

1 2009 TMI - 33633 - HC

Commissioner of Gift-tax Versus Ripan Kumar

Gift-tax – Whether Tribunal was right in holding that in valuing the unquoted shares for the purposes of working out the value of the deemed gift on March 20, 1979, and March 31, 1979, reference should be made to the balance-sheet of the said company as on March 31, 1978 - Revenue, has made an attempt to attack the order of the Tribunal by asserting that the Gift-tax Officer had rightly assessed the gift-tax by applying the break up method – finding of tribunal is justified - in terms of the view taken by the Division Bench in Shakuntala Devi's case reference is answered in favour of the assessee

2 2009 TMI - 33620 - HC

ATS INFRASTRUCTURE LTD. Versus CIT

Transfer of case from Delhi to Meerut - Show cause notice u/s 127 - even if the notice in question erroneously mentions the pendency of a case in Meerut, since the decision to transfer it there is in large measure influenced by the convenience of the Petitioners, it becomes impervious to challenge – Meerut is undoubtedly of closest proximity both to Delhi as well as to the Noida and hence the impugned decision is neither capriciousness, malafide nor arbitrary - Petitions lack merit and are dismissed

3 2009 TMI - 33619 - AAR

M/s K.T. Corporation, In re

Draft Reciprocal Carrier Services Agreement between K.T. Corporation, Korea and Vodafone Essar South Limited - Whether the Liaison Office of K.T. Corporation in New Delhi constitute a Permanent Establishment - L.O. was set up to act only as a communication channel and it became functional within the restrictions imposed by R.B.I - L.O. is, no doubt, a fixed place of business (i.e. an office) maintained exclusively for the purpose of collecting information for the applicant which is in the nature of preparatory and auxiliary character for the enterprise. Facts being so, L.O. cannot be regarded as PE of the applicant as per the exclusionary provision of Article 5(4) of the Treaty

4 2009 TMI - 33618 - HC

S.R. BATLIBOI & CO. Versus DEPARTMENT OF INCOME TAX (INVESTIGATION)

While audit of EMAAR, laptops were seized – Petitioner on request of Deputy Director, Income Tax (DDIT) provided the electronic data relating to three companies of the EMAAR Group together with the print copies of the data. Nevertheless, the DDIT insisted on securing total and unrestricted access to the laptops obviously in order to gain information and data of all the other clients of the Petitioner – held that Revenue is not empowered to make use of material stumbled in a Search against a third party - impugned summons are set aside, and Respondents are directed to return the laptops to Petitioner

5 2009 TMI - 33617 - AAR

Sri Ramachandra Educational and Health Trust (SREHT), In re

Agreement with HMI, USA for transfer of knowledge and experience - Whether Tax is to be deducted by SREHT, India at source U/s. 195 on the payments made on account of annual contract fee and additional fee to HMI, USA, when both the parties are exempt from tax in their respective countries - a clear picture of the activity and payments does not emerge from the facts available - As the applicant makes lump sum payment for various services rendered by HMI, it is not possible for us to say what amount relates to which particular service - we cannot give ruling that the applicant is not at all liable to deduct any tax at source

6 2009 TMI - 33616 - HC

Commissioner of Income Tax-III, Coimbatore Versus M/s Mani Spinning Mills P. Ltd.

Whether ITAT was right in holding that for purposes of computation of interest under Section 234B and 234C, tax credit u/s 115JAA has to be first set off against the tax payable and the interest under the said sections have to be computed after taking into consideration the tax credit carried forward u/s 115JAA even though there is no legal sanction for such adjustment u/s 208 to 211, u/s 234B or 234C or under any other provisions of the Act - question of law is answered against the revenue to the effect that the interest under the said two provisions have to be calculated after giving effect to the MAT credit

7 2009 TMI - 33615 - HC

Commissioner of Income Tax Central I, Chennai Versus M/s. Jumbo Bag Ltd.

Whether ITAT was right in cancelling the order CIT u/s 263 on the ground that deduction u/s 80HHC was allowable on the basis of book profits and not on the basis of eligible profits u/s 80HHC as per computation under the normal provisions of the Income Tax Act, while computing the books profits u/s 115JB - Assessing Officer is not entitled to touch the profit and loss account prepared by the assessee as per the provisions contained in the Companies Act, while arriving at the book profit under Section 115J and the book profit so arrived at should be the basis for taxation and therefore, the computation under Section 80HHC should be limited to the case of profits of eligible category only - question of law is answered against the revenue and the appeals are dismissed

8 2009 TMI - 33606 - HC

Commissioner of Income Tax Versus The Tiruttani Co-operative Sugar Mills Limited

Assessability of receipts on account of higher free sale of sugar and receipt of excise duty rebate - held that subsidy received by the assessee was not in the course of a trade so it was of a capital nature – in respect of "Receipt from concession in the rate of excise duty rebate" held that the incentives given by the Government in the form of higher free sugar were given exclusively for the purpose of repayment of loan borrowed for the purpose of meeting part of the capital cost from financial institutions and therefore were not revenue receipts - Both these receipts are capital in nature and therefore not to be treated as income liable to tax

9 2009 TMI - 33605 - HC

Commissioner of Income Tax Chennai Versus M/s. Anusha Investments Ltd.

Whether Tribunal was right in holding that MAT credit is to be set off from the tax payable before setting off the tax deducted at source and advance tax paid - Whether the MAT credit can be given priority of set off against tax payable, contrary to the Scheme of Schedule G of Form 1 - Whether the interest u/s 234B and 234C had to be calculated after giving the MAT credit against the tax payable on the basis of normal computation - questions of law answered in favour of the assessee

10 2009 TMI - 33604 - HC

M/s. Royal Stitches (P) Ltd. Versus The Chief Commissioner of Income Tax, Chennai

Chief Commissioner dismissing the respondent's petition for waiver of interest u/s 234-B – AO did not accept the claim of the assessee that the interest income from bank deposits should be assessed under the head 'business' - petitioner contend that respondent declined to exercise his power of discretion to grant waiver of interest arbitrarily by applying an irrelevant decision - notification 400/234/IT(B) dated 23.05.1996 issued by the CBDT u/s 119 empowers the Board to issue instructions and directions with regard to waiver of interest as claimed by assessee – there is no scope of interference in the order of the respondent, in respect of assessment years, 1993-94, 1994-95 and 1995-96 – but for A.Y. 1996-97 order of respondent is set aside

11 2009 TMI - 33603 - HC

Commissioner of Income Tax Bhopal Versus M/s Garg Trading Co.

Assessee offered income in respect of tendu patta business on the basis of provisions of S. 44AC – activity like collection of tendu leaves, pruning, prevention of diseases, plucking, arrangements of pudas at collection centres, drying, gradation of bid leaves, putting them in the bags and thereafter their transportation do not amount to "processing" of tendu leaves within the meaning of S. 206C - activity undertaken by the assessee is neither a manufacturing activity nor a processing activity –Tribunal was justified in law in the holding that case of assessee clearly falls within preview of S. 44-AC

12 2009 TMI - 33602 - HC

Commissioner of Income Tax, Guwahati Versus M/s. Peerchand Ratanlal Baid (HUF)

Addition of undisclosed income made for the block period - since the Assessing Officer had failed to initiate proceedings in terms of Section 153 read with Explanation 3 necessarily follows a conclusion that notice under Section 148 was necessary and no such notice having been given to the assessee the provisions of Section 153 did not authorise such notice to be issued any further - while dismissing the appeal of the Revenue we deem it proper to conclude that the provisions of Section 147/148 will apply to an assessment for a block period made under Chapter XIV-B

13 2009 TMI - 33591 - HC

SURAJMAL MEMORIAL EDUCATION SOCIETY, NEW DELHI Versus DIRECTOR GENERAL OF INCOME TAX (EXEMPTIONS) and ANR.

Denial of exemption under section 10(23C)(vi) and no renewal of exemption on the ground that the petitioner had not applied its income wholly and exclusively to objects for which it was set up - Petitioner claims that it had withdrawn amounts, credited to its principal, and thereafter paid sums to these two schools in cash – but there was no documentary proof - The Director General ordered to produce the books of account of the two schools - The petitioner failed to produce the books of accounts of those two schools and instead requested for issuance of summons under Section 131 - This request was turned down by the Director General. – Held that, this would indeed be a very dangerous precedent fraught with possibilities of harassment at the behest of the assessee, if, without any foundation the Department insists on a third party to produce its books of accounts – Petition dismissed

14 2009 TMI - 33590 - SC

Commissioner of Income Tax, Udaipur Rajasthan Versus McDowell & Co. Ltd.

Whether in the facts and in the circumstances of the case, the Division Bench of the High Court was justified in affirming the findings of ITAT deleting the disallowance of Rs.14,51,100/- holding that the technical service charges (royalty) payment under consideration is allowable based on subsequent agreement dated 10.4.1992 at higher rate than that based on earlier agreement entered into in December, 1990 even though earlier agreement entered into in December, 1990 was to be effective upto 2000 and had neither been substituted nor rescinded? – Held yes - The Tribunal and the High Court recorded a finding that the new agreement in April, 1992 was not a subterfuge or clandestine device to reduce the tax liability but was an expenditure incurred on business expediency and the decision of the parties to enter into an agreement was based on commercial consideration

15 2009 TMI - 33589 - SC

Commissioner of Income Tax, Udaipur Rajasthan Versus McDowell & Co. Ltd.

Whether on the facts and in the circumstances of the case, the ITAT was justified in allowing the depreciation on research and development assets which related to the closest business of fast food division/unit of the assessee company as such not used during the previous year? - Stand of the revenue is that machinery in respect of R & D centre related to the fast food unit which was closed and therefore the assessee was not entitled to any depreciation because there was no actual user of the machinery - Stand of the assessee on the other hand is that the machinery was used in respect of both the fast food and the liquor units. This aspect needs to be factually examined – matter remanded

16 2009 TMI - 33588 - SC

Commissioner of Income Tax, Udaipur Rajasthan Versus Mcdowell & Co. Ltd.

Section 43B - Furnishing of bank guarantee cannot be equated with actual payment which requires that money must flow from the assessee to the public exchequer as required under Section 43B. By no stretch of imagination it can be said that furnishing of bank guarantee is actual payment of tax or duty in cash – further - the expression now used in Section 43B (i)(a) is "Tax, Duty, Cess or fee or by whatever name called". It denotes that items enumerated constitute species of the same genus and the expression 'by whatever name called' which follows preceding words 'Tax', 'Duty', 'Cess' or 'fee' has been used ejusdem generis to confine the application of the provisions not on the basis of mere nomenclatures, but notwithstanding name, they must fall within the genus 'taxation' to which expression 'Tax', 'Duty', 'Cess' or 'Fee' as a group of its specie belong vis. - bottling fees chargeable from the assessee under the Rules framed under the Rajasthan Excise Act, 1950 and interest chargeable on late payment of bottling fees not covered by provisions of section 43B.

17 2009 TMI - 33587 - SC

Commissioner of Income Tax, Udaipur Rajasthan Versus Mcdowell & Co. Ltd.

Whether on the facts and in the circumstances of the case, the I.T.A.T. was justified in deleting the addition of Rs.2,77,887/- being made treating the expenditure incurred in purchase of new transformer as capital expenditure even when the old transformer still exists in the blocks of asset and not sold, discarded or demolished or destroyed? - Since neither the Tribunal nor the High Court dealt with the factual aspect in detail, we remit the matter to the Assessing Officer to consider the respective stands in the background of what has been stated by this Court in Saravana [2007 TMI - 1775 ] and Ramaraju [2007 TMI - 2064 ] cases

18 2009 TMI - 33586 - HC

Commissioner of Income Tax, Haldwani, Nainital Versus M/s. Kisan Sahkari Chini Mill

Assessee, a public sector co-operative sugar mill involved in mfg. and sale of sugar - Amount received by assessee being incentive as levy sugar released for free sale, claimed by the assessee as capital receipt but the AO has treated it to be revenue receipt - Order of the ITAT sustained in with tribunal held that the subsidy in question should be treated as capital receipt – revenue appeal dismissed

19 2009 TMI - 33585 - HC

Commissioner of Income-tax, Dehradun Versus M/s RBF Rig Corporation

Whether, the ITAT has erred in law in holding that reimbursement of expenses on account of catering charges and fuel etc. to the assessee were not part of the gross receipts for the purposes of S. 44BB – words used in the section, include the amount received by the assessee on account of catering charges and fuel etc. to the non-resident assessee involved in the business of oil exploration, as the catering charges do form part of 'services and facilities' in connection with the extraction or production of the mineral oil - catering charges and fuel expenses reimbursed cannot be excluded from the 'amount' defined in sub-section (2) of Section 44BB – tribunal's order set aside

20 2009 TMI - 33584 - HC

JAL HOTELS CO. LTD. Versus ASSTT. DIR. OF INCOME TAX

Legal propriety of notices issued u/s 148 - once the basic or primary facts have been disclosed, the burden to prove that amounts represents undisclosed income of the assessee is on the Revenue – there was no new material in the hands of the Revenue leading to the view that there was reason to believe that income had escaped assessment. Instead, the case is a classic instance of a change of opinion. Consequently, the Writ Petitions are allowed and the impugned Notice u/s 148 is quashed