Legal Decisions with Notes

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PROSPECTIVE OVERRULING


Facts/issues

The Supreme Court laid down the following important principles of law relating to prospective overruling.

Decision

The doctrine of prospective overruling which is a feature of American Jurisprudence and an exception to the normal principles of law, was imported and applied for the first time in LC Golaknath v. State of Punjab AIR 1967 (SC) 1643. In Managing Director, ECIL v. B. Karunakar (1993) 4 SCC 427 the view was adopted. Prospective over ruling is a part of the principles of constitutional cannon of interpretation and can be resorted to by the Supreme Court while superceding the law declared by it earlier. It is a device innovated to avoid reopening of settled issues, to prevent multiplicity of proceedings and to avoid uncertainty and avoidable litigation. In other words action taken contrary to the law declared prior to the date of declaration are validated in larger public interest. The law as declared applies to future cases. It is for the Supreme Court to indicate as to whether the decision in question will operate prospectively. In other words there shall be no prospective over ruling, unless it is so indicated in the particular decision.

Note

The concept of prospective effect is being practised statutorily also. For example, clause 28(iii), (iiiib) and (iiiic) were inserted by the Finance Act, 1990 respectively with effect from A.Y. 1962-63, A.Y. 1967-68 and A.Y. 1972-73. Explanation 8 to section 43(1) was inserted by the Finance Act, 1986 with retrospective effect from A.Y. 1974-75. Section 14A was inserted by the Finance Act, 2001 with retrospective effect from A.Y. 1962-63. In all these cases if assessments were to be re-opened to give effect to the provisions retrospectively there would have been great difficulty.

CONCEPT OF BANKING

2. CIT v. Ahmed Nagar District Central Cooperative Bank Ltd. [2003] 264 ITR 38 (Bombay)

Facts/issues

The assessee was a cooperative society carrying on the business of banking. During the assessment year 1982-83 the assessee bank earned income by way of commission from the Maharashtra State Electricity Board and from Mula Pravana Cooperative Society (MPCS) for collecting electricity bills from the public on their behalf. The assessee contended that the commission earned from the aforesaid two public sector undertakings was income derived from business of banking and as such the said income was exempt under section 80P(2)(a)(1) of the Income-tax Act. According to the assessee collection of electricity bills was a facility extended by the bank to its customers and hence was a part of the banking business.

Decision

Banking today covers a large number of activities. With globalisation, banking is not restricted to receiving deposits for the purpose of lending. Banks offer various facilities to its customers. They provide lockers, safe deposits vaults, finance for margin trading, collecting dues and charges for and on behalf of Government. Section 6(1)(a) of the Banking Regulation Act, 1959 is an enabling provision. It provides for various forms of business akin to banking. Therefore, section 6(1), states, inter alia, that in addition to the banking business a banking company may engage in specified forms of business enumerated in section 6(1)(a) to (o). The judgement of the Supreme Court in the case of Mehsana District Central Cooperative
Bank Ltd. [2001] 251 ITR 522 shows that the word “banking” is not restricted only to accepting deposits from customers for the purpose of lending and that the word “banking” has been interpreted by the Supreme Court to cover even rent charged by the banks for hiring out safe deposit vaults to its customers. Therefore, income earned by the assessee bank by way of commission/fees from its customers being public sector undertakings would be exempted under section 80P(2)(a)(1).

SECTION 80RRA – IS PHYSICAL MOVEMENT ABROAD NECESSARY?


Facts/Issues

There were two experts in international marking. Oiltanking, a foreign company entered into an agreement with one expert in the matter of providing consultancy services. An application was made to the Government in the matter of approval of the agreement. The agreement was approved subject to a condition that the approval for exemption was limited proportionately to stay and work abroad with the total amount received by the applicant. In the case of second expert the approval under section 80RRA(2)(ii) was denied on the ground that no visits abroad for rendering services outside India were envisaged in the agreement. The main issue, therefore, was whether in order to get the deduction under section 80RRA the eligible person should stay abroad and render his services outside India.

Decision

To claim exemption under section 80RRA it is unnecessary for a technician to be physically outside India for the purpose of deduction. In these days of technological development one can render service without physically going outside India in terms of section 80RRA. Section 80RRA only provides for deduction for any services rendered by him outside India. Rendering services outside India need not be physically outside service. If this argument is accepted the very object of beneficial deduction is defeated. In the light of the beneficial deduction provision and in the absence of any specific intention of the legislature in seeking service physically outside India it is not possible to deny the deduction. The legislature in its wisdom has stated in other provisions with regard to stay outside. Those words are missing in section 80RRA.

WRONG USE OF ACCOUNTING


Facts/Issues

The assessee was a firm engaged in the manufacture and export of blankets. For the assessment year 1992-93 the gross sales including exports were shown in the return filed by the assessee at Rs.34,70,405.90. The closing stock was calculated at Rs.130 per kilogram amounting to Rs.8,69,13,158. On the other hand the opening stock was shown at Rs.90 per kilogram amounting to Rs.1,13,36,831 and consequently the gross profit was shown at Rs.7,13,03,219.99. The net profit was shown by the assessee accordingly at Rs.6,40,11,915. The Assessing Officer found on the basis of the above calculation that the assessee had valued the opening stock at Rs.90 per kilogram and the closing stock at Rs.130 per kg whereas in fact the goods were sold at Rs.136 per kilo gram. The Assessing Officer further found on the above calculation the gross profit ratio of 2054.60 per cent. Under the circumstances the Assessing Officer concluded that the method followed by the assessee in valuing the closing stock at market rate gave a distorted picture in the sense that the assessee had artificially inflated the profit in order to get the benefit of deduction under section 80HHC. He further found that in the subsequent assessment year 1993-94 the assessee had followed the opening stock at Rs.130 per kilogram and consequently the assessee has filed a return of loss of Rs.54,420. The Assessing Officer concluded that the entire exercise was a device to avail of excess deduction in the first year and to suppress the profit in the second year. In the circumstances the Assessing Officer computed the total income by applying the principle of “lower of costs or market value”. Consequently, the Assessing Officer reduced the gross profit from Rs.7,13,03,219.99 to Rs.4,45,64,939 by valuing the opening stock at Rs.90 per kilogram for the assessment year 1992-1993 and by valuing the closing stock also at Rs.90 per kilogram. Accordingly, the value of the closing stock was reduced by the Assessing Officer from Rs.8,69,13,158 to Rs.6,01,71,130 and consequently the net profit was reduced by the Assessing Officer from Rs.6,40,11,915 to Rs.3,72,73,634 and profits from business at Rs.3,78,01,032. Consequently the Assessing Officer restricted the deduction under section 80HC to Rs.3,78,01,032 instead of Rs.6,45,39,313 which the assessee would have got if the gross profits were taken at Rs.7,13,03,219.99. The Tribunal found that the assessee
was valuing the closing stock at market price for several years and since there was no change in the method of accounting there was no need for interference by the Assessing Officer.

Decision

Under the Income-tax law each year constitutes a separate unit. Under the method adopted by the assessee, it sought a higher deduction under section 80HHC in the assessment year 1992-93 and in the assessment year 1993-94 it sought to suppress the profits. Under the method followed by the assessee, in the assessment year 1992-93, the correct taxable income could not be deduced. In the assessment year 1992-93, the assessee calculated the closing stock at Rs.130 per kilogram and the opening stock at Rs.90 kilogram. By calculating the closing stock at Rs.130 per kilogram, the gross profit got inflated to Rs.7,13,03,219.99 and consequently with the inflation of gross profits the resultant deduction under section 80HHC also got inflated. In the assessment year 1993-94, what the assessee had done was to inflate the debits by calculating the value of the opening stock at Rs.130. By that method, the assessee had increased the expenses in the next year. In the next year, there was no closing stock and the assessee had returned a loss of Rs.54,420 whereas if the value of the opening stock in the assessment year 1993-94 was calculated at Rs.90, as done by the Assessing Officer, then there was income of Rs.2,67,38,280 which arose on account of the difference in the rates of Rs.130 and Rs.90 per kilogram. Thus, the Assessing Officer was right in coming to the conclusion that the entire device was to inflate deduction under section 80HHC in the assessment year 1992-93 and to suppress the profits in the assessment year 1993-94. The assessee was not justified in its method because it gave a distorted picture. There was no merit in the argument of the assessee that it had been following the mixed system of accounting for the last several years and hence the Assessing Officer should not have interfered with the method of accounting.

Note

The Supreme Court has repeatedly held that the treatment of a receipt or item in the accounts in a particular way would not alter the real nature of the receipt. Therefore, what is required for the purpose of computation of correct income under the Income-tax Act is a valuation of the stock-in-trade which would be fair. Manipulating the value of the inventories by misusing accounting principles would necessarily have to be struck down.

COLD STORAGE – IS IT INDUSTRY?


Facts/Issues

Rajasthan Ice & Cold Storage was carrying on the business of cold storage and it was contended before the High Court that goods storage was the “process” of refrigeration and therefore, it was an industry entitled to be charged electricity duty at a reduced rate.

Decision

In a cold storage, vegetables, fruits and several other articles which require preservation by refrigeration are stored. As a result of long storage, scientific examination may indicate loss of moisture content. That is not sufficient for holding that the stored articles have undergone a process. Therefore the assessee cannot be held to be an industrial company. It was not entitled to the benefit of reduced electricity duty under the notification dated November 1, 1965 issued under the Rajasthan Electricity (Duty) Act, 1962.

AN APPARENT INSIDER TRADING

6. ITC Classic Finance Ltd. v. Deputy Commissioner of Income-tax and another [2003] 264 ITR 154 (Bom)

Facts/Issues

The assessee was a finance company carrying on the business of leasing, financing hire purchase, dealing in shares and other financial activities. During the previous year relevant to the assessment year 1991-92 the assessee acquired 1 lakh equity shares of Rs.10 each at par from the promoters quota out of total capital consisting of 10 lakhs shares of ITC Agro-Tech Ltd. on May 13, 1988. The said shares were sold at Rs.18.90 per share resulting in a profit of Rs.8,90,000 during the assessment year 1991-92. The assessee offered the whole of the profit to tax. The decision to sell was taken by the assessee as the edible oil industry was not doing well and that ITC Agro-tech Ltd. had not declared dividend since 1988. Hence, the entire bulk of shares was sold on March 18, 1991. On June 10, 1991 the shares of ITC Agro-tech which were earlier unquoted were listed on the Calcutta Stock Exchange. The trading in this counter commenced on June 27, 1991 and in the very first week the shares of ITC Agro-tech Ltd., were quoted at Rs.59.
Under the above circumstance before the Income-tax Officer, the assessee contended that the break-up value of the shares of ITC Agro-tech Ltd., was Rs.2.55 and that the assessee had sold those shares at Rs.18.90 per share. The assessee contended that under the circumstances the sale price was reasonable, more particularly because the shares were unquoted at that time. The Assessing Officer took the view that the assessee had suppressed the income. There was no reason for the assessee who was a trader to sell the shares on March 18, 1991 when the procedure for listing was pending before the Calcutta Stock Exchange. Therefore, the Assessing Officer took the sale price at the rate of Rs.54 per share and made an addition of Rs.35.10 lakhs. This was confirmed by the Tribunal.

**Decision**

There was a concurrent finding of fact recorded by the authorities below that the shares were obtained through the promoters quota which had a lock-in period. The assessee gave no particulars with regard to the sale effected in favour of the broker. Who paid the consideration for the shares has also not been disclosed. If the shares were not listed on the stock market, it is difficult to understand why the shares were sold to the broker. The transaction did not appear to be above board. Hence, the addition was upheld.

### GIFT BY MUSLIM FATHER IN A MARRIAGE

7. **CGT v. K.B. Avurumankutty (2003) 264 ITR 177 (Mad.)**

**Facts/Issues**

The father of a Muslim girl gifted a car and jewellery at the time of her marriage. The question arose whether such gifts would be exempt under the Gift-tax Act. The Tribunal felt that though the family was a Muslim family, there was a legal obligation on the part of the father to safeguard the marriage of his daughter. Therefore, in order to avoid talaq, the assessee had to give certain property to his daughter at the time of her marriage. A car and the jewellery given to the daughter by the assessee for her well-being who in turn is under legal obligation to incur such expenditure at the time of her marriage cannot be said to be voluntary and therefore, the provisions of the Gift-tax Act are not attracted and it cannot be termed as a gift.

The High Court observed that there was no basis to suggest that if the car and the jewellery were not given, there would be have been a talaq. There was no compulsion on the part of the father to give any car or the jewellery to his daughter. The High Court did not appreciate the finding of the tribunal that the father was under a legal duty to preserve the marriage. Muslim marriage is a contract between the man and the woman. There is absolutely no place for the bride’s or bride groom’s father in this contract. Therefore the order of the Tribunal was set aside.

**Note**

Even though the Gift-tax Act is no more applicable, the above case has been reported because it raised an interesting point relating to the Muslim Personal Law.

### VOLUNTARY RETIREMENT SCHEME EXPENSES


**Facts/Issues**

During the accounting year ending March 31, 1996, the company claimed the voluntary retirement scheme expenses amounting to Rs.10,02,23,735 incurred at Bovrile plant. As per the annual report, the voluntary retirement scheme expenses were to be written off within a period of 60 months. In the past, the company had incurred the voluntary retirement scheme expenses for other plants and under the books of the company, such expenses were written off over a period of 36 months. Therefore, when for the accounting year ending March 31, 1996, the voluntary retirement scheme expenses amounting to Rs.10,02,23,735 incurred for Bovrile plant came to be written off within 60 months, the officer disallowed the said expenses to the tune of Rs.9,68,82,917. In other words, the Assessing Officer amortised the said expenses over a period of five years and allowed deduction only to the tune of Rs.33,40,818 for the accounting year ending March 31, 1996, and the Assessing Officer disallowed the claim for the balance amount. Consequently, the Assessing Officer came to the conclusion that the balance amount of Rs.9,68,82,917 constituted excess claim, which was disallowed. Being aggrieved, the assessee preferred an appeal before the Commissioner of Income-tax (Appeals), who agreed with the Assessing Officer and, accordingly, took the view that once the management in its books spread over the amount of Rs.10,02,23,735 over a period of 60 months then, the Department was right in not giving the full deduction of Rs.10,02,23,735 during the assessment year in question. The Tribunal took the view
that the voluntary retirement scheme expenses were not incurred for acquiring any asset; that, it was incurred in order to reduce the cost; that, under the VRS the liability stood ascertained, quantified and paid and that, the liability was discharged during the accounting year ending March 31, 1996. The Tribunal also found that the VRS has been approved by the Commissioner of Income-tax. In the circumstances, the appeal was allowed.

**Decision**

The said expenses were incurred by the assessee to save expense. This expense was not referable to any income-yielding asset. It is well settled that, ordinarily, revenue expenditure, which is incurred wholly and exclusively for the purposes of business, must be allowed in its entirety in the year in which it is incurred and it cannot be spread over a number of years even though the assessee has written it off in its books over a period of years. It is only in cases of special type of assets that the spread over is warranted.

**Note**

Section 35DDA, inserted by the Finance Act, 2001 w.e.f. A.Y. 2001-2002 provides that where an assessee incurs any expenditure in any previous year by way of payment of any sum to an employee at the time of his voluntary retirement, in accordance with any scheme or schemes of voluntary retirement, one-fifth of the amount so paid shall be deducted in computing the profits and gains of the business for that previous year, and the balance shall be deducted in equal instalments for each of the four immediately succeeding previous years.

**ITEMIZED SALE OR SLUMP SALE?**

9. Premier Automobiles Ltd. v. ITO and Another [2003] 264 ITR 193 (Bom)

**Facts/Ishues**

The assessee was engaged in the business of manufacture and sale of cars. Up to the previous year relevant to the assessment year 1995-96 it was engaged in the manufacture of two cars namely Padmini and Premier 118 NE at Kurla and Kalyan respectively. PAL had plant and machinery for 118 NE at Kaylan, Kurla (gear box) and Pune (machining). PAL had manufacturing facility for Padmini at Kurla. PAL entered into a MOU on March 11, 1993 with Automobile Peugeot (AP) to establish a joint venture company known as Kalyan Motors Company Ltd. (KMCL) for manufacture and distribution of 60,000 Peugeot cars throughout India. Under the MOU it was agreed that PAL will contribute to the equity of the joint venture company – KMCL to the extent it was engaged in the manufacture and sale of 118 NE cars. PAL also entered into a supplemental MOU with AP on May 17, 1994. PAL also executed a deed of declaration of trusteeship on September 29, 1994 whereby PAL agreed to sell, assign and transfer to Kalyan Motor Company Ltd. its Kalyan undertaking as a going concern on an “as is where is” basis. On October 19, 1994 PAL entered into a joint venture agreement with AP. On January 6, 1995 PAL executed a slump sale agreement whereby PAL transferred and sold to Kalyan Motor Company Ltd. On November, 30, 1995 PAL submitted its return of income enclosing a book profit of Rs.81.31 crores from the slump sale dated January 6, 1995. The Assessing Officer, however, took the view that it was a sale of itemized assets. He, therefore, assigned the sale value to building, plant and machinery and paint shop separately. The Assessing Officer determined the sale price by relying on the cost of acquisition mentioned in the books of account of the transferee company. This finding was accepted by CIT (Appeals) and by the majority judgement of the Tribunal. According to PAL the Assessing Officer erred in relying on the allocation done by Premier Padmini Ltd. (originally KMCL) in its books of account. According to PAL, agreement dated January 6, 1995 was a slump sale for Rs.247 crores which price was allocated for accounting purposes by PPL and which allocation was not binding on PAL. The basic issue therefore was whether the agreement dated January 6, 1995 was a slump sale or a sale of itemized assets.

**Decision**

Perusal of the documents connected with the transaction showed that the intention of the parties in the commercial sense was to transfer the Kalyan business, as a whole, for a lump sum consideration of Rs.247 crores and that the parties did not intend to make a sale of itemized assets. Mere execution of conveyance of immovable property by itself would not constitute sale of itemized assets. PPL (originally KMCL) never intended to purchase individual items and apart from land, building, plant and machinery, PAL had transferred business advantages like licences, quotas, permission to use the name “Premier”, work-force and other intangibles. Even after the sale dated September 29, 1994, there was continuity of business by PPL of manufacturing 118 NE cars and Peugeot cars. The balance-sheet, profit and loss account and the assessment order of PPL showed that within the six month period ending March 31, 1995, PPL...
had sold cars to the value of Rs. 177.26 crores. The entire arrangement was to the effect that the French company AP agreed to make an investment of Rs. 350 crores in the joint venture because the other contracting party, viz., PAL had infrastructure to manufacture 118 NE cars at Kalyan, Kurla and Pune. PPL did not intend to purchase assets individually/separately but intended to buy the entire Kalyan business for a lump sum price. The transaction was a slump sale. The conclusion that the transaction was a slump sale was not only based on interpretation of terms and conditions of the entire arrangement but also on the manner in which the gain was accounted for by PPL in its books of account. It was clear that PAL had not accounted for profits on itemized assets. The sum of Rs. 81.31 crores was the book profit on the slump sale. The Assessing Officer would have to compute the quantum of capital gains under section 45 to 50.

PLANT GENERATION AND RESEARCH EXPENSES – CAPITAL OR REVENUE

10. CIT v. Arunachal Pradesh Forest Corporation Ltd. [2003] 264 ITR 279 (Gau)

Facts/issues

The Arunachal Pradesh Forest Corporation Ltd. a company was an undertaking of the Government of Arunachal Pradesh. The company was engaged in the operation of forests and utilization of forest resources. For the assessment year 1987-88 the company claimed expenditure of Rs.25,73,082 as generation expenses and Rs.4,50,939 as maintenance of plantation and an amount of Rs.1,30,688 which have been spent by the company towards research and development of the plants. The Assessing Officer held the generation expenses and maintenance of plantation as non-agricultural expenses and expenses of capital nature and denied deduction of the same. For the research and development expenses of Rs.1,30,688 the Assessing Officer was of the view that the expenditure incurred for research and development were capital in nature because the assessee derived enduring benefit out of such research work and as such it could not be allowed. The Tribunal found that there was contract between the State Government and the company under which the State Government has granted a lease of the forest to the company to utilize the timber of the forest in its saw mills as well as for supply of timber to Government quota holding industries or to sell otherwise. Under the contract of lease it was obligatory on the company to have new plan-
tation which required sowing/planting and growing of young plants which in due course of time would replace the trees felled in the area and also for the purpose of maintaining the ecological balance.

Decision

As a matter of obligation under the lease the re-generation and plantation expenses have to be incurred by the company. The trees grown after the plantation and as a result of re-generation do not become the property of the company. It is a property of the State Government having full right, title and interest over it. Plants planted would not be grown within 10 years for utilization as forest products. Thus whatever plant re-generation is done by the company the fruits of it will not be available to the company during the lease period. The expenses incurred by the company for the re-generation of the plants is not in the nature of capital gains. It is allowable as a deduction. So far as research expenses are concerned, in the business carried out by the company the research is necessary to identify the plant disease and their cure, better understanding of the plant growth, to find out various diseases and whether it is communicable to large areas and remedial measures to prevent it. The expenses incurred in research in these areas do not necessarily create any permanent assets. Research expenses for maintaining ecological balance, maintaining the forest and for the growth of the plant cannot create a capital asset and cannot be said to result in an advantage of enduring nature. Hence, the research expenses are allowed as a deduction.

CASH CREDITS – WHEN ONUS SHIFTS TO THE DEPARTMENT?

11. Nemi Chand Kothari v. CIT and Another [2003] 264 ITR 254 (Gau)

Facts/issues

The assessee took loans from two creditors. The Assessing Officer examined these creditors who confirmed having given the loans to the assessee. When they were asked about the source of their money they explained that they had taken loans from sub-creditors. The Assessing Officer examined the sub-creditors and found that they had filed their income-tax returns for the first time, without disclosing any details regarding purchases or sales of their business dealings. The Assessing Officer came to the conclusion that the entire set-up was one of capital formation exercise and disallowed the loan taken by the assessee.
Decision

The assessee has established the identity of the creditors. He had also shown, in accordance with the burden, which rested on him under section 106 of the Evidence Act, that the said amounts had been received by him by way of cheques from the creditors aforementioned. In fact, the fact that the assessee had received the said amounts by way of cheques was not in dispute. Once the assessee had established that he had received the said amounts from the creditors aforementioned by way of cheques, the assessee must be taken to have proved that the creditor had the creditworthiness to advance the loans. Thereafter the burden had shifted to the Assessing Officer to prove the contrary. On mere failure on the part of the creditors to show that their sub-creditors had creditworthiness to advance the said loan amounts to the assessee, such failure, as a corollary, could not have been and ought not to have been, under the law, treated as the income from the undisclosed sources of the assessee himself, when there was neither direct nor circumstantial evidence on record that the said loan amounts actually belonged to, or were owned by, the assessee. The Assessing Officer had failed to show that the amounts, which had come to the hands of the creditors from the hands of the sub-creditors, had actually been received by the sub-creditors from the assessee. In the absence of any such evidence on record, the Assessing Officer could not have treated the said amounts as income derived by the appellant from undisclosed sources.

DOCTRINE OF RES JUDICATA


Facts/Issues

The Court laid down the following proposition in regard to the doctrine of res judicata.

Decision

Each assessment year being independent of the other, as a general rule, the principle of res judicata or estoppel by record, which applies to civil courts, does not apply to income-tax proceedings but, yet for the sake of consistency and for the purpose of finality in all litigations, including litigation arising out of fiscal statutes, earlier decisions on the same question should not be reopened unless some fresh facts are found in the subsequent year. The Supreme Court in Radhasoami Satsang v. CIT [1992] 193 ITR 321 observed that where a fundamental aspect permeating through the different assessment years has been found as a fact one way or the other and the parties have allowed that position to be sustained by not challenging the order, it would not be at all appropriate to allow the position to be changed in a subsequent year.

TAXABLE UNDER WHAT HEAD?


Facts/Issues

The assessee was a co-operative society registered under the Gujarat Co-operative Societies Act, 1962. It was formed broadly with the objects of carrying on activities of providing godowns, shops, and other amenities for the trade of members and persons engaged or connected with textile trade and the society. The assessee was given on lease, land in the vicinity of the Ring Road of Surat by the Surat Municipal Corporation, wherein it constructed a huge building complex having 1,030 shops, 104 godowns and one auditorium. In addition, part of the complex was designed and constructed for use by banks and that block came to be rented to six different banks. A part of the building has been rented to the Post and Telegraphs Department for running a post office. The assessee has also constructed over the land, residential hotel and a revolving restaurant.

The construction was made by the assessee by raising funds by way of loan from the bank and raising share capital. The shops were allotted after the construction by draw of lots. Each member of the assessee was allotted a shop or a godown and no non-member was allotted either a shop or a godown by the assessee. However, as per bye-laws of the society a member could induct another person and such person would be permitted to occupy the premises after becoming a nominal member of the society. The assessee provided services to its members and occupants of the shops and godowns in the form of security, sanitation, lifts, electricity in the passage, insurance, package. The assessee accepted a token rent of Re.1 from each of the shop or godown holder. It also charged its members/occupiers for the services rendered to the members/occupiers. The assessee had income by way of rents that it charged from the banks, post office and canteens. The assessee had the income by way of rent from the residential hotel and the revolving restaurant owned by it. The assessee owned an auditorium which also fetched income to the assessee whenever its use was
allowed by the assessee. For rendering the services the
assessee had an administrative machinery for which per-
manent staff was employed. The question arose whether
its income was to be assessed as “business income” or
“income from property” or “income from other
sources”. A view was taken by the Assessing Officer
and confirmed by the CIT (Appeals) that the activity of the
assessee was not a business activity and the income
derived by the assessee from these activities cannot be
considered as business income. The Tribunal thought
otherwise. A reference was made to the High Court.

Decision
The rent charged by the assessee by way of nominal
rent from its members/allotees cannot be considered as
income from house property. All the same, the token rent
from the allottee-members remains an income. The said
income would fall under “income from other sources”.
Services rendered by the assessee include internal tele-
phone system, security, sanitation, lighting, lifts, air-con-
ditioning, insurance services, etc. The income derived by
the assessee from the occupants and/or members for ren-
dering services would fall under the head “business
income”. Providing services of banks, canteen and post
office are amenities for the trade of members. Letting out
the premises to banks was with a view to facilitate and pro-
vide amenity to its traders and therefore, would fall within
the term “business activity” of the assessee. Letting out a
part of the premises to the post office is an act of provid-
ing amenity to its members for promotion of their trade.
This service is in no manner different from services of
banks from the businessman’s point of view as it helps the
traders in their business. Providing a canteen has to be
construed as service planned and provided by the assessee
as an amenity to facilitate trade. The income derived is by
fulfillment of the object of the assessee to provide amenity
to its members in trading business and has therefore to be
considered as business income. The income derived by
the assessee by permitting use of the auditorium by collecting
charges therefor cannot be considered as “income from
house property” or “income from other sources” but
would fall under the head “business income”. Income
from the revolving restaurant and the hotel, would fall
under the head of “income from house property”.

Note
Counsel for the assessee put forth an interesting
argument that the assessee was a co-operative society
wedded to the co-operative movement. Accessibility of
non-members to the hotel or revolving restaurant was
only occasional and incidental. The main object was to
serve or to cater to the needs of the members for pro-
moting their trade. In the light of these arguments can
the concept of mutuality be introduced in this case?

SCAPE OF SECTION 44BB


Facts/Issues
On 31st December, 1990 ONGC filed a return
under section 160(1)(i) read with section 163(1)(c) as
agent of Cooper Engineering Services International
declaring a net income of Rs.3.69 lakhs. The assessee
company was a non-resident. The said company had
undertaken repairs of two gas compressors on Bombay
High platform. ONGC as the agent/authorized repre-
sentative of the non-resident company had agreed to
bear the corporate tax liability on the income of the
NRC under the contract i.e. the contract between
ONGC and NRC which was a “net of tax” contract.
Since the contract was for oil exploration section 44BB
was applicable. Under that section 10% of the gross
receipt is deemed to be the income of the NRC. Since
the contract was net of tax the Assessing Officer came
to the conclusion that the extent to which ONGC
undertook to discharge the tax liability of the NRC
would amount to benefit under section 28(iv).
Accordingly he added that tax component to the
income of the assessee on the basis of multiple gross-
ing. The CIT (Appeals) felt that section 44BB read with
section 195A did not permit multiple grossing up of
income on tax protected contracts. The Tribunal con-
firmed this.

Decision
Section 44BB is a special provision for computing
profits and gains in connection with the business of oil
exploration. It applies to non-resident companies
engaged in such business. It begins with a non obstante
clause. It provides for charging 10 per cent tax on the
aggregate of receipts referred to in section 44BB(2).
Even if the NRC makes a loss in a given year it is liable to
pay tax. Therefore, section 44BB provides both for
chargeability of tax and computation. Therefore, it is a
complete code by itself. Section 44BB imposes tax on
notional income and that notional income has to be
computed in accordance with section 44BB. Therefore,
there is no need to refer to section 28(iv) of the Act.