

Select Legal Decisions

DIRECT TAXES

1. Ramilabaen Ratilal Shah v. CIT (2006) 152 Taxman 37 (Guj)

(i) Noting in a diary seized constitutes sufficient information for the assessing authority to form a *prima facie* opinion that income has escaped assessment. Reassessment proceedings can, therefore, be initiated on this basis.

(ii) Excess of the value of property as per the noting in the seized diary, over the value as per books of account is deemed to be the undisclosed income of the assessee, where the explanation given by the assessee was not found to be satisfactory by the assessing authority.

2. CIT v. Standard Radiators (P) Ltd. (2006) 152 Taxman 210 (Guj.)

The assessee changed its method of accounting from cash to mercantile system in the assessment year under consideration. The issue involved is whether bonus relating to an earlier year can be allowed as deduction in the relevant assessment year. It was held that since the assessee had been consistently paying bonus on cash basis in the past after the end of the accounting period and the same modality was adopted in the year under consideration, such payment cannot be considered as relating to an earlier year. Hence, bonus actually paid during the previous year is an allowable deduction.

3. M. M. Fisheries (P) Ltd. v. CIT (2006) 152 Taxman 247 (Del.)

Where an asset is owned by the director of a company in his personal capacity, then such asset cannot be deemed to be in the vested ownership or beneficial utility of the company. The director of the company was

the registered owner of the vehicle and the as per the findings recorded by the Tribunal, even the beneficial ownership did not vest in the assessee company. The company had no dominion over the vehicle nor was the vehicle provided as a perk to the director of the company. Therefore, the company is not entitled to claim depreciation under section 32 in respect of such vehicle.

4. CIT-II v. Sri Ram Memorial Education Promotion Society (2006) 152 Taxman 257 (All.)

The assessee did not deduct the tax at source in respect of the salary paid to the principal of the school. The Assessing Officer imposed penalty under section 272A(2)(c) and (g). The High Court held that once penalty under section 271C has been imposed on the assessee for not deducting the tax at source, penalty cannot be imposed under section 272A(c) and (g) for non-compliance of the provisions of sections 203 and 206. This is because, in a case where tax has not been deducted at source, the question of issuing the certificate of tax under section 203 or that of filing of return under section 206 would not arise at all.

5. Suresh Chand Talera v. Union of India (2006) 152 Taxman 348 (MP)

In this case, it was held that agricultural income of minor son of the assessee has to be included in the income of the assessee for the purpose of determining the rate of income-tax applicable to the income of the assessee.

6. Neset Holdings (P) Ltd. v. CIT (2006) 151 Taxman 309 (Delhi)

In this case, it was held that expenditure incurred by an assessee on payment of one-time non-refundable fee for membership

(The authors CA. Priya Subramanian and CA. Smita Mishra are Sr. Education Officer, and Executive Officer respectively at the Institute. They can be reached at flc@icai.org)

of OTC Exchange of India is a revenue expenditure allowable as deduction under section 37(1).

7. CIT, Lucknow v. Brigadier Paramanand (2006) 152 Taxman 123 (All.)

The assessee is entitled to carry forward and set-off unabsorbed depreciation under section 32(2), even though it was not determined in pursuance of a return filed under section 139, since section 80 which stipulates filing return of loss as per section 139 is not applicable to unabsorbed depreciation allowed to be carried forward under section 32(2).

8. Sahara Airlines Ltd. v. D.G.I.T (Inv.) North (2006) 152 Taxman 522 (All.)

This case is regarding exercise of power under section 127 to transfer a case from one Assessing Officer to another Assessing Officer. In this case, there are several assessees in a group, having their business activities and offices at different places throughout the country, and there is an element of interlacing of funds and intermixing of activities amongst the various entities of the group. In such cases, for proper and just assessment of tax, it is necessary to get the assessment proceedings transferred at any one place under one officer, as found appropriate by the income-tax authorities. The choice of place where the cases are to be transferred is fully within the domain of the transferring authority. The assessee does not have the choice of asking for a particular officer or a particular place for assessment to be made when power under section 127(2) is to be exercised. It is sufficient that the place where the cases are being transferred has sufficient links with the business activities of the group assessees.

9. ABP Ltd. v. JCIT (2006) 151 Taxman 161 (Cal.)

The Assessing Officer cannot initiate proceedings under section 148 by simply stating that he had reasons to believe that income has escaped assessment. The exercise of power in this manner would be an abuse

of power. It is necessary that the Assessing Officer should actually record the reasons in writing for initiation of proceedings under section 148.

10. CIT v. Laxmi Talkies (2006) 151 Taxman 99 (Guj.)

The assessee, a registered firm, carrying on business of exhibiting films in leased premises, incurring expenditure on account of stamp duty, interest etc. in addition to expenditure on renovation and repairs of cinema hall, claimed such expenditure as revenue expenditure. The High Court held that, since the expenditure would help the firm to increase its revenue by attracting more customers to cinema hall without bringing into existence any new asset or benefit of enduring nature, the expenditure incurred was a revenue expenditure.

INDIRECT TAXES

1. Udayani Ship Breakers Ltd. v. Commissioner of, Customs and Central Excise, Rajkot 2006 (195) ELT 3 (SC)

Remission of duty under section 22 of the Customs Act cannot be granted if the claim thereof has not been made before the Assessing Authority. A sale after the act of import is not a sale in course of international trade but only a sale in the course of domestic trade. Price paid during course of international trade should be the price for purposes of valuation, reduced price during course of domestic price is not relevant under section 14(1) of the Customs Act, 1962 read with Rule 4 of Customs (Valuation) Rule, 1988.

2. Jayantilal Thakkar & Company v. Union of India 2006 (195) ELT 9 (Bom.)

Advocates or legal advisers or auditors of company cannot be alleged or presumed to handle much less deal with excisable goods as contemplated under section 9(1)(bbb) of the Central Excise Act or erstwhile Rule 209A of the Central Excise Rules, 2001 while discharging their professional duties. Thus,

they are not liable to penalty for clandestine removal of goods by a company.

3. North West Switchgear Ltd. v Commissioner of Central Excise, New Delhi 2006 (195) ELT 134 (SC)

Fan regulators cleared as such and not with electric fan are classifiable as parts/accessories of fan under sub-heading 8414.99 of Central Excise Tariff and not under sub-heading 8414.20 ibid covering fans. The Supreme Court has held that if regulators have to be classified under 'electric fans' whether sold with fan or separately, then no part or accessory will be covered under sub-heading 8414.99 ibid.

4. Siddhartha Tubes Ltd. v. Commissioner of Central Excise, Indore (M.P.) 2006 (193) ELT 3 (SC)

Cost of bought out items viz. sockets, which are fitted to m.s./g.i. pipes before their removal from factory gate is includible in the assessable value of the pipes. The reason for the inclusion being the essentiality of the sockets for the functioning of the pipes as these sockets join the pipes to each other. Service charges paid to Madhya Pradesh Laghu Udyog Nigam Ltd., the selling agent, for supplying goods to various departments of State Government are also includible in the assessable value because they are not in nature of trade discount. Trade discount is admissible as deduction only if discount is given to a customer or the trader.

5. Siddhartha Tubes Ltd. v. Commissioner of Customs and Central Excise, Indore (M.P.) 2006 (193) ELT 6 (SC)

Galvanization cost is includible in assessable value of m.s. galvanized pipes even though galvanization does not amount to manufacture. The concept of valuation is different from concept of manufacture. In the instant case, the process of galvanization took place before product was cleared from place of removal. Galvanization adds to quality of product and increases the value of pipes. The cost of the process of galvanization,

being incidental to the manufacture of pipes, is includible in the assessable value of pipes.

6. Commissioner of Central Excise-II, Chennai v. Beacon Neyrpic Ltd. 2006 (193) ELT 16 (SC)

Assessee being related to its subsidiary company, by itself is not sufficient to invoke Valuation Rules. The Department has to go further and show that relationship has introduced an element other than purely commercial consideration in effecting sale by assessee to subsidiary company.

7. Commissioner of Central Excise and Customs Gujarat v. Pan Pipes Resplendents Ltd. 2006 (193) ELT 129 (SC)

Printing/decorating of duty paid plain glazed ceramic tiles does not amount to manufacture as it does not change the basic character of glazed tiles.

The Supreme Court stated that manufacture implies a change but every change is not a manufacture yet every change in an article is a result of some treatment, labour and manipulation. Therefore, for manufacture there must be transformation and a new article must result, having a distinct name, character or use.

8. Commissioner of Central Excise, Mangalore v. Micro Finish Valves (P) Ltd. 2006 (1) (S.T.R.) 283 (Tri. – Bang.)

Merely transferring of technical know-how is not covered under consulting engineer services.

9. Protec Laboratories Pvt. Ltd. v. Commissioner of Central Excise, Mumbai 2006 (1) STR 287 (Tri. – Mum.)

Service of obtaining and supplying free pharmaceutical samples from manufacturer to various doctors for advertising medicaments is not covered under clearing and forwarding services as neither any sale nor any clearing or forwarding of goods is involved in this case. The service may more appropriately be covered as business auxiliary service w.e.f. 9.7.2004. □