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INCOME TAX UPDATES

SUPREME COURT JUDGEMENTS

a. Sec.43B

Unutilized Modvat credit of earlier years adjusted in assessment year in question should be treated as actual payment of excise duty under Sec.43B.

Customs duty paid and allowed as deduction under Sec.43B can be added to value of closing stock.

CIT v. Maruti Udyog Ltd. [2010] 186 Taxman 49 (SC)

HIGH COURT JUDGEMENTS

b. Sec.115JA - MAT

Even after preparation of profit and loss account of assessee for relevant year in accordance with provisions of Parts II and III of Schedule VI of Companies act, Assessing Officer (AO) can compute book profits for purpose of Sec.115JA by examining applicability of each clause in Explanation to sub-section (2) of Sec.115JA.

CIT v. Brindavan Beverages Ltd. [2010] 186 Taxman 233 (Karnataka)

c. Sec.10B

Assessee registered with STPI was an exporter of computer software. For relevant year filed return claiming deduction under Sec.10B and AO rejected the claim on ground that assessee was not having its own infrastructure and used another concern's to develop its software. The CIT(A) and the Tribunal upheld assessee's claim and also held that the instant case was development and creation of intellectual property, viz. software programme, and hence the essential inputs for such development were that of personnel belonging to the assessee.

CIT v. Techdrive (India) Pvt. Ltd. [2010] 186 Taxman 208 (Delhi)

d. Sec.4 – mutual concern

Whether only when object of an assessee claiming to be mutual concern or club is to carry on particular business or where income is generated from members and non-members through business carried on by it, it would be treated as tainted with commerciality – Held Yes. Whether simply because some incidental activity of assessee was revenue generating, that would not provide any justification to hold that it was tainted with commerciality and reached a point where relationship of mutuality ended and that of trading began – Held Yes.

CIT v. Standing Conference of Public Enterprises (SCOPE) 186 Taxman 142 (Delhi)

e. Sec.36 - Bad debts

Effect of amendment to Sec.36(1)(vii) read with Sec.36(2), with effect from 1.4.1989 is only that now for claiming deduction under 36(1)(vii) it is not necessary for assessee to establish that debt had become bad in previous year and mere writing off of debt or part thereof as irrecoverable is substantial compliance of same.

On strength of amendment it cannot be said that an enquiry is not permissible to see and satisfy that there is some semblance of genuineness in such entry and same is not totally fake entry.

CIT v. Kohli Bros. Color Lab (P) Ltd [2010] 186 Taxman 62 (Allahabad)

f. Sec.80HHC read and 115JA

Whether while computing profit under section 115JB, deduction under Sec.80HHC is to be allowed on basis of book profits under Sec.115JB and not on basis of eligible profits under Sec.80HHC as per normal computation. Held- Yes.

CIT v. Futura Polyester Ltd. [2010] 186 Taxman 51 (Madras)

INCOMETAX TRIBUNAL JUDGEMENTS

a. Set off of losses vis-à-vis Sec.10A

In respect of AY 2003-04, the assessee had a unit in Chennai which was engaged in software development and whose profits were eligible for deduction u/s 10A. The assessee had another unit in Delhi which was engaged in trading and had suffered a loss. The assessee claimed that it was eligible for a deduction u/s 10A on the whole of the profits of the Chennai unit without it being reduced by the losses of the Delhi unit. The AO and CIT (A) rejected the claim on the ground that after the amendment of s. 10A w.e.f. 1.4.2001, a deduction is allowed from the "total income" and consequently the losses have to be taken into account. On a reference to the Special Bench, it was held that Sec.10A has to be given precedence before setting off losses.

Scientific Atlanta India Technology Pvt. Ltd. v. ACIT [ITA Nos.229,352 & 536/Mds/2007] (Chennai Special Bench ITAT)

RECENT DEVELOPMENTS**❖ New TDS provisions applicable from 1.4.2010**

CBDT has clarified vide Press Release dated 20th Jan 2010 that new provision relating to tax deduction at source (TDS) will become applicable with effect from 1st April 2010. Tax at higher of the prescribed rate or 20% will be deducted on all transactions liable to TDS, where the Permanent Account Number (PAN) of the deductee is not available. The law will also apply to all non-residents in respect of payments / remittances liable to TDS. As per the new provisions, certificate for deduction at lower rate or no deduction shall not be given by the assessing officer under section 197, or declaration by deductee under section 197A for non-deduction of TDS on payments shall not be valid, unless the application bears PAN of the applicant / deductee.

❖ Circular on FBT – adjustment of advance tax paid for 1st quarter

Circular No.2/2010 dated 29th Jan 2010 - the CBDT has clarified that any instalment of advance tax paid in respect of fringe benefits for assessment year 2010-11 shall be treated as Advance Tax paid by assessee concerned for assessment year 2010-11. The assessee can adjust such sum against its advance tax obligation in respect of income for assessment year 2010-11 or in case of loss etc. claim such payment as refund as advance tax paid in assessment year 2010-11.

SERVICE TAX UPDATES**a. Commercial training or coaching service**

Where assessee-company provided induction training programs covering ERP (SAP), its software products, quality software engineering and personality development topics to its prospective employees for which it collected certain amount from them, such activities undertaken by assessee amounted to giving training to its own employees and, hence the same cannot be covered under Commercial training or coaching services.

IVL India (P) Ltd. v, CCE & C [2009] 23 STT 145 (Bang CESTAT)

b. Advertising agency service

Activity of sale of publicity materials and carrying out of scanning cannot be construed as rendering of `advertising agency service`.

CST v. Elegant Publicities [2009] 23 STT 286 Chennai CESTAT

c. Construction of Complex service

Value of materials supplied and provided by service receiver to works contractor / construction service provider cannot be included in receipts of works contractor for calculating service tax.

Cemex Engineers v. CST [2009] 23 STT 389 Bang. CESTAT

d. Information technology software service

Since implementation of ERP services was specifically covered under IT service, which effective only from 16.5.2008, assessee, providing service implementation of ERP software, was not liable to service tax for period prior to that date.

IBM India Pvt. Ltd. v. CST [2009] 23 STT 338 Bang. CESTAT

e. CENVAT Input credit

- Where assessee used its aircraft for conveyance of its employees between its plants, such aircraft is held to be used for the purpose of its business and hence the service tax paid to Airports Authority of India for landing and parking in connection with operation of aircraft was eligible for availment of Cenvat credit.

Force Motors Ltd. v. CCE [2009] 23 STT 160 (Mum CESTAT)

- Assessee can avail Cenvat credit on payment of service tax to outdoor catering service received in canteen located in its manufacturing premises.

Ferromatik Milacron India Ltd. v. CCE [2009] 23 STT 200 (Ahd CESTAT)

- Cenvat credit of service tax paid on group insurance of employees is admissible.

HEG Ltd. v. CCE [2009] 23 STT 157 (New Delhi CESTAT)

- Where assessee-manufacturer used Xerox machine for designing and drawing, without which final product could not be manufactured, assessee was entitled to avail Cenvat credit on service tax paid on such service.

Parason Machinery (I) (P) Ltd. v. CCE [2009] 23 STT 289

OTHER NEWS

❖ ECONOMIC INDICATORS

a. Major indices & bullion

| Particulars | Opening 1.1.2010 | Closing 29.1.2010 |
|--------------------------|------------------|-------------------|
| SENSEX | 17464.81 | 16357.96 |
| NIFTY | 5201.05 | 4882.05 |
| Gold Rates 24K (gms.) | 1681 | 1524 |

b. Forex

| Particulars | Opening 1.1.2010 | Closing 29.1.2010 |
|----------------|------------------|-------------------|
| USD v INR | 46.65 | 46.28 |
| Euro v INR | 67.19 | 64.61 |
| Pound St v INR | 75.55 | 74.58 |

❖ COMPLIANCE CALENDAR

| Particulars | For the period | Due Date |
|--|--|--|
| Payment of TDS and TCS collection | Jan' 2010 | 07.2.2010 |
| Filing of ETDS returns | Oct 2009 - Dec 2009 quarter | 15.1.2010 |
| Service Tax payments by Companies | Jan' 2010 | 5.2.2010 (In case of E-payment 6.2.2010) |
| Service tax payment by individuals / firms | for 3 rd quarter of 2009-10 | 5.1.2010 |