TWO RECENT DECISIONS OF SUPREME COURT PROVIDING RELIEF TO TAXPAYERS

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Decisions rendered by the Supreme Court become law of the land because of Article 141 of the Constitution of India. The decisions of the Supreme Court are binding on the tax department and all appellate authorities have to follow such decisions. However, occasionally the decision of the Supreme Court is also referred as deserving reconsideration by a larger Bench which is akin to observing the decision as not indicating the true purport of law. Example for this could be found in *Dilip N.Shroff v. Joint CIT (2007) 291 ITR 519 (SC)* referred to in *Union of India v. Dharmendra Textile Processors (2007) 295 ITR 244 (SC)* in page 251.

However, each of the apex court decision when it is applicable to the current provisions of law (i.e. a legal provision still in vogue), the tax counsels take a look at it with all reverence and treat it as, the law. Of course, it could be scuttled by the Legislature subsequently by bringing amendment to law either prospectively or retrospectively.

This write up discusses two recent decisions of Supreme Court which have practical relevance and application besides providing relief to the taxpayers.

CIT v. Mahindra & Mahindra Ltd (2018) 93 taxmann.com 32 (SC)

The decision of the apex court affirms the decision of the Bombay High Court reported in 261 ITR 501 in the year 2003. The assessee entered into an agreement whereby it took a loan for purchase of tools and equipments. After some years the lender waived the principal amount of loan of Rs. 57.74 lakhs.

The short question before the Apex Court was whether the amount written off / waived by the lender is chargeable to tax in the hands of the recipient-assessee. The argument of the Revenue was two-fold viz. (i) it is taxable under section 41(1); alternatively (ii) the waiver falls within the ambit of section 28(iv). One clear fact was that the amount was given previously as loan with interest and it was waived after some time. Prior to such write off it was shown as "loan-unsecured" in the balance sheet of the borrower-assessee.

Section 28(iv) provides for taxation of value of any benefit or perquisite, whether convertible in to money or not, arising from business or the exercise of profession.

Section 41(1) says any amount of loss or expenditure or trading liability incurred by the assessee and subsequently the assessee obtains some benefit in respect of such loss or expenditure or trading liability, by way of remission or cessation thereof, the amount of benefit so obtained shall be deemed to be the profits and gains of business or profession. This is regardless of whether the business is continued or existing at the time of receipt of such benefit or cessation or waiver.

Decision of the Apex Court

The Court held that to apply section 28(iv) the benefit must have been received in some other form other than in the shape of money. In this case, the assessee received waiver of Rs.57.74 lakhs which was received as cash receipt due to waiver of loan. The apex court held that the very first condition of section 28(iv) which says "any benefit or perquisite arising from the business shall be in the form of benefit or perquisite other than in the shape of money" and which is not satisfied in this case. Hence it held that the amount cannot be taxed under section 28(iv) of the Act.

As regards application of section 41(1), the apex court took note of legal provision and held that there should be an allowance or deduction claimed by the assessee for any year in respect of loss, expenditure or trading liability incurred and subsequently if the creditor remits or waives any such liability, the assessee is liable to pay tax under section 41 of the Act. The objective of the section is to ensure that **the assessee does not get away with double benefit once by way of deduction and another by not being taxed on the benefit received by him in the later year with reference to the deduction allowed earlier due to remission of such liability.**

The assessee in this case was paying interest but it was not claimed as deduction under section 36(1)(iii). The assessee had claimed only depreciation in respect of the asset and it has nothing to do with interest paid by it. The cost of machinery purchased by the assessee was not debited to trading account or profit and loss account in any of the years. It distinguished the difference between "trading liability" and "other liability". It held that section 41(1) is applicable only in respect of trading liability. Waiver of loan by the lender leads to cessation of liability other than trading liability. Accordingly, it held that the argument of the Revenue for taxing the waiver of loan taken for purchase of capital asset would not fall under section 41(1) of the Act.

This decision of the Apex Court would nullify the decision such as *CIT v. Ramaniyam Homes (P) Ltd (2016) 384 ITR 530 (Mad)* and uphold decisions such as *Logitronics (P) Ltd v. CIT (2011) 333 ITR 386 (Del); CIT v. Cochin Co (P) Ltd (1989) 184*

ITR 230 (Ker) and *CIT v. Chetan Chemicals (P) Ltd (2004) 267 ITR 770 (Guj)*.

CIT v Calcutta Export Company (2018) 93 taxmann.com 51 (SC)

This is yet another decision of the apex court which provides relief to the taxpayers. The assessee filed return of income for the assessment year 2005-06 declaring total income of Rs.418.18 lakhs. The case was selected for scrutiny and while completing the assessment, the Assessing Officer disallowed Rs.40.82 lakhs towards export commission which must have been deposited before the end of the previous year (as the law stood then). The amount of tax deducted at source was however remitted before the 'due date' for filing the return specified in section 139(1).

The Finance Act, 2008 extended the time for remittance of the tax deducted at source up to the due date for filing the return in the case of tax deducted in the last month of the previous year and any other case, on or before the last day of the previous year.

The apex court observed that the amendment was made with a purpose viz. ensure tax compliance. The intention of the legislature was not punish the assessee which is further reflected on reading of section 40(a)(ia). The expenditure which is not allowed gets shifted to the subsequent year in which the tax is deducted and remitted by the payer.

The Finance Act, 2008 thus classified in two categories viz. (i) those have deducted source during the last month of the previous year; and (ii) those who have deducted tax in the remaining 11 months of the previous year. In the case of former, the time limit was extended till the date of filing the return and for others before the end of the previous year.

The Finance Act, 2010 further relaxed the rigor of section 40(a)(ia) by providing the time limit for payment of the TDS amount up to the 'due date' for filing the return specified in section 139(1).

Reasoning and verdict:

1. The apex court had to decide whether the subsequent amendments which are curative in nature should be applied retrospectively i.e. from the date of insertion of the provisions of section 40(a)(ia) or be applicable from the date of enforcement.

2. The apex court went into the rationale of the introduction of disallowance of expenditure for non-deduction / remittance of amounts to the exchequer. It held that the purpose of the legal provision was to ensure compliance and not punish the taxpayer. It held that the legislature can and do experiment and intervene from time to time when it feels and notices that the existing provision cause unintended and excessive hardships to the citizens and the Subjects were put to great inconvenience and uncomfortable results.

3. It observed that obedience to law is mandatory and has to be enforced but the magnitude of punishment should not be disproportionate to what is required and necessary. The amendments made in the Finance Act, 2008 and Finance Act, 2010 were steps to mitigate the hardship caused to the taxpayers.

4. A proviso which is inserted to remedy unintended consequences and to make the provision workable must be read into the section to give the section a reasonable interpretation and requires to be treated as retrospective in operation so that a reasonable interpretation can be given to the section as of whole.

5. **It accordingly held that the amendment made by the Finance Act, 2010 by extending the time limit for remitting the TDS amount up to the 'due date' for filing the return specified in section 139(1) must be given retrospective operation. In effect, from the date of insertion of section 40(a)(ia).**

6. It adverted to its own precedence in the case of *Allied Motors (P) Ltd v. CIT (1997) 224 ITR 677 (SC)* where in the context of section 43B the amendment brought into remedy the unintended consequences and supply an obvious omission was held to be retrospectively applicable. Such rationale was followed in cases such as *Whirlpool of India Ltd v. CIT (2000) 245 ITR 3 (SC)*; *CIT v. Amrit Banaspati (2002) 255 ITR 117 (SC)* and *CIT v. Alom Enterprises (2009) 319 ITR 306 (SC)*.

7. Finally the Court held that the remittance of TDS amount by the assessee for the assessment year 2005-06 before the 'due date' for filing the return is not liable for disallowance as the subsequent amendment of law will have retrospective application.

Conclusion

The two apex court decisions referred above provide definite relief to the taxpayers.

- The waiver of loan is not chargeable to tax under section 41(1) nor under section 28(iv).However, readers may note that section 2(24) defining the term "income" w.e.f. 01.04.2016 includes assistance in the form of subsidy or grant or cash incentive or duty drawback or **waiver** or concession or reimbursement by the Central Government or State Government or any authority or body or agency in cash or kind to the assessee becomes chargeable to tax.

- The expression "waiver" needs to be kept in mind as the waiver of loan by the above mentioned viz. Central Government or State Government or any authority or body or agency could become income under section 2(24) in spite of the above said decision.

- The second proviso to section 40(a)(ia) inserted by the Finance Act, 2012 w.e.f. 01.04.2013 provides complete and lasting relief to the payers from disallowance if the payees have satisfied the conditions specified in the proviso to section 201(1). This amendment is also curative in nature and removes the hardship to the taxpayers. This amendment whether could be applied retrospectively right from the insertion of section 40(a)(ia) from the assessment year 2005-06 remains to be seen. If such interpretation is accepted by the CBDT, a Circular in this regard would provide great relief to the taxpayers besides saving in litigation cost.