

Subsidies counted for tax benefit

The Supreme Court has ruled that subsidies given as incentives to industries set up in backward areas are deductible under the Income Tax Act. In a large number of appeals moved by the commissioner of income tax against judgments of the Gauhati high court, the apex court rejected the contention of the tax officials that amounts received as subsidies were revenue receipts and did not qualify for deduction under Section 80.

The revenue authorities argued that as Section 80 spoke of profits and gains "derived from" any business, such profits and gains must have a direct nexus with the business. Subsidies do not have such a nexus and are grants from the government. Rejecting the argument, the Supreme Court ruled that so long as profits and gains emanated directly from the business itself, the fact that the immediate source of the subsidies is the government would make no difference, as subsidies like transport and electricity are only to reimburse costs actually incurred in the manufacturing and selling of products. As several high courts had held contrary views on this point, the present judgment has settled the law.

SC clarifies on arbitration law

While the Arbitration and Conciliation Act has been in force since 1996, litigation invoking the old Arbitration Act of 1940 is still reaching the courts. There have been contradictory judgments by different benches of the Supreme Court over the years on the question of arbitrator's power to award interest.

Therefore, the court was called upon to sort out the legal issues in the appeal case, Union of India vs Ambica Construction. Having decided the legal issues, the dispute was referred to another bench to decide the issues on merits. The arbitration in this case started in 1992 and the new bench will adjudicate once again, according to the principles laid down in this judgment. The legal question was in regard to the power of the arbitrator under the old Act to award interest when the contract contains a bar against it.

The present judgment answered the question by ruling that "if the contract expressly bars award of interest pendente lite, the same cannot be awarded by the arbitrator. We also make it clear that the bar to award interest on delayed payment by itself will not be readily inferred as express bar to award interest by the arbitral tribunal, as ouster of power of the arbitrator has to be considered on various relevant aspects."

Weeding out income tax litigation

The Supreme Court has invoked for the first time the December 2015 circular of the Central Board of Direct Taxes to dispose an appeal of the commissioner of income tax against NSN Jewellers. The amount involved was less than Rs 25 lakh and, therefore, the court did not go into the dispute in view of the circular. To reduce tax litigation, the board had raised retrospectively the monetary limit for filing appeals by the department of revenue before the Supreme Court, the high courts and the appellate tax tribunal.

The new limit for the Supreme Court is Rs 25 lakh, the high courts Rs 20 lakh and the tribunal Rs 10 lakh. It was also clarified that appeals should not be filed "merely because the tax effect exceeds the monetary limits; filing should be decided on merits of the case." The tax effect was explained as the difference between the tax on the total income assessed and the tax that would have been chargeable had such total income been reduced by the income in respect of the issues against which the appeal is intended to be filed."

Additional interest for land losers

Those dispossessed of their land before a notification under the Land Acquisition Act would be entitled to additional interest for the period between dispossession and the notification, the Supreme Court stated in its judgment, *Balwan Singh vs Land Acquisition Collector*. The court's view in earlier cases was that dispossessed land owners would be entitled to rent and damages for use and occupation for the period the government retained possession of the property. Following the principle, the court directed the Haryana authorities to award additional interest by way of damages, at 15 per cent per annum for the period between July 1, 1984, the date when the land owners were dispossessed, till September 2, 1993, the date of the notification.

ATM signboards are 'advertisements'

The Bombay high court dismissed last week a petition of ICICI Bank challenging the demand of the Municipal Corporation of Greater Mumbai requiring it to obtain permission and pay fees for displaying illuminated signboards on the bank premises, ATMs and extension counters. In the dispute going back to 2007, the bank contended such display did not constitute 'advertisement' under the Municipal Corporation Act. It only indicated a service provided, and illumination is to make the signboards visible at night. Rejecting the argument, the high court stated illuminated signboards were intended to attract customers, old and new, and increase business. It was not like a sign-board in front of a residence showing the name of the occupant. The HC depended on reputed dictionaries for the meaning of the word 'advertisement'. It also clarified that judicial review did not lie in cases of this nature.

Arbitration no bar to consumer complaint

The National Consumer Commission has stated a consumer can make a complaint to a consumer forum even if there is an arbitration clause in the agreement between him and a service provider. In this case, *Mahindra Holidays and Resorts India Ltd vs Adnan Rassiawala*, some persons who had contracted with the firm moved the Maharashtra state consumer commission. The firm argued that as there was a term in the contract that disputes shall be referred to arbitration under Section 8 of the Arbitration and Conciliation Act, a complaint in the consumer commission would not lie.

The argument was rejected, leading to the appeal. The national commission also rejected the contention, stating consumers have an option to move either a consumer forum or for arbitration. If they choose the consumer forum, they would not be barred from it on the ground that there was an arbitration clause. They can choose either remedy but not both. The plain language of Section 3 of the Consumer Protection Act makes it clear that the remedy available under that Act

is "in addition to and not in derogation of the provisions of any other law for the time being in force."

(Business Standard)