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SUMMARY OF CASE LAWS

Journals Referred:

317 ITR, 318 ITR; 121 ITD; 184 TAXMAN; 23 STT;

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Income Tax

A – Decision is in favour of Assessee.

Advance Ruling

There is no specific requirement in sub-clause (i) of section 245N(a) that determination in advance ruling should relate to tax liability of a non-resident.

Umicore Finance, In re 184 Taxman 99 (AAR-New Delhi).
318 ITR 78 AAR N- Delhi.

Appellate Tribunal

Where assessee is assessed at a loss, its case would be governed by clause (d) of section 253 (6) as clause (a) or (b) or (c) postulates assessment out of a positive figure and, in such a situation, court fee payable by assessee would be five hundred rupees only.

Gilbs Computer Ltd. V ITAT 184 Taxman 342 Bom.

Issue of notice

Assessee filed return for assessment year 1996-97 on 31-11-1996 assessment was framed under section 144. There was no evidence to show that notice under section 143(2) had been served on assessee before 30-11-1997, i.e. within one year of filing of return and accordingly assessment was void.

CIT v Cebon India Ltd.
184 Taxman 290 P & H.

Business Commencement of

A business is commenced as soon as an essential activity of that business is started. On 15-08-1995, it has acquired a licence from its parent company to sub-licence ESPN services for distribution of programmes in India via cable television system –By virtue of that licence, it entered into an agreement on 01-10-1995 with another company and appointed it as its sole distributor for distribution of ESPN programmes. Since assessee was ready to commence its business on 15-08-1995 when it acquired licence, it was held that business has commenced and expenses are admissible.

CIT V ESPN Software India (P.) Ltd. Taxman 452 Delhi.

Business disallowance

Certain deductions to be allowed only on actual payment - Assessment years 1987-88 and 1988-89 – Assessee had collected sales tax but same was not credited in its profit and loss account- It explained that amount so collected was covered under scheme of State Government whereby sale tax payable would be converted into loan and it had applied for such conversion- However, since assessee could not submit any supporting evidence to show that said amount had been converted into loan under scheme of Government, Assessing Officer invoked provisions of section 43B and made addition of amount of sale tax collected- Before Commissioner (Appeals), assessee produced certificate issued by State Government certifying that sum collected by assessee during relevant period had been deemed to be received as sales tax and had been converted into a loan- Commissioner (Appeals), after considering those documents in light of Circular No.496, dated 25-9-1987, deleted addition made under Section 43B – His order was upheld by Tribunal. On facts, it was held that Tribunal had taken correct decision –

CIT v. Official Liquida tor of Essab Computer (P.) Ltd. (Guj.)

Business Exp.

Where assessee company had paid amount of ESI and PF with in extended period of time, deductions for same would be available to assessee.

CIT V Usha (India) Ltd. 184 Taxman 83 Delhi.

Interest on borrowed capital

Assessee's claim for deduction was rejected by Assessing Officer on ground that assessee had given interest – free advances amounting to Rs.13.05 crores to its sister concern 'M' and therefore expenditure was not incurred by assessee wholly, exclusively and necessarily for purpose of its business –It was seen that loan was given to sister concern before loan was taken by assessee-company from bank – It was also noted that assessee company had enough reserves and surplus to give loan of Rs.13.05 crores to its sister concern. Therefore, deduction for interest was allowable to assessee under section 36(1)(iii)

CIT v H.B. Stock Holdings Ltd. 184 Taxman 352 Delhi.

Co-op. HSG Society

Assessee was a co-operative commercial housing society. It received transfer fee and non-occupancy charges from incoming/existing members and claimed that same was not taxable on principle of mutuality- it was held that even if receipt was issued in name of transferee, it was in nature of admission fee which could be appropriated only on transferee being admitted and surplus could be disposed of in favour of members only for objects which they would specify-transfer fee received by assessee would be governed by principle of mutuality and therefore would not be exigible to Tax-Similarly since object of contribution in form of non-occupation charges was for purpose of increasing society's funds, which could be used for objects of society, non-occupancy charges were also not taxable in hands of assessee being governed by principle of mutuality.

Mittal Court Premises Co-operative Society Ltd. V ITO 184 Taxman 292 (Bom.)

Mutuality

Assessee was a registered society established with object of promoting welfare among its members who contributed towards corpus fund – Welfare fund was utilized, inter alia, towards advance of loans to members on interest, which was major portion of its revenue – Surplus funds were invested in fixed deposits with bank and in shares- income earned by assessee by way of interest on investment and dividend on shares was governed by principle of mutually and, therefore, was not taxable.

Canara Bank Golden Jubilee Staff Welfare Fund V Dy.CIT
184 Taxman 508 Kar.

Prosecution

Assessees who were partners of a firm were prosecuted for having committed offence punishable under section 276C, read with Section 277, on allegation false returns were filed in order to evade income-tax-Trial Judge, however, it was found that accused persons had no active role to play in business of firm and moreover, prosecution had failed to establish that said partners were effectively controlling affairs of firm. The lower court acquitted assessees. There was no illegality with order of acquittal of accused members of firm

Union of India V Nalinidevi 184 Taxman 136 MP

Penalty

- Penalty under Section 271(1)(c) is imposed only when there is some element of deliberate default and not for a mere mistake. Assessee claimed set off of capital loss suffered on sale of machinery against profits of business-Assessing Officer disallowed assessee's claim and imposed penalty for furnishing inaccurate particulars-On appeal, Commissioner (Appeals) as well as Tribunal deleted penalty recording a finding of fact that furnishing of inaccurate particulars was simply a mistake and not a deliberate at tempt to evade tax- On facts deletion of penalty was found justified.

  CIT v. Sidhartha Enterprises
  184 Taxman 460 P & H.

- Assessee, a department of Haryana Government, committed default in issuing TDS certificates under section 203- Assessing Officer levied penalty under section 272A(2)(g)- Assessee contended that it was under bona fide belief that TDS certificates were to be issued and submitted with annual return, and for that reason there was delay, and therefore, no loss was caused to revenue as deduction of tax had already taken place- Since basis for imposing penalty was a mere technical violation, lower authorities were justified in deleting said penalty.

  CIT (TDS) v. Executive Engineer
  184 Taxman 379 P & H.

Settlement Commission

- Fixing of 31.3.2008 as cut-off date on which pre June 2007 applications would abate if not disposed of by Settlement Commission under section 245HA(1)(iv) and making available confidential information under section 245HA(3) would be clearly ultra vires Constitution and, therefore, two provisions are liable to be struck down as null and void ab initio- Settlement Commission mist fulfil its mandatory statutory duty in disposing of such applications as are referred to in section 245D(4A)(i) by date specified therein except where prevented from doing so due to any reason attributable to applicant; and that an application, in respect of which Settlement Commission had been prevented from fulfilling aforesaid mandatory statutory duty due to any reasons attributable on part of applicant, would abate on specified date under section 245HA(1)(iv)-

  Star Television News Ltd. v. Union of India (Bom.)
  184 Taxman 400 Bom.

- Though Settlement Commission has all powers which are vested with an income-tax authority, in addition to power conferred under Chapter XIX-A, yet such power can be exercised for purpose of procedure of settlement of application under section 245C and not for reassessment of tax of a particular year- where income disclosed by assessees under section 245C was not accepted by Settlement Commission as full and true disclosure of their income, applications filed under section 245C were not maintainable and, therefore, order passed by Settlement Commission enhancing income disclosed by assessees was without jurisdiction-

  Canara Jewellers v. Settlement Commission
  184 Taxman 491 Mad.

- Settlement Commission admitted application of assessee under section 245D- Department contended that assessee had failed to make full and true disclosure in first instance and that declaration-in-question was a second declaration which could not be aground for admitting application under section 245D- Since instant petition was filed only against order of Settlement Commission admitting application of assessee under section 245D, same could not be interfered with at instant stage. However, it would be open to department to raise point of maintainability of application before Settlement Commission which would be entitled to examine that question at final hearing stage of matter.

  CIT v. K. Hayaprakash Narayanan
  184 Taxman 85 SC.

Tax audit

In case of an individual carrying on business as a sole proprietor, it is necessary to comply with provisions of section 44AB only in respect of his business income and not in respect of his other income.

Ghain Construction v. State of Maharashtra
184 Taxman 52 Bom.

Accrual of Income

Amount was retained by contractee for successful completion of contract-Retention amount and additional security deposit does not accrue to assessee before completion of contract.

CIT v. P & C Constructions (P.) Ltd.
318 ITR 113 Mad.

Waiver of Interest

Assessee was minor in relevant assessment year. There was death of her father who was looking after business her mother and guardian was a housewife unfamiliar with tax matters-Entire tax was paid voluntarily and extra amount was also paid-There is sufficient reason for nonpayment of advance tax on time-Levy of interest 234A, 234B, 234C- was set aside.

V. Akilandeswari v. CCIT
318 ITR 1 (Mad).

Appeal to High Court

Appeal is to be preferred within 120 days of receipt of order of ITAT. There was Delay in filing appeal-No power vests in High Court to condone the delay-

Asst. CIT v. Shubhash Traders
318 ITR 402 Mad.

Appeal

- CBDT circular F. No.279/126/98-IT dated March 27, 2000 fixing monetary limits for appeals 15 is binding on Revenue. Appeals are liable to be dismissed.

  CIT v. Nagaraja Rao
  318 ITR 422 Mad.

- Circular of May 15, 2008 fixing monetary limit in case of appeal by Revenue-Monetary limit is applicable to pending cases requiring Dept to withdrawn such appeals.

  CIT v. Madhukar K. Inamdar (HUF)
  318 ITR 149 (Bom).

Business – Commencement of

Business-Assessee company was incorporated in July 1995,. It placed orders in Aug. 1995 for purchase. It appointed directors and employees in Nov. 1995. Bank account was opened in 1996-Assessing Officer disallowed expenditure incurred prior to commencement of bank account- High Court upheld the order of Tribunal that prior to opening of bank account assessee was incurring expenditure from Nov. 1995 –Income tax Act, 1961and the same was allowable-

CIT v. Whirlpool of India Ltd
318 ITR 347 Delhi.

Return –

Return which was signed by company secretary who is not competent to sign it u/s.140-Defect is curable-Opportunity ought to have been granted to assessee to cure defect-Defect was found when assessment proceedings was taken up and subsequent valid return was not considered on account of lateness- It is not proper-Revised return related back to orginal filing date.

CIT v. Haryana Sheet Flass Ltd.

318 ITR 173 Delhi.

TDS

- Assessee was providing computer education and training-Franchisee agreement was entered into under which fees were collected from students by assessee and shared with franchisees- It not a payment of rent. Tax need not be deducted at source u/s 194-I.

  CIT v. Niit Ltd.

  318 ITR 289 Delhi.

- Fees for technical services-Assessee was providing internet services to subscribers-Payment was made to non-resident for provision of internet bandwidth –No technical services were provided by non-resident to assessee-Payment is not fees for technical services-Assessee is not liable to deduct tax at source from payment made to non-resident u/s.9(1)(vii).

  CIT v. Estel Communications P. Ltd.

  318 ITR 185 Delhi.

Depreciation

By virtue of provisions effective from assessment year 1997-98 carry forward of deprecation is available up to 8 years-Assessee is entitled to set off of unabsorbed depreciation against short-term capital gains in assessment year 2000-01.

CIT v. S & S Power Switchgear Ltd.

318 ITR 187 Mad.

Foreign exchange rate fluctuation

Business loss – Disclosure of notional loss and gain on account of foreign exchange rate fluctuation is in accordance with law-Assessee is entitled to deduction.

CIT v. Tata Lucent Technologies Ltd.

318 ITR 110 Karn.

Income tax authorities

Powers of income tax authorities include – power to impound and retain books and documents under section 131- Maximum period of retention is fifteen days-Extension should be given only once and only for a few more days – Books and documents retained with Dept for many years-Assessee was granted compensation.

Subha and Prabha Builders P. Ltd v. ITO

318 ITR 29 Karn.

Industrial undertaking

Special deduction – Production of fruit-based drink mixes or concentrates-amounts to "processing, preservation and packaging of fruits or vegetables.." – Deduction is available-

Delna Rustom Boyce In re

318 ITR 455 AAR.

Warranty charges

Telecommunications service company has made provision for warranty charges-Provision is not simply an ad hoc method but based on scientific basis- It is definite business liability and is Deductible-

CIT v. Ericssion Communications P. Ltd.

318 ITR 340 Delhi.

Mutuality

Contribution received as transfer fee by the Housing Society from in-coming and outgoing member on transfer of flat in the Society is not table on transfer of flat in the Society is not taxable on principal of mutuality.

Sand Co-op Hsg Society v. LTD

317 ITR 47 Bom.

Nonresident taxation

Payment was received by nonresident for permitting use within India of database which is not technical being financial and economic information relating to companies with non-exclusion non-transferable rights of use. In the absence of PE, it is not taxable.

Factset Research Systems In Re

317 ITR 168 AAR.

Return of income

Return of income of assessee Co was signed by Co secretary who is not authorized person u/s.140. It is a defective return and can be rectified and relates back to the date of original return.

Prime Securities Ltd v. ACIT
317 ITR 27 Bom.

Capital Gains

- The term used in section 45(4) "distribution of Capital assets on the dissolution of firm or otherwise" cannot be extrapolated to bring retirement of one partner into the ambit of the section.

  ACIT v. Goyal dresses ITA N.1478/MDS/2007 dt.22.8.08
  TAT Chenna 121 ITD Par 1. ST3.

- Assessee had received gift of residence on 1-2-2003 from her daughter who had purchased it on 29.1.93. In A.Y. 04-05 she sold the residence and declared long term Capital Gains. Sp. Bench of Mumbai ITAT held that benefit of indexation should be applied w.e.f. 29.1.93, the date of acquisition by previous owner. The earlier decision in the case of Kishore Kanonho. (290 ITR AT 298 Mum) was reversed.

  DCIT v. Manjula J. Shall
  318 ITR 417 Mum SB.

DTAA

Malaysian Co has entered in to agreement with Indian Co for Supply of personnel. Foreign Co does not render Supervisory Services in India and does not maintain PE. Its income is not taxable in India.

DDI (Int. Taxation) v. Stock Engineers and Contractors
318 ITR AT 42 Mu.

Exempted Income

Bank Subscribed to tax free bonds not for earning tax free income but for meeting its statutory obligation of maintaining statutory liability. Section 14-A is not applicable and expenditure is allowable.

State BK of Travancore v. ACIT
318 ITR AT 171 Cochin.

D - Decision is in favour of Department.

Mutuality

Assessee club, claimed exemption in respect of interest income earned on bank deposits and FDRs on principle of mutuality. Since benefit of interest income derived by assessee was not extended to members of club, Assessing officer was justified in making additions in that respect.

Amar Singh Club V Union of India
184 Taxman 481 J & K.

Firm

Assessee –firm had paid salaries to some of its partners treating them as working partners. Said partners were residing in far away places from place of business of firm and, therefore, they could not be working partners of assessee firm. High Court upheld the disallowance

CIT V Sulaikha Clay Mines 184 Taxman 42 Ker.

Deemed dividend

Asseessee company was engaged as an ancillary unit of company 'P'- Both assessee company and 'P' had common shareholders / directors. For the purpose of modernization and expansion of plant and machinery of assessee-company P - Co advanced funds to assessee – Amount of advance had to be adjusted against entitlement to moneys of assessee company payable by 'P'. The advance would not fall within definition of 'deemed dividend' under section 2(22)(e).

Creative Dyeing & Printing 184 Taxman 483 Delhi.
318 ITR 476 Delhi.

Depreciation

The expression licences is used in section 32(1)(ii) to apply to licenses relatable to intellectual properties only and not to all licences. Since BSE card is not a business or commercial right relating to intellectual property rights, depreciation cannot be allowed on same.

CIT v Techno Shares & Stock Ltd. 184 Taxman 103 Bom.

Industrial undertaking

Gross total income is to be computed in accordance with provisions of sections 30 to 43D-Including current depreciation-Income of industrial undertaking cannot be enhanced by device of disclaiming current depreciation-

Plas Tiblends India Ltd v. Assl.
CIT 318 ITR 352 Bom.

Shipping business

Income earned by transportation of cargo from Indian ports to China by Swiss company is taxable in India-Special provision for such tax is not intended to be covered by DTAA-

Gearbulk AG, In re 318 ITR 66 AAR.

Double taxation avoidance

Under Collaboration agreement between Swedish company and Indian company-Swedish company agreed to manage and supervise installation of equipment-Management charges were received by assessee-Whether relating to business management or technical management is outside the scope of DTAA. It is not exempt from tax-

CIT v. Swedish Telecoms International AB 183 ITR 280 Bom.

Penalty

Various High Courts have held that unless A.O. has recorded his satisfaction in the assessment order reg. initiation of penalty proceedings, penalty is not valid. To get over that, amendment was made by insertion of Sec.271(1B) retrospectively w.e.f. 1-4-89 according deemed satisfaction to proceedings initiated without recording satisfaction Said retrospective amendment is held to be proper.

Mr. Madushrece Gujpta v. Union of India
317 ITR 107 Delhi.

Firm

Firm with chartered Accountants as partners paid Rs.16,18,140/- to the two retired partners and claimed it as deduction on the ground that it is diversion of income by overriding title. As the payment was on a/c of special terms mutually agreed upon, it is application of receipt and not deductible.

S. B. Billimoria & Co v. ACIT
317 ITR 203 AT Mum.

Exempted income

Since dividend income is exempted from tax, interest paid on borrowed Capital utilized in purchase of shares cannot be allowed as deduction u/s.14-A and such disallowance cab be made even in a year in which no exempt income has been received by the assessee.

Chem Invest Ltd v. ITD

121 ITD 318 Delhi SB.

Service Tax

A – Decision is in favour of Assessee.

Service Tax

When a builder undertakes construction work on his own without engaging the Services of any other person, then in such a case in the absence of service provider and service recipient relationship, the question of providing taxable Service to any person by other person does not arise.

Shri. Nandnagar CHS Ltd v. CST
(2009) 23 STT 46 AHD CESTAT.