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IMPORTANT CASES TO BE REMEMBERED

1. Director of Income-tax (International Taxation) vs. Morgan Stanley & Co. (Supreme Court)

Morgan Stanley cannot be regarded as having a PE in India under article 5 of DTAA on account of services rendered by MSAS. MSAS cannot be regarded as an agency PE of Morgan Stanley. As long as MSAS, of Morgan Stanley, is renumerated for its services at arm's length price, no further income can be attributed in hands of PE of Morgan Stanley and to MSAS in India.

2. SANDVIK ASIA LTD. V. CIT (SUPREME COURT)

Interest on interest on refund. The assessee was granted interest on refund after substantial lapse of time; the Supreme Court held that the assessee is entitled to claim interest on such delayed payment of interest.

3. S.A. builders Ltd. Vs. CIT(Appeals) (Supreme Court)

Interest on loan advanced to sister concern for commercial expediency shall be allowed as deduction.

4. ***Section* 139(3), 32(2) & *80*** ***East Asiatic Co. (India) Pvt. Ltd.***

Set off & carry forward of Depreciation is governed by Section 32(2) & not by Chapter VI. So, depreciation can be carried forward even if ROI is filed after due date.

5. ***Section 139(5)*** ***Kumar Jagdish Chandra Sinha (Supreme Court)***

Only 139(1) or 142(1) can be revised. 139(4) can't be revised.

6. ***Section 139(5)*** ***Dhampur Sugar Mills Ltd.***

Revised Return steps into the shoes of original return and is deemed to be filed on the date the original return was filed.

7. ***Section* 145** ***British Paints India Ltd. (Supreme Court)***

Method of valuation of stock at raw material cost only is not a correct method and A.O. is justified in valuing the stock at 100% cost. Every year assessment is a separate assessment and A.O. can take different view in later years. On the basis of this judgment the last 40 years assessments were reopened.

8. ***Section* 147** ***Sun Engineering Pvt. Ltd. (Supreme Court)***

1. On Re-assessment, original assessment remains & is not wiped off.
2. Matters lost in original assessment, which have since acquired finality (i.e. no appeal etc. is

filed) can't be claimed in Re-assessment proceedings.

3. Expenses not claimed in original assessment cannot be claimed in re-assessment proceedings. However, expenses related to income which has escaped assessment can be claimed.

4. Under Section 147 income cannot be assessed below original assessment or returned income (if no assessment is made earlier).

9. ***Section 153*** ***Purushottam Dass T. Patel***

"Assessment" or "Reassessment" is an integral process of involving not only the determination of Total Income, but also determination of Tax. Notice of Demand should also be prepared within time prescribed under section 153.

10. ***Section 154*** ***Hindwire Industries Ltd. (Supreme Court)***

The order sought to be amended does not necessarily mean original order but rectified order also. 4 years shall be from the end of the F/Y in which rectified order was passed for the second rectification u/s 154.

11. ***Section 271(1)(c)*** ***Shadiram Balmukand. (Supreme Court)***

A.O. can levy penalty only on the additions made by him and not on the additions made by CIT (Appeals). Similarly, the CIT (Appeals) can levy penalty on the additions made by him and not on the additions made by A.O.

12. ***Explanation 2 to Section 271(l)(c)*** ***Anantharam Veerasinghaiah & Co. (Supreme Court)***

Intangible additions are the real income of the assessee. Therefore unexplained investments/cash credits/expenditures, etc can be explained out of such additions.

13. ***TATA CHEMICALS LIMITED (BOMBAY)***

High Court cannot admit the question of Law, which was not raised before the Tribunal.

14. ***ALA Firm (Supreme Court)***

When firm is dissolved then stock in trade must be valued at FMV. FMV minus Book Value is firm's income under P/G/B/P. This case will apply if business of firm is discontinued.

15. ***Sakthi Trading Co. (Supreme Court)***

Where on dissolution of firm, the business of the firm was not discontinued, then the stock shall be valued at cost or market price whichever is lower.

16. ***Enhanced Compensation*** ***Ram Bai or Sutlej Cotton Mills Ltd.(Supreme Court)***

If accrual System of accounting is followed, then interest on additional compensation will be spread over from date the Government acquires the asset to the date Court passes the order for additional compensation.

17. ***Section* 2(47)** ***Anarkali Sarabhai. (Supreme Court)***

Redemption of Preference Shares amounts to transfer (Relinquishment of right). Capital gains is chargeable in the hands of shareholder in the year of redemption.

18. ***Section 49(1)*** ***R.M. Arunachalam (Supreme Court)***

If an asset is acquired in circumstances of section 49(1) and the previous owner had created a mortgage which is cleared by the assessee, then COA to assessee is equal to COA of previous owner plus amount paid for clearing the mortgage charge.

19. ***Section* 47** ***Gautam Sarabhai Trust***

If the consideration for transfer of shares in amalgamating company consist of something more than the shares in amalgamated company THEN exemption under section 47 is not available.

20. ***Section* 251** ***Jute Corporation of India Ltd.(Supreme Court)***

A claim for deduction can be admitted by the first appellate authority even if no claim for such deduction was made in the return of income or at the time of assessment proceedings if the appellate authority is satisfied that such a ground could not have been raised at the time of filing of return or at the time of making the assessment order and such a ground became available because of change in law or change in circumstances.

21. ***Section* 251** ***Gurjargravures P. Ltd. (Supreme Court)***

No claim for a deduction can be admitted by the first appellate authority if no claim was made before A.O. and there was no material on record supporting such claim, so however, the assessee could have made a claim for such deduction at the time of filing of return or during the course of assessment proceedings.

22. ***Section* 251** ***National Thermal Power Co. Ltd. (Supreme Court)***

ITAT has power to consider any ground raised by the assessee or the department for the first time before the Tribunal although it has not been raised before the lower authorities. An appellant before the Tribunal, can urge a new ground of appeal only with the permission of the Tribunal.

23. ***DIRECTOR OF STATE LOTTERIES v. CIT (GAUHATI HIGH COURT)* 1999**

The income arising to the lottery agent in respect of the prize on unsold ticket in his possession is income from business and profession and is not taxable under section 115BB. Section 194B is also not applicable and TDS is not required to be deducted on such prize winning ticket.

24. ***Section* 172 *read with 44B*** ***A.S. Glittre (Supreme Court)***

Tax paid under section 172 will be treated as advance tax for all purposes. Excess will be refunded to the assessee if he opts for normal provisions and the assessee is entitled to interest on the refund of excess advance tax.

25. ***Section 28*** ***Sahney Steel & Press Works Ltd.(Supreme Court)***

If subsidy is received for setting up industry in the backward area and the subsidy is received with reference to investment in fixed assets, then such subsidy will be reduced from the actual cost of the assets as per Explanation 10 to section 43(1). If a subsidy is given by way of assistance to the assessee in carrying on his business or trade, it has to be treated as a trading receipt. In the present case, the subsidy was given only on commencement of commercial production. The subsidy was given to help the assessee to run the business more profitably. It was a helping hand provided to industries in the early years to compete with established industries. The subsidies were operational subsidies and therefore Assessing Officer was justified in taxing the same as revenue receipt.

26. ***Section 37(1)*** ***Hazi Aziz & Abdul Shakoor Bros. (Supreme Court)***

Penalties imposed for infraction of law are not deductible.

27. ***Section 37(1)*** ***Malwa Vanaspati & Chemicals Co. (Supreme Court)***

Assessee paid sales tax of Rs. 1,00,000/= instead of Rs. 2,00,000/= after giving an undertaking to the sales tax department, that he will sell the goods in the state of Rajasthan only. Had he not given the undertaking, he would have paid sales tax of Rs. 2,00,000/=. Because of his failure to the sell the goods in Rajasthan only, he had to pay a penalty of Rs. 1,25,000/= to the sales tax department. Held, Rs. 25,000/= represents penalty which is disallowable and Rs. 1,00,000/= represents sales tax which is deductible.

28. ***Section 37(1)*** ***Indian Alluminium Co Ltd. (Supreme Court)***

Assessee failed to deduct TDS on fees paid to foreign collaborator and the collaborator refused to pay the same. Assessee paid TDS from his own pocket and claimed deduction of the same. Held, not allowable since paid as a consequence of default under I. T. Act and is in nature of penalty.

29. ***Tuticorin Alkali Chemicals & Fertilizers Ltd. (Supreme Court)***

Interest paid during construction period is to be capitalised to the cost of the assets to which it relates. Interest earned during construction period cannot be reduced from the interest paid during construction period and the same is taxable as I/O/S

Set off of interest paid and earned after construction period is possible and balance will be taxed.

30. ***Section 41 (1)*** ***P.K. Kaimal***

Assessee who claimed the bad debt and who recovers must be the same for the applicability of section 41(4). No taxability if the assessee who recovers the bad debt is different from the assessee who claimed the bad debt.

31. ***Section 36(1)(vii)*** ***Veerabhadra Rao(Supreme Court)***

Assessee being successor to a business will be entitled to claim allowance for bad debt even though the debt does not relate to business of assessee but to the business he succeeded. If predecessor has incurred the debt and the assessee writes off the same, deduction of bad debt shall be allowed to the assessee.

32. ***Section* 37(1)** ***Brooke Bond India Ltd.(Supreme Court)***

Expenses for issue of share capital is capital expenditure and is not allowable.

33. ***Section 37(1)*** ***Madras Industrial Investment Corporation Ltd. (Supreme Court)***

Discount on issue of debentures is to be allowed as a deferred revenue expenditure and shall be allowed proportionately over the period of the debentures.

Wealth-tax

34. ***Section* 4** ***M. G. Kollankulam***

Where the properties are transferred under section 4, then it is not necessary that the properties concerned should have been assets as defined in the Wealth-tax Act, on the date on which the transfers were effected by the assessee. If the properties are assets on the valuation date, then the said assets will be clubbed with the wealth of the Individual even though the properties were not assets at the time when they were transferred.

35. ***Section 2(ea)*** ***Rabindranath Dhal***

Asset does not include any house which the assessee may occupy for the purposes of his business or profession. If a house owned by partner is used by the partnership firm in which he is a partner, then it can be said that the house is used by the partner for the purposes of his business or profession and is not an asset in the hands of partner.

36. ***H.* S. *Chauhan***

Penalty cannot be levied under the Wealth tax Act on the legal heir of deceased.

37. ***GAJ SINGH (SUPREME COURT)***

When exemption for a palace is claimed under section 5(iii), exemption cannot be claimed for another house under section 5(vi).

38. ***TRUSTEES OF H.E.H. THE NIZAM'S PILGRIMAGE MONEY TRUST (SUPREME COURT)***

Exemption under section 5(i) is not available to a properly situated in India if it is held for any public purpose of a charitable or religious nature outside India.

39. ***KO. MATHEWS (KERALA HIGH COURT)***

Even if the assessee has converted the assets which were brought by him from outside India, into money and has used that money for acquisition of other assets, then the asset which is acquired with sale consideration of original asset, is also eligible for exemption under section 5(v).

Income-tax

40. ***UP State Industrial Development Corporation (Supreme Court)***

Where the assessee in the financing business subscribed to the undersubscribed portion of a public issue and received commission on the shares so subscribed, held that the commission is not the income of the assessee, but shall be reduced from the cost of shares.

41. ***Section 40(ba)*** ***Rashiklal & Co. (Supreme Court)***

Salary, commission or remuneration paid by AOP/BOI to Karta in his individual capacity will be disallowed even if the Karta is not a member in his individual capacity, but is a member on behalf of the HUF.

42. ***Section 2(22)*** ***G. Narasimhan (Supreme Court)*** **1998**

The accumulated profits under section 2(22) have to be reduced by the amount deemed as dividend under section 2(22)(e). On reduction of share capital, there is deemed dividend under section 2(22)(d). The Supreme Court in Kartikeya V. Sarabhai held that capital gains will arise on reduction of share capital. The Supreme Court in G. Narasimhan held that for computing the capital gains on the shares so reduced, the sale price shall be taken as under:

Cash received on reduction
Add: FMV of assets received on reduction
Less: Deemed dividend under section 2(22)(d).

43. ***Section 80IA*** ***Seeyan Plywoods***

Deduction under section 80IA/80IB is available in the assessment years in which the value of old plant and machinery does not exceed 20% of total value of plant and machinery. It is not available in the years in which the value of old plant and machinery exceeds 20%. The deduction is not dependent on whether or not deduction has been allowed in the preceding assessment year.

44. ***City Mills Distributors Pvt. Ltd. (Supreme Court)***

Income earned by the promoters of a company prior to incorporation cannot be taxed in the hands of the company since the accrual of income takes place when the assessee company was not in existence. The same shall be taxable in the hands of promoters in the status of AOP/BOI.

45. ***Bombay Dyeing & Manufacturing Co. Ltd. (Supreme Court)***

The assessee contributed Rs.2,25,000/- to Maharashtra Housing Board for construction of flats for company workers. The ownership of the flats was to remain with the Housing Board and the assessee's workers were allowed to occupy the flats. Held that the company cannot claim depreciation since the flats are not owned by it. The said expenditure is exclusively for the welfare of the employees and is allowable as revenue expenditure.

46. ***Bankipur Club Ltd. (Supreme Court)***

Income of mutual concern is exempt from tax in so far as it is received from its members. A club is a mutual concern and is entitled to exemption for the surplus arising from sale of drinks, refreshments etc. or amounts received by way of rent for letting out the buildings or amounts received by way of admission fees, periodical subscriptions and receipts of similar nature from its members.

47. ***Arvind Mills Ltd. (Supreme Court)***

The assessee paid betterment charges to Municipal Corporation for laying down of the roads, making a provision for drainage etc. in the area in which his land was situated. Held, that the betterment charges could not be added to the cost of land since the improvements were not effected to the land owned by the assessee, but to the adjacent land belonging to the Government. The same could not be treated as a revenue expenditure since there is no direct nexus with the day-to-day running of the business. The same is a capital expenditure not allowable as deduction.

48. ***Kasturi* & *Sons Ltd.* (1999) *(SUPREME COURT)***

"Moneys payable" in section 43(6) has to be interpreted only as actual money payable in cash or by cheque/draft and not any other thing or benefit which can be converted into money. In the instant case, the aircraft of the assessee met with an accident and the insurance company gave a similar aircraft to the assessee. The Supreme Court held that in the present case contract of insurance was a contract of reinstatement and not contract for money.

49. Travancore Cochin Chemicals Ltd. [2000]

Payment towards proportionate share of expenses of assessee for running of school wherein children of assessee's employees were studying would be expenditure for smooth functioning of business of assessee and also expenditure wholly and exclusively for welfare of employees of assessee and hence allowable under section 37(1).

50. Anand Theatres [2000] (SUPREME COURT)

Theatre used for running cinema business cannot be treated as 'plant'

51. C.R. Subrmanian [2000]

In case of sale of land and building, capital gain is bifurcated between long-term capital gain and short-term capital gain.

52. Miss Piroja C. Patel [2000]

Compensation paid for eviction of hutment dwellers from land which is sold would be allowable as cost of improvement.

53. Travancore Rubber & Tea Co. Ltd. [2000] (SUPREME COURT)

Where assessee received, under an agreement to sell old unyielding rubber trees, earnest money and advance amount and sale did not materialise, in view of section 51 both amounts in question

received and retained by assessee in respect of abortive sale transaction of rubber trees would be capital receipt.

54. *ANJUM M.H. GHASWALA (SUPREME COURT) 2001.*

Section 245D does not empower the Settlement Commission to waive or reduce the statutory interest payable under sections 234A, 234B or 234C. Interest under sections 234A, 234B and 234C are mandatory interest and Settlement Commission can not waive or reduce such interests. Settlement Commission has the same power as conferred by the Income-tax Act on Income-tax Authorities. Therefore, Settlement Commission can waive/reduce the interest under sections 234A/B/C to the extent it can be waived by Chief Commissioner/Director General (Investigation) as permitted by the Board's circular.

55. *HINDUSTAN BULK CARRIERS (SUPREME COURT OF INDIA DECEMBER 2002) MOST IMPORTANT*

Interest under section 234B shall be charged on the tax on consolidated amount of income assessed by the Settlement Commission, i.e. both the disclosed as well as undisclosed incomes. Therefore interest under section 234B shall be charged on the tax payable on the incomes already disclosed in the returns filed together with income disclosed before the Settlement Commission. Interest has to be levied from 1st April of the Assessment Year upto the date of order of Settlement Commission passed under section 245D(4), where the order of Settlement Commission is passed under section 245D(4)

56. *CIT v. Bokaro Steel Ltd. [1999] (Supreme Court)*

Where assessee-company, which was in process of constructing and erecting its plant and had not started any business during relevant assessment years, received certain amounts through (i) rent charged by assessee from its contractors for housing workers and staff employed by contractor for construction work of assessee, (ii) hire charges for plant and machinery given to contractors for use in construction work of assessee, (m) interest from advances made to contractors for purpose of facilitating work of construction, and (iv) royalty for excavation and use of stones on assessee's land for construction work, first three receipts being intrinsically connected with construction of assessee's plant, would be reduced from the cost of the plant and similarly royalty received for stone excavated from assessee's land would go to reduce cost of plant and could not be taxed as income.