

TAXATION

Legal Decisions

DIRECT TAXES

1. [Kerala State Stamp Vendors Association v. Office of the Accountant- General and others \[2006\] 282 ITR 7 \(Ker.\)](#)

Discount given to stamp vendors by the treasury of the State Government on sale of stamp papers is not subject to tax deduction at source. The stamp vendors are not agents and therefore this discount could not be treated as "commission or brokerage" under section 194H of the Income- tax Act,1961.

2. [P.C. Joshi v. Union of India and others \[2006\] 282 ITR 39 \(Bom.\)](#)

The question regarding National Tax Tribunal is a matter concerning the basic structure of the judicial framework of the Constitution. An ad interim order restraining the constitution of the National Tax Tribunal has been passed by Bombay High Court.

3. [CIT v. Pateshwari electrical and Associated Industries P. Ltd. \[2006\] 282 ITR 61 \(All.\)](#)

Letting out of house property (having a sarai license and a license from District Health Officer) to a bank to be used as a Guest house to be treated as a business income and not income from house property. The main reason was that the municipality of Nanital had assessed the property as a hotel establishment.

4. [CIT v. Mehsana district Co-operative Milk Producers Union Ltd. \[2006\] 282 ITR 24 \(Guj.\)](#)

Additional price paid by the co-operative society for the purchase of milk pursuant to a resolution of the Board of Directors on the last day of the accounting period shall be allowed

as a deduction. The nature of payment as purchase price cannot change and hence it does not amount to application of profits.

5. [Star India P. Ltd. v. Commissioner of Central Excise \[2006\] 280 ITR 321 \(SC\)](#)

Where the law provides for the punishment of an offence such provision cannot be understood to have a retrospective effect. Any liability although created retrospectively could not entail the punishment of payment of interest retrospectively. This decision was rendered in the context of levy of service tax for broadcasting which was first brought in, but later was the subject matter of validation, so that the levy of interest before the validation clause could not have retrospective effect.

6. [Dr. Prakash B. Sultane v. CIT \[2006\] 280 ITR 593 \(Bom.\)](#)

When an unmarried individual coparcener acquires assets on partition, such assets would be considered as individual assets. But on marriage the property would be assessable as the property of Hindu Undivided family.

7. [Sandvik Asia Ltd. v. CIT and others \[2006\] ITR 643\(SC\)](#)

The Government shall be liable on general principles to pay interest on the amounts of interest wrongfully retained. Where the refund of tax is delayed, interest payable for the delayed refund is also delayed. What applies to refund applies for interest also.

8. [U.P.Bhumi Sudhar Nigam v. CIT \[2006\] 280 ITR 197 \(All.\)](#)

Interest income from the grant required

The author CA. Mukta Kathuria is a member of the Institute working as Executive Officer at ICAI. She can be reached at mukta@icai.org.

to be deposited in treasury but deposited in commercial bank Interest income from the grant required to be deposited in treasury but deposited in commercial bank shall be assessable. Such interest will not be treated as diversion of income to the treasury on the principle of diversion of income by overriding title.

9. CIT v. Dharam Pal Singh (HUF) [2006] 280 ITR 629 (All)

The share of deceased karta shall not be excluded from the computation of capital gain even if such sale deed was entered into by the deceased and executed after his death by his son. This was so held as there was no physical partition of the property of HUF after the death of the karta and sale deed was executed with the entire property treating it to be HUF property.

10. CIT v. London Machinery Co. [2006] 280 ITR 271 (All)

The transfer of unpaid excise credit to the profit and loss account of the assessee is chargeable as profit under section 41(1) of the Income-tax Act, 1961.

11. Google Online India P. Ltd., In re [2006] 280 ITR 211(AAR)

The activity of providing / selling space for advertisement on the Google website proposed to be carried out by the applicant was covered in the definition of "Advertising agency" and was classifiable under section 65(105)(e) of Chapter V of the Finance Act, 1994.

Whether a service provided by the applicant is taxable service or not cannot be the subject-matter of advance ruling authority under section 96C(2) of the Finance Act, 1994.

Note: The Finance Act, 2006 has expanded the scope of AAR by inserting a new clause (f) to section 96C(2) which empowers the AAR to determine the liability to pay service tax on taxable service.

12. T.N. Power Finance and Infrastructure Development Corporations Ltd. [2006] 280 ITR 491 (Mad.)

Deduction of bad debt shall be allowed only on the basis of the principles laid down under section 36 (1)(vii). The direction of the Reserve Bank of India to provide for non-performing assets could not override the mandatory provisions of the section 36(1)(vii), which provides for a deduction not exceeding 5 percent. of the total income only in respect of provision for bad and doubtful assets which are predominantly revenue in nature or trade related and not for provision for non-performing assets which are of predominantly capital nature.

Note: The proviso to section 36(1)(vii)(c) gives an option to the assessee mentioned therein to claim deduction in respect of any provision made by it for any asset classified by the RBI as doubtful or loss assets for an amount not exceeding 10 percent of the amount of such assets as on the last day of the previous year. However, such deduction can be availed only for A.Y. 2003-04 and 2004-05

13. Navin Jindal v. Assistant CIT [2006] 280 ITR 608 (P&H)

The right to receive right shares is acquired at the time of acquisition of original shares. Therefore, period of holding of original shares is to be considered while determining the whether the gain / loss is short term or long term on sale of such right.

Note: This decision does not seem to be in line with clause (e) of Explanation 1 to section 2(42A) which specifies that period of holding in such a case should be reckoned from the date of offer of such right.

14. CIT v. Shital Prasad Kharag Prasad [2006] 280 ITR 541 (All.)

The notice under section 148 has to be

served on all adult members of the family who were in existence at the time of partition of the Joint Hindu family to validate the proceedings.

15. CIT v. Shiv Narain Karmendra Narain [2006] 280 ITR 355 (All.)

The question relating to classification of certain assets for determining the rate of depreciation cannot be considered as a mistake apparent from record for the purpose of invoking section 154.

16. CIT v. Manju Rani [2006] ITR 449 (All.)

When there are several methods of valuation, rectification is not permissible for substituting one method adopted by the assessee by another method chosen by the Assessing Officer. [*Wealth tax*]

17. CIT v. N.P. Mathew (Decd.) [2006] 280 ITR 44 (Ker.)

The department should be consistent at least in respect of the same assessee for different assessment years.

Note: The rule of res judicata is generally not applicable to taxation laws.

18. CIT v. Bright Automotive and Plastics Ltd. [2006] 280 ITR 157 (MP)

When appeal is made to the appellate tribunal it is the duty of the Tribunal to state facts and reason for its decision.

19. Kailash Investments P. Ltd. v. CIT [2006] 281 ITR 92 (Guj.)

The loss incurred by the assessee in conversion of call money liability into a debt, cannot be treated as a business expenditure under section 37 or loss under section 28 or capital loss under section 45 or loss under the head "other sources" in section 57. It shall be a dead loss.

20. CIT v. Rajasthan Spinning and Weaving Mills Ltd. [2006] 281 ITR 408 (Raj.)

The question of claim of deduction of any amount spent by the assessee as revenue expenditure incurred wholly or exclusively for the purpose of the business is not to be decided on the basis that the assessee must be entitled to whole benefit accruing from it. Therefore, the donation of a bus to a school where the children of the employees are studying can be treated as expenditure for welfare of the employees.

INDIRECT TAXES

EXCISE AND CUSTOMS

1. Vikram Cement v. CCE. [2006] (194) E.L.T 3 (S.C.)

The CENVAT credit on inputs being explosives used for blasting mines to produce limestone for use in manufacture of cement / clinkers in factory situated at some distance away from mines cannot be denied on the ground that they were not used as inputs within the factory. The scheme of CENVAT Rules, 2000 does not prohibit this.

Note: This decision overrules the contrary opinion in J.K. Udaipur Udyog Ltd. [2004] (171) E.L.T. 289 (SC)

2. Amrit Papers v. C.C.Ex. [2006] (194) E.L.T. 10 (SC)

The reversal of debit in the CENVAT credit account is allowed when exemption is subsequently denied.

3. Tata Teleservices Ltd. v. CCus. [2006] (194) E.L.T. 11 (SC)

While clarifying a notification, CBEC cannot pre-determine a issue that is matter of evidence. It should leave it to the department to establish the same before the adjudicating authorities.

CBEC circular cannot impose limitation which is not provided in exemption notification itself and whittle it down. It is especially so if notification merely reproduced a tariff entry and

the impugned limitation would tantamount to reading it in classification itself.

4. [CCus. v. Indo Exim \[2006\] \(194\) E.L.T. 19 \(SC\)](#)

Issue of facts not specifically pleaded in answer to writ petition before the High Court cannot be allowed as a ground for interference with decision of High Court.

5. [Anjaleem Enterprises Pvt. Ltd. v. CCEx. \[2006\] \(194\) E.L.T. 129 \(SC\)](#)

Condition of the goods / products at the time of leaving factory is one of the important aspects to be taken into account for purpose of valuation under section 4 of Central Excise Act, 1944.

6. [CCus. v. HICO Enterprises \[2006\] \(194\) E.L.T 157 \(Tri-LB\)](#)

The reference order passed by Larger Bench of Tribunal is not the final order within the meaning of section 129B(1) of Customs Act, 1962 and rectification application does not lie against such reference order.

7. [CCEx. v. Prabhat Chemicals \[2006\] \(194\) E.L.T 184 \(Tri-Del.\)](#)

Filing of appeal is itself a protest, therefore the refund could not be denied on technical ground that protest letter was not filed.

8. [CCEx. v. Hira Cement \[2006\] \(194\) E.L.T. 257 \(SC\)](#)

Non-filing of an appeal against an order in any event would not be a ground for refusing to consider the matter on its own merits. When public interest is involved in interpretation of law, the Court is entitled to go into the questions. In this case the precedent laid upon by the Tribunal was overruled by the Supreme Court subsequently. The matter was reopened and remanded to the Tribunal for considering all aspects.

9. [Royal Oil Seed Private Limited v. Union of India \[2006\] \(194\) E.L.T. 385 \(Bom.\)](#)

If the show cause notice is totally vague and does not disclose any material for rejecting invoice vale then such a show cause notice cannot be said to be validly issued.

10. [Bombay Snuff Pvt. Ltd. v. Union of India \[2006\] \(194\) E.L.T 264 \(Del.\)](#)

If a petition seeking reference under section 35G of the Central Excise Act, 1944 is not maintainable in a particular High Court, an appeal under section 35G ibid after its amendment cannot be said to be so maintainable.

11. [AM Overseas v. Union of India \[2006\] \(194\) E.L.T. 267 \(Guj.\)](#)

Where a bank account was seized during an investigation relating to goods exported by the petitioner, no directions under section 110(3) of Customs Act, 1962 read with sections 113(i) and 121 ibid could be issued to prevent the petitioner assessee from operating its bank account.

12. [CCEx. v. R. H. Industries \[2006\] \(194\) E.L.T 275 \(P&H\)](#)

Mere existence of exemption notification is not sufficient to show that inputs are wholly exempt or recognisable as non-duty paid or charged to nil rate of duty. Revenue should conduct necessary enquiry to see if the conditions of exemption are not satisfied in respect of inputs.

SERVICE TAX

13. [Synergy INFO-SERS v. CCEx. \[2006\] \(1\) S.T.R. 142 \(Tri.-Mumbai\)](#)

Service tax shall be payable even if taxable and non-taxable services are charged in the same bill.

14. [Essel Propack Ltd. v. CST \[2006\] \(1\) S.T.R 150 \(Tri.-Mumbai\)](#)

Royalty payment for use of technology cannot be equated with any services to be provided by foreign company to Indian company and thus are not liable for service tax.

15. SAP India System, Applications & Products in Data Processing Pvt. Ltd. v. CCEx. [2006] (1) S.T.R. 152 (Tri.-Chennai)

Services rendered by a consulting engineer in relation to software are taxable as consultancy engineers under section 65(31) of the Finance Act, 1994.

16. United Plastomers v. CCEx. [2006] (1) S.T.R. 194 (Tri.-Del.)

A dealer agent shall not be covered under the category of clearing and forwarding agent services for the levy of service tax as the goods are not being directly or indirectly handled by them.

17. Board of Cricket Control in India v. CCEx. [2006] 3 STT 59 (Mum.-CESTAT)

The income arising from the activities of cricket Board relating to :

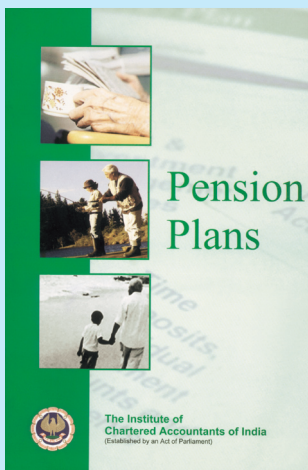
- sale of telecast rights of matches,
- permitting sponsors to use space for putting up advertisement in stadia,
- permitting logos on clothing and clothing accessories of the players shall be taxable under the head " Advertising agency".

18. Samsung Electronics Co. Ltd. v. CCEx. [2006] (1) S.T.R (Tri.-Delhi)

Know-how fees and royalty paid to holding company towards right to use trade mark is merely a transaction in property and not consultancy advice. Thus service tax is not leviable. □

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