

[JUDICIAL UPDATE [FOR NOVEMBER, 2018 EXAMINATION]

1. Does the Central Board of Direct Taxes (CBDT) have the power to amend legislative provisions through a Circular?

Commissioner of Income-tax v. SV Gopala and Others [2017] (Supreme Court)

Facts: The CBDT had issued a Circular invoking the powers under Section 119 of the Income-tax Act, 1961. The Circular amended the provisions contained in Rule 68B of the Second Schedule to the Income-tax Act, 1961 relating to time limit for sale of attached immovable property.

Issue: Does the CBDT have the power to amend legislative provisions through a Circular?

Supreme Court's Decision: The Supreme Court observed that the CBDT does not have the power to amend legislative provisions in exercise of its powers under section 119 of the Income-tax Act, 1961 by issuing a Circular. The Supreme Court, accordingly, quashed the circular for being *ultra vires*.

2. Can dividend distribution tax under Section 115-O of Income-tax Act, 1961 be levied in respect of the dividend declared out of agricultural income?

Union of India v. Tata Tea (Supreme Court)

Facts of the case: The petitioner is a tea company engaged in cultivating and processing tea in its factory for marketing. The cultivation of tea is an agricultural process while the processing of tea in the factory is an industrial process. The petitioners contend that when the company distributes dividend, it is taxed under Section 115-O. The tax on dividend declared by it in this case is nothing but a tax on agricultural income. The legislative competence for taxing agricultural income lies with the State Government and not the Central Government.

Issue: Can dividend distribution tax be levied on dividend income of a tea company under section 115-O?

Supreme Court's Observations: Parliament has the competence to tax "income other than agricultural income." Section 115-O pertains to additional tax at the stage of distribution of dividend by domestic company. When dividend is declared to be distributed and paid to a company's shareholders it is not impressed with character of the source of its income. Dividend is derived from the investment made in the company's shares and the foundation rests on the contractual relations between the company and the shareholder.

Dividend is not 'revenue derived from land' and hence cannot be termed as agricultural income in the hands of a shareholder. Hence, despite the petitioner's company being involved in agricultural activities, in the shareholder's hands, the income is only dividend and not agricultural income.

Supreme Court's Decision: When dividend is declared to be distributed and paid to a company's shareholders, it is not impressed with character of the source of its income. Section 115-O is within the competence of the Union Parliament and

therefore dividend distribution tax can be levied in respect of the entire dividend declared and distributed by a tea company.

3. Is an assessee receiving refund consequent to waiver of interest under sections 234A to 234C of the Income-tax Act, 1961 by the Settlement Commission, also entitled to interest on such refund under section 244A?

K. Lakshmansa and Co. v. Commissioner of Income-tax (Supreme Court)

Facts of the case: The assessee had approached the Settlement Commission for waiver of interest under sections 234A to 234C of the Income-tax Act, 1961. The said interest has already been paid by the assessee. The Settlement Commission waived the interest but refused to grant interest on refund on the ground that section 244A does not provide for payment of interest in such cases. Further, the Settlement Commission's power to waive interest does not enable the Commission to provide for payment of interest under section 244A.

Issue: When refund is awarded by the Settlement Commission under section 244A, is there a right to receive interest on the same?

Supreme Court's observations: The Supreme Court observed that the right to claim refund is automatic once the statutory provisions have been complied with. The statutory obligation to refund, being non-discretionary, carries with it the right to interest. Section 244A is clear and plain – it grants a substantive right of interest.

Under section 244A, it is enough if the refund becomes due under the Income-tax Act, 1961 in which case the assessee shall, subject to the provisions of that section, be entitled to receive simple interest. It does not matter that the interest being waived is discretionary in nature; the moment that discretion is exercised and refund becomes due consequently, a right to claim interest springs into being in favour of the assessee.

Supreme Court's Decision: The Supreme Court held that the assessee has a right to interest on refund under section 244A.

4. Whether certain receipts by co-operative societies from its members (non-occupancy charges, transfer charges, common amenity fund charges) are exempt based on the doctrine of mutuality?

Income-tax Officer v. Venkatesh Premises Co-operative Society Ltd. (Supreme Court)

Supreme Court's observations: The doctrine of mutuality is based on the common law principle that a person cannot make a profit from himself. The essence of the principle of mutuality lies in the commonality of the contributors and the participants who are also the beneficiaries. The contributors to the common fund must be entitled to participate in the surplus and the participants in the surplus are contributors to the common fund. Any surplus in the common fund shall, therefore, not constitute income but will only be an increase in the common fund meant to meet sudden eventualities.

The Supreme Court made the following observations:

- If for convenience, part of the transfer charges were paid by the transferee, they would not partake of the nature of profit. The amount is appropriated

only after the transferee was inducted as a member. In the event of non-admission, the amount was returned. The moment the transferee was inducted as a member the principles of mutuality would apply.

- Non-occupancy charges were levied by the society and were payable by a member who did not himself occupy the premises but let them out to a third person. The charges were utilised only for common benefit of facilities and amenities to the members.
- Contribution to the common amenity fund taken from a member disposing of property was utilized for meeting heavy repairs to ensure hazard-free maintenance of the properties of the society which ultimately benefitted the members.

Supreme Court's Decision: The doctrine of mutuality, is based on the common law principle that a person cannot make a profit from himself. Accordingly, the transfer charges, non-occupancy charges common amenity fund charges and other charges are exempt owing to application of the doctrine of mutuality.