsequent year 1995-96, for which the assessee had not claimed deduction.
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> (iii) This had led to incongruity inasmuch as the Tribunal having accepted the principle of spreading over of expenses for allowance as deduction in giving effect to it had not kept in view the fact situation and not made any appropriate orders in pursuance of its own finding.
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> (iv) Therefore, the appeal was to be allowed and the Tribunal was directed to pass necessary orders in giving legitimate consequential effect to its own findings contained in its order."

CIT v. H.H. Sri Raja Rajagopala Thondaiman

Month-Year :	Jun – 2006
Author/s :	282 ITR 126 (Mad.)
Title :	CIT v. H.H. Sri Raja Rajagopala Thondaiman

Details :

The assessee, the ex-Ruler of the Pudukkottai Samsthanam had sold his palace in the A.Y. 1996-97 for a consideration of Rs.17,76,020. The assessee claimed exemption from tax on the sale proceeds. The Assessing Officer charged the sale proceeds to tax as long-term capital gain. The Tribunal deleted the addition.

On appeal, the Madras High Court upheld the decision of the Tribunal and held as under :

"The Tribunal was right in holding that there was no capital gains assessable in respect of the transfer of the site and palace at Pudukkottai belonging to the assessee, for a consideration of Rs.17,76,020, on the ground that there was no cost of acquisition and the capital gains could not be computed ignoring the fact that the property in question was obtained in consideration of his estate at Pudukkottai merging with erstwhile State of Madras."

CIT v. Amba Impex

Month-Year :	Jun - 2006
Author/s :	282 ITR 144 (Guj.); 201 CTR 409 (Guj.)
Title :	CIT v. Amba Impex

Details :

The assessee was entitled to deduction u/s. 80HHC of the Income-tax Act, 1961 in respect of its export business. In the A.Y. 2001-02, the assessee had claimed deduction u/s.80HHC in respect of the exchange rate difference pertaining to export made in the earlier years. The Assessing Officer disallowed the claim for deduction. The Tribunal allowed the assessee claim.

On appeal, the Gujarat High Court remanded the matter back to the Tribunal and held as under :

> "(i) U/s.(2) of S. 80HHC, sale proceeds of goods or merchandise exported out of India and received in convertible foreign exchange become entitled to the deduction, subject to fulfillment of other requisite conditions. Clause (a) of Ss.(2) of S. 80HHC provided that such sale proceeds have to be received in convertible foreign exchange within a period of six months from the end of the previous year or, within such further period as the competent authority may allow in this behalf. Thus, a plain reading of the provision makes it clear that once the competent authority has extended the time, in a case where it is necessary, or, where the sale proceeds have been received within a period of six months from the end of the previous year, or within further extended period, as sale proceeds relatable to exports, it would not be open to Revenue to raise such a controversy.
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> (ii) The legislature in its wisdom has taken into consideration the fact that in case of exports made, sale proceeds are not necessarily realizable immediately within the accounting period in which exports have been made. As a corollary, by the time such sale proceeds are received within the prescribed time, by virtue of exchange rate difference, there might be situation where a larger amount is received than the amount as reflected in the shipping bill. Hence, merely because an amount is received in a year subsequent to the year of export by way of exchange rate difference, it does not necessarily always follow that the same is

not relatable to the exports made.

(iii) None of the authorities have approached the issue in the light of the provisions of Ss.(2) of S. 80HHC. No evidence is available on record to establish fulfillment or otherwise, of the conditions stipulated by Ss.(2) of S. 80HHC. In these circumstances, it would not be fair and just to either side to resolve the controversy in absence of the relevant facts and evidence being available on record.

(iv) In light of what is stated hereinbefore, the question is left unanswered and the appeal is restored to the file of the Tribunal, only in relation to the issue relatable to deduction u/s.80HHC, without expressing any final opinion on merits of the matter. The Tribunal shall, after hearing both the sides, decide the appeal on this count, after permitting additional evidence on record, if necessary."

Ashok Kumar v. ITO

Month-Year :	Jun – 2006
Author/s :	201 CTR 178 (J&K)
Title :	Ashok Kumar v. ITO

Details :

The assessee was engaged in the business of glassware and crockery goods which were imported from outside the state and were subject to check at the entry. In the A.Y. 1990-91, the Assessing Officer found that the assessee had inflated the value of the stock in the statement given to the Bank for hypothecation, for increasing the cash credit limit. The assessing officer made an addition of Rs.5,76,735 as the value difference in the stock statement given to the Bank. The Tribunal upheld the addition. In appeal, the Jammu and Kashmir High Court deleted the addition and held as under :

> "(i) It is true that an admission is no doubt a relevant piece of evidence, but it is never conclusive. It is all the more so in the matter of assessment to tax. It is open to the assessee to explain or clarify under what circumstances it was made or to prove that what was stated did not reflect the true state of affairs.
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> (ii) In the stock position shown to the Bank, the assessee had not disclosed the quantity and weight of the stock, but had only given particulars of the goods and their value. Whereas the assessing authority as well as the Tribunal labored under the impression that the quantity and weight of the goods declared to the Bank differed with that shown by the assessee in the trading account.
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> (iii) It is thus clear that an addition has been made, neither on the ground that the assessee had more stock on 31st March 1990, nor on the ground that the assessee had any concealed income which had been invested by it in the closing stock, but simply on the ground that the closing stock declared in the trading account after physical verification and the value thereof differed with the stock position given to the Bank.
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> (iv) While making the addition, the assessing authority as well as the Tribunal ignored the important fact that the goods/stock shown in the trading account on 31st March 1990 were as per verification and valued at cost, whereas in the declaration made to the Bank the stock was not valued at cost, but was on rough

estimate. As a matter of fact, no statement of stock as on 31st March 1990 was filed before the Bank. It was only for the period ending up to 15th February 1990.

(v) The assessing authority and the Tribunal thus have completely misread the document (declaration) furnished by the assessee to the Bank and, therefore, the orders of the assessing authority as well as of the Tribunal are not sustainable in law."

K. Kacharadas Patel Specific Family Trust v. CIT

Month-Year :	Jun – 2006
Author/s :	282 ITR 317 (Guj.)
Title :	K. Kacharadas Patel Specific Family Trust v. CIT

Details :

The assessee was carrying on the business of manufacturing detergent powder under a royalty agreement with N. Sales of finished products were effected through a chain of consignee distributors located at various stations in the country, and under the agreement with such consignee distributors, it was the consignee distributors who were primarily liable to incur expenditure on advertisements. However, an arrangement had been worked out between the assessee and such distributors to ensure publication of uniform and systematic advertisements. Therefore, the assessee undertook work of issuing advertisements and towards the expenditure incurred by the assessee, recoveries were effected from the consignee distributors towards such advertisements. The rate of such recovery was 2% of the net sales or Rs.1,50,000, whichever was less. Accordingly, against the expenditure of Rs.32,36,844 incurred by the assessee, recoveries to the extent of Rs.42,01,069 had been made, resulting in excess recovery of Rs.9,64,219 for the A.Y. 1984-85. In the assessment u/s.143(3) of the Income-tax Act, 1961, this excess recovery of Rs.9,64,219 was accepted as business profit and deduction u/s.80I was allowed on such business profit. Exercising powers u/s.263 of the Act, the Commissioner of Income-tax held that such excess of recovery was not relatable to the business of assessee and was not entitled to deduction u/s.80I of the Act. The Tribunal held that the recoveries made from the consignee distributors were directly relegated to net sales of the detergent powder made by the consignee distributors and were includible in computing the deduction u/s.80I.

On reference, the Gujarat High Court upheld the decision of the Tribunal and held as under :

"The Tribunal had taken into consideration the terms of the agreement entered into by the assessee with the consignee distributors and recorded a finding to the effect that the recoveries made from the consignee distributors were directly related to net sales of the detergent powder made by the consignee distributors. The excess recoveries were includible in computing the special deduction u/s.80-I.

CIT v. Nem Kumar Jain

Month-Year :	Jun – 2006
Author/s :	151 Taxman 187 (All.)
Title :	CIT v. Nem Kumar Jain

Details :

During search conducted in the assessee's premises, the assessee surrendered a certain sum as undisclosed income in a statement recorded u/s. 132(4). Thereafter, the assessee filed return disclosing his income plus agricultural income. The assessment was completed u/s.143(3) and the Assessing Officer imposed penalty u/s.271(1)(c), on the ground that manner in which income had been derived was not disclosed and tax on such income was not paid before furnishing the return. The Tribunal deleted the penalty holding that the ingredients of S. 271(1)(c) are not satisfied.

On reference, Allahabad High Court upheld the decision of the Tribunal and held as under :

> "(i) In the instant case, it was not the case that the tax along with interest had not been deposited. The case of the Revenue was that the tax was not deposited before filing of return. Explanation 5(2) to S. 271(1)(c) does not say that the tax along with interest should be deposited before filing of the return. The Tribunal had not considered that aspect of the matter, but merely because the tax had not been deposited before filing of the return, it would not make Explanation 5(2) inapplicable.
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> (ii) Tribunal was justified in deleting the penalty imposed u/s.271(1)(c)."

South India Surgical Co. Limited v. ACIT

Month-Year :	Jun – 2006
Author/s :	201 CTR 289 (Mad.)
Title :	South India Surgical Co. Limited v. ACIT

Details :

The assessee company was carrying on business of manufacturing and marketing surgical instruments. For the A.Y. 1996-97, the Assessing Officer disallowed the claim for bad debts of Rs.65,28,748 and the said disallowance was confirmed by the Tribunal.

On appeal, the Madras High Court upheld the disallowance and held as under :

> "(i) It is not sufficient for the assessee to say that he has become pessimistic about the prospect of recovery of debt in question. He must feel honestly convinced that the financial position of the debtor was so precarious and shaky that it would be impossible to collect any money from him. The question is really one of fact depending upon the various facts and diverse circumstances bearing on the debtor's pecuniary position, his commitments and obligations.
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> (ii) The judgment of the assessee in regarding the debt as bad debt must be a honest judgment and not a convenient judgment. The judgment of the assessee must be established to have been taken on relevant facts and circumstances, which should show that the debt is not realizable for some fault on the part of the debtor or some supervening impossibility on the part of the debtor to pay, but not possible difficulties or hurdles the assessee may have to incur to compel the recalcitrant debtor to pay.
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> (iii) The assessee for his convenience may decide that the debt is too small and it is not worthwhile to pursue the debtor, but that judgment would not be a honest judgment, which would establish that the debt has become a bad debt.
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> (iv) A time-barred debt can be assumed to be bad, but is not necessarily bad because of expiry of limitation for recovery of the same.
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> (v) On the perusal of the correspondence produced by the assessee, it is clear that the concerned hospitals have acknowledged that they are due to pay these amounts to the assessee. It was only the paucity of allocated budget to the hospitals that resulted in non-payment. The parties are actually Government

themselves. It would be preposterous to consider that the Government is not in a position to discharge its acknowledged debt. It might be due to certain fund-flow problem and priority between different needs and there is postponement in discharging certain liability by the Government. There is no negation of claim, nor any Government hospital has written that they would not pay any of these amounts.

(vi) The other parties from whom huge amounts running into lakhs are due are public and private hospitals. In this case also, the assessee did not produce any evidence to support its stand that the debts have become bad. With regard to a sum of Rs.2,14,365 due from one Dr. R, he refused to pay the amount as he had got the orders to the assessee from the hospital. The said reason cannot be a ground for writing off the amount, as in any event it could only be treated as commission in kind.

(vii) Except the unilateral act of the assessee to write off the debts as bad debts in the books of account for the previous year relevant to the assessment year, the assessee has not made out any case to regard the debts as irrecoverable. The judgment of the assessee in regarding the debts as bad debts is only regarded as convenient judgment to suit his claim, but not a honest judgment having regard to the financial position of the hospitals.

(viii) The Tribunal is right in law in holding that the debt claimed by the appellant as bad had not become bad and thus not allowable as deduction u/s.36(1)(vii)."

CIT v. Sanco Trans Ltd.

Month-Year :	Jun - 2006
Author/s :	201 CTR 439 (Mad.)
Title :	CIT v. Sanco Trans Ltd.

Details :

In the A.Y. 1995-96, the assessee had claimed deduction of deferred revenue expenditure incurred at their leased premises at the container freight station. The assessee pointed out that the expenditure had been incurred for the purpose of black topping on the ground, repairs and leveling of platforms, go down, roads, etc. during the F.Y. 1993-94. The Assessing Officer found that the expenditure had been incurred by the subsidiary of the assessee company and was transferred to the assessee account by the way of debit note dated 31-3-1995. However, he disallowed the expenditure on the ground that it was not incurred in the relevant year. CIT(A) allowed the claim which was upheld by the Tribunal.

On appeal, by the Revenue, the Madras High Court upheld the decision of the Tribunal and held as under :

"CIT(A) having allowed the claim of the assessee-company in relation to expenditure on repairs/renovation incurred by the subsidiary company in the earlier year, but transferred to the account of the assessee-company by a debit note during the relevant previous year, and the Tribunal having affirmed the findings of the CIT(A), no substantial question of law arises."

Jamnagar Jilla Sahakari Kharid Vechan Sangh Limited

Month-Year :	Jun – 2006
Author/s :	201 CTR 243 (Guj.)
Title :	CIT v. Jamnagar Jilla Sahakari Kharid Vechan Sangh Limited

Details :

The assessee cooperative society was deriving income from dividend, interest and from trading activities. In the A.Y. 1981-82, the assessee had traded in a number of commodities including articles intended for agriculture. In respect of articles intended for agriculture, the assessee had claimed deduction u/s.80-P(2)(a)(iv) of the Income-tax Act, 1961 on the gross income without reducing any portion of the common expenditure. The assessing officer determined the net income by reducing the proportionate common expenditure. The Tribunal allowed the assessee's claim.

On reference, the Gujarat High Court upheld the decision of the Tribunal and held as under :

"Business of the assessee-society being an indivisible business, common expenditure which has no direct nexus with the activities specified in S. 80P(2)(a)(iv) cannot be apportioned for deducting the same from the income from such specified activities, and, therefore, deduction u/s.80P(2)(a)(iv) is to be allowed on the gross income."

CIT v. Daljeet Tyres

Month-Year :	Jun - 2006
Author/s :	201 CTR 530 (All.)
Title :	CIT v. Daljeet Tyres

Details :

The assessee is entitled for the investment allowance for the plant and machinery which was being used for business, wherein by the process of manufacture printed and coloured tin sheets were produced, which were capable of being sold in the market in acceptable form.