

Chandigarh, Wednesday, April 9, 2003

It is a settled proposition of law that a cheque, unless dishonored, is a payment. It is also almost taken as settled that when tax is paid by cheque, it is the date of tendering of cheque that is the date of payment and not the date of realization. This assumes a lot of importance since interest may be payable, if the date of realization is after the specified due date. The Authority for Advanced Rulings (MR/GOI) pointed out that under Rule 80 of the Central Treasury Rules, the payment through a cheque, honoured on presentation, dates back to the date of its tender. However, these rules were not applicable from 1st June, 1983. Under the new rules, the payment can be deemed to have been made only when it is entered in the receipt scroll.

Sub-clause (c) of rule 19(1) of the Central Government Account (Receipt and Payment) Rules 1983 read with sub-rule (1) of Rule 20 makes it clear that the date of payment of Government dues tendered in the form of cheque or draft shall be the date on which it was cleared and entered in the receipt scroll. Sub-rule (c) of rule 19 (1) also provides that the depositor must make suitable precaution to ensure that his cheque or draft reaches the bank in good time keeping in view the provisions of rule 20.

In a particular case, the facts were that the assessee's representative had deposited with a bank in Bombay a cheque dated 10th March, 1994 for the required amount of advance tax drawn on another bank in Bombay along with the advance tax challan. The cheque was sent for clearing on March 16, 1994, and returned unpaid with the remarks "advice not received. Please present it after two days". The assessee's representative obtained the original cheque dated 10th March, 1994 by paying fee of Rs 10 and presented the same cheque along with a fresh challan, which was accepted by the bank on April 15, 1994. This cheque was presented on April 16, 1994, and was honored on the same date and the receipted challan was issued on April 16, 1994. On these facts, the ruling of AAR was sought by the applicant/assessee and it was in this context that the AAR has made the observation, as stated above. But this rule, it would seem, modifies the principles of the decided cases. The observations made therein would clearly create apprehension in the minds of the taxpayers and the Revenue

Department as to the correctness of the practice so far followed.

Decided Cases

Following are the observations in various court cases:

- ❑ A payment by negotiable instrument is a conditional payment: if the negotiable instrument is dishonored on presentation, the creditor may consider it as a waste paper and resort to his original demand. ref: CIT' vs. Ogale Glass Works Ltd. (SC)
- ❑ In the highly developed society, payment by cheque has become a more convenient mode of discharging one's obligation and that this is a sufficient tender.
- ❑ If the cheque was sent by post and was met on presentation, the date of payment is the date when the cheque was posted. . Ref: Supreme Court in Damadilal vs. Parashram .
- ❑ Date of handing over the cheque to the officer authorised to receive the same will be the date of receipt, when sufficient funds are available in the accounts of the assessee on the date of presentation:

CIT vs. Kumudam Publications (P) Ltd

□ In *Oswal Woollen Mills Ltd.* Case, the Court stated that the proposition of law that if payment by cheque is accepted and the cheque on payment is encashed, the payment relates back to the date when the cheque had been received, was of general applicability, and that as there was no provision in the Income-tax Act or Rules which forbade the Income-tax Department from accepting cheques, that proposition governing general transactions would govern the Department also in the matter of acceptance of cheques towards payment of advance tax.

There was an argument advanced in the said case before the Punjab & Haryana High Court, that the cases governing commercial transactions relating to the encashment of cheque will not apply to tax payments.

The Court observed that the decision of the Supreme Court in the case of *Ogale Glass Works Ltd.* (supra) would govern the case on hand. It was also observed that there is no provision in the Income-tax Act which forbids the Department from accepting cheques. It is for this precise reason, that the Department accepts cheques. Thus the Court held that the law governing the general principles would also govern the Department, and the cheque payment is a valid one.

Opinion

The new Treasury Rules would cause greater hardship, where, even prepaid amounts such as banker's cheque or draft would be treated as unrealized till it is encashed. The provisions of law are quite clear. Section 245S of the Act states that the Advance Ruling pronounced by the Authority U/S 245S shall be binding only:

- on the applicant who had sought it; . in respect of the transaction in relation to which the ruling had been sought; and
- on the Commissioner, and the income tax authorities subordinate to him, in respect of the applicant and the said transaction.

Thus the legal position would seem that the decision of the authority would not affect transactions generally. The observations are only an obiter-dicta and can have only a persuasive value. It cannot be said to be binding on any body.

Cases where the cheque delivered on the due date, and bounced later stood on a different footing. In all other cases, the equity should take care and the persons at the helm of affairs should interfere and give suitable clarifications and accept the date of delivery of the cheque as the date of payment of taxes. This would avoid considerable litigation. Alternatively, the law makers should make it specific that the payment on the last date should only be cash and none else. Also, suggestion is made that the payment of taxes maybe made by credit card and the same should be recognized without any reservation, since it is the order of the day to make any payments, which is easier and less cumbersome.