

RECENT SUPREME COURT JUDGEMENTS

On account of substantial amendments in taxation laws in recent years, all decisions may be read keeping in view the law applicable at the relevant time.

Agricultural Income

It is necessary to raise produce from land by performance of basic operations (*CIT vs. Raja Benoy Kumar Sahas Roy* [1957] 32 ITR 466).

Appeal to High Court

Substantial question of law is to be formulated by the High Court at the time of admission of appeal. The question cannot be formulated after conclusion of arguments. *M. Janardhana Rao vs. JCIT* (2005) 273 ITR 50 (SC).

Appeal to Supreme Court

It is not open to the revenue to accept the earlier judgment in the case of one assessee and challenge its correctness without just cause in the case of other assessees. (*Union of India vs. Kaumudini Narayan Dalal* [2001] 249 ITR 219).

Merely because no appeal was preferred against similar decision of High Court does not affect maintainability of appeal if public interest is involved (*State, CBI v. Sashi Balasubramanian* (2007) 289 ITR 8).

Appellate Powers

1. He cannot find a new source of income not considered by I.T.O. Power of enhancement is restricted to the subject matter of assessment or source of income considered by I.T.O. (*CIT vs. Shapoorji Pallonji Mistry* [1962] 44 ITR 891 and *CIT vs. Rai Bahadur Hardutroy Motilal Chamaria* [1967] 66 ITR 443).
2. Where sufficient material is on record, a claim can be made for the first time before AAC or Tribunal even if the assessee made no claim before the A.O. Additional ground of appeal may be raised for the first time where such ground could not have been raised earlier or where such ground became available on account of change of circumstances. (*Jute Corpn. of India vs. CIT* [1991] 187 ITR 688)
3. The Tribunal has jurisdiction to entertain additional ground raised for first time in respect of question of law which arises from the facts found by I.T. authorities and having a bearing on the tax liability of the assessee. (*National Thermal Power Co. Ltd. vs. CIT* [1998] 229 ITR 383).
4. While condoning delay, Courts should have a pragmatic and liberal approach (*Collector of Land Acquisition vs. MST. Katiji* (1987) 167 ITR 471; *N. Balakrishnan vs. M. Krishnamurthy* (1998) 7 SCC 123).
5. Dept. and assessee's, both appeals should be heard together (*CIT vs. Vijay Inds. Udoy* 152 ITR 111 (SC))

Appellate Tribunal

Income Tax Appellate Tribunal is an independent judicial body (*ITAT vs. V. K. Agarwal* (1999) 235 ITR 175).

A.O.P./B.O.I.

1. Where persons do not combine in a joint enterprise to produce income they cannot be assessed as A.O.P. (*CIT vs. Indira Balkrishna* [1960] 39 ITR 546).
2. On sale of business by firm, surplus is to be assessed in the status of B.O.I. (*C.I.T. vs. Artex Mfg. Co.* [1997] 227 ITR 260).

Amalgamation

1. Effective date is date of transfer specified in the scheme. From said date, income of amalgamating Co. is that of amalgamated Co. (*Marshall Sons & Co. vs. CIT* [1997] 223 ITR 809).
2. Shares received in new company on the basis of shares in old company does not amount to 'Exchange' or 'Relinquishment' and no capital gains arises. (*CIT vs. Rasiklal Maneklal (HUF)* [1989] 177 ITR 198)

Assessment/Intimation

1. Failure to get the accounts audited for which there is no default on part of the assessee should not give rise to best judgment assessment. (*Swadeshi Polytex Ltd. vs. ITO* [1983] 144 ITR 171).
2. ITO should observe principles of natural justice in making assessment (*Dhakeshwari Cotton Mills Ltd. vs. CIT* [1954] 26 ITR 775).
3. Best judgment assessment should be made on some rational basis (*Joharmal Murlidhar & Co. vs. Agricultural ITO* [1971] 79 ITR 6).
4. Assessment of total income in India is to be in Indian rupees even where accounts are maintained in foreign currency. (*CESC Ltd. vs. C.I.T* [1998] 233 ITR 50).
5. "Assessment proceedings":- Explanation 1 to S. 153 comprehends entire process of assessment starting from stage of filing of return under section 139 till making order of assessment u/s. 143(3)/144. (*Auto and Metal Engineers and Ors. vs. DDI* [1998] 229 ITR 399).
6. Merely because a wrong person is taxed with respect to particular income, the A.O. is not precluded from taxing the right person with respect to that income. (*I.T.O. vs. Ch. Atchiaiah* [1996] 218 ITR 239)
7. Regular assessment means assessments under sections 143(3) and 144 alone. (*Modi Industries Ltd. vs. CIT* [1995] 216 ITR 759).
8. Regular Assessment initiated by issuing notice u/s. 143(2); summary assessment u/s. 143(1)(a) – cannot be made thereafter (*CIT vs. Gujarat Electricity Board* [2003] 260 ITR 84)

9. *Presumption u/s. 132(4A) is not applicable for framing regular assessment (P. R. Metrani v. CIT (2006) 287 ITR 209)*
10. *Assessing Authority has no power to entertain a claim made by assessee otherwise than by filing a revised return (Goetze (India) Ltd. v. CIT (2006) 284 ITR 323).*

Audit

Order passed u/s. 142(2A) for getting accounts audited without giving an opportunity of hearing to the assessee was bad in law (*Rajesh Kumar v. DCIT (2006) 287 ITR 91*) Note : The issue as to whether notice of hearing is necessary before passing an order directing audit has been referred to a larger bench in *Sahara India (Firm) v. CIT (2007) 289 ITR 473*).

Benami Transaction

1. Benami Transaction (Prohibition) Act, 1988 is not declaratory, S. 3(1) and S. 4(1) are not retrospective and does not apply to pending proceeding. S. 4(2) has limited operation in pending cases. (*R. Rajagopala Reddy vs. Padmini Chandrasekharan [1995] 213 ITR 340, Mithilesh Kumari vs. Prem Behari Khare [1989] 177 ITR 97 Overruled in part*).
2. Neither the filing of suit or taking of a defence is prohibited where property is purchased in the name of wife or unmarried daughter and the presumption under section 3(2) is rebutted. (*Nandkishor Mehta vs. Sushila Mehra [1995] 215 ITR 218*).

Binding nature of ITAT decision/order

Unless order of ITAT is set aside, the CIT(A) should follow the same. Failure to follow may result in undue harassment and chaos in administration of tax laws and amounts to contempt of Tribunal order. (*Kamlakshi Finance Corp. AIR 1992 (SC) 711*).

Binding Precedent

1. Decision of a Division Bench of the hon'ble Supreme Court is binding on another Division Bench of the same or a smaller number of Judges (*UOI vs. Raghubir Singh (1989) 178 ITR 548*).
2. Dismissal of special leave does not amount to either upholding the order or otherwise (*V. M. Solgonkar & Bros. (p.) Ltd. vs. CIT (2000) 243 ITR 383*).
3. Ratio of High Court judgment is binding on all Courts and Tribunals functioning within the jurisdiction of the High Court and also on other Division Benches of the same High Court (*UOI vs. Ragabur Singh (1989) 178 ITR 548*).
4. If there is conflict of two decisions of the Supreme Court, the decision of the larger bench will prevail (*CIT vs. Trilok Nath Mehroratra (1998) 231 ITR 278*).

5. Although the principles of res judicata does not apply to tax matters, Courts will generally accept an earlier decision unless there is a change in facts or in law – Bharat Sanchar Nigam Ltd. and Another v. Union of India and Others (2006) 282 ITR 272 (SC).
6. Lower authorities bound by order passed by higher authority (CIT v. Ralson Industries Ltd. (2007) 288 ITR 322).

Block Assessment

Conditions precedent should be satisfied before making block assessment (Manish Maheshwari v. ACIT (2007) 289 ITR 341).

Bonus Shares

Bonus shares received for shares held as stock-in-trade do not automatically become part of stock-in-trade. They are received as capital and can be converted into stock of business (*CIT vs. Madan Gopal Radheyilal* [1969] 73 ITR 652).

Business Connection

1. Where the Indian Co. canvassing orders for non-resident Co. had no right to accept offers on behalf of the non-resident and contracts were entered into, delivery made and prices received outside India, Indian Co. not assessable as agent of non-resident as there is no business connection (*CIT vs. R.D. Agarwal & Co.* [1956] 56 ITR 20; *CIT vs. T.I. & M. Sales Ltd.* [1987] 166 ITR 93). Also refer Expln. 2 to Sec. 9(1).
2. Expression 'business connection' in 9(1) includes professional connection. Connection must be real and intimate and not casual. Fees received by solicitors in London held to be taxable. (*Barendra Prasad Roy and Others vs. ITO* [1981] 129 ITR 295). Also refer Expln. 2 to Sec. 9(1).
3. "Business connection" under Income-tax Act is different from the term "permanent establishment" used in double taxation avoidance treaties (*Ishikawajima-Harima Heavy Industries Ltd. v. DI* (2007) 288 ITR 408)

Business Expenditure

1.
 - a. Whenever statutory impost is paid by an assessee as interest, damages or penalty, the A.O. should examine scheme of the relevant statute, notwithstanding the nomenclature of the impost. If impost is found to be of composite nature, the A.O. should bifurcate the two components and give deduction to the component, which is compensatory in nature. (*Prakash Cotton Mills Pvt. Ltd. vs. CIT* [1993] 201 ITR 684).
 - b. Interest u/s 36(2) of the BST Act held to be of a composite nature. Hence compensatory element held allowable. (*Standard Batteries Ltd. vs. CIT* [1995] 211 ITR 444).
2. Following allowed as Business Expenditure

- i. Under mercantile system of accounting, expenditure due but not provided in the accounts (*Kedarnath Jute Mfg. Co. Ltd. vs. CIT [1971] 82 ITR 363*).
- ii. Interest on borrowings for acquiring tax-free securities held to be allowable (*CIT vs. Indian Bank Ltd. [1965] 56 ITR 77*). [Refer also case at para 2 (xx) below]. Refer Section 14A
- iii. Interest on loan for purchase of capital asset (*Bombay Steam Navigation Co. P. Ltd. vs. CIT [1965] 56 ITR 52*). [Also refer amendment by Finance Act, 2003, w.e.f. 1/4/2004 – disallowing interest till the capital asset is first put to use]
- iv. Legal expenses for defending civil litigation. (*Sree Meenakshi Mills Ltd. vs. CIT [1967] 63 ITR 207*).
- v. Remuneration to Karta/Members of H.U.F. (*Jitmal Bhuramal vs. CIT [1962] 44 ITR 887; Jugal Kishore Baldeo Sahai vs. CIT [1967] 63 ITR 238*).
- vi. Royalty paid under mining lease agreement (*Gotan Lime Syndicate vs. CIT [1966] 59 ITR 718*).
- vii. Expenditure for use of technical research and patents of foreign collaborators (*CIT vs. CIBA of India Ltd. [1968] 69 ITR 692*).
- viii. Lump sum payment, once for all, for acquisition of know-how for improving or updating process so as to result in higher yield of product already being manufactured. (*Alembic Chemical Works Co. Ltd. vs. CIT [1989] 177 ITR 377*).
- ix. Expenditure incurred for raising loans. (*India Cements Ltd. vs. CIT [1966] 60 ITR 52*). Also refer amendment by Finance Act, 2003 w.e.f. 1-4-2004 disallowing interest till the capital asset is first put to use.
- x. Expenditure on replacement of certain parts (*CIT vs. Mahalakshmi Textile Mills Ltd. [1967] 66 ITR 710*).
- xi. Contribution for development of roads owned by Govt. (*Lakshmiji Sugar Mills Co. P. Ltd. [1971] 82 ITR 376, L. H. Sugar Factory and Oil Mills vs. CIT [1980] 125 ITR 293; Contrary decision in Travancore Cochin Ltd. vs. CIT [1977] 106 ITR 900 and Arvind Mills Ltd. vs. CIT [1992] 197 ITR 422*).
- xii. Amount paid for use of goodwill of a firm. (*Devidas Vithaldas & Co. vs. CIT [1972] 84 ITR 277*).
- xiii. Amount paid under a short-term agreement to avoid competition (*CIT vs. Coal Shipment Pvt. Ltd. [1971] 82 ITR 902*).
- xiv. Municipal property tax paid in foreign country (*Mitsui Steamship Co. Ltd. vs. CIT [1975] 99 ITR 7*).
- xv. Payments to employees on grounds of commercial expediency. The expression "wholly and exclusively" does not mean "necessarily" (*Sassoon J. David & Co. Pvt. Ltd. vs. CIT [1979] 118 ITR 261*).

- xvi. Expenditure on renovation of building, reconditioning of machinery etc. after derequisitioning of a colliery. (*Kalyanji Mavji & Co. vs. CIT [1980] 122 ITR 49*).
 - xvii. Amount paid for purchase of "loom hours". (*Empire Jute Co. Ltd. vs. CIT [1980] 124 ITR 1*).
 - xviii. Successor of a business entitled to claim bad debts in respect of an amount receivable by predecessor. Legal expenses for takeover of business allowable. (*CIT vs. T. Veerabhadra Rao, [1985] 155 ITR 152*).
 - xix. Where assessee has an existing right to carry on a business, any expenditure incurred during the course of business for purpose of removal of any restriction or obstruction or disability provided no capital asset is acquired. (*Bikaner Gypsums Ltd. vs. CIT [1991] 187 ITR 39*).
 - xx. In the case of indivisible business, entire expenditure will be permissible even if some of the activities may yield tax free income. [*Rajasthan State Warehousing Corp. vs. CIT [2000] 242 ITR 450*]. [Finance Act, 2001 has inserted sec. 14A w.e.f. 1/4/62 to disallow expenditure in relation to exempt income].
 - xxi. Provision for liability towards leave encashment held allowable [*Bharat Earth Movers vs. CIT [2000] 245 ITR 428*]. [Finance Act, 2001 has amended section 43B so as to allow deduction only on payment basis].
 - xxii. Expenditure incurred in connection with issue of bonus shares (*CIT v. General Insurance Corpn. (2006) 286 ITR 232*).
3. In applying the test of commercial expediency for determining whether an expenditure was wholly and exclusively laid out for the purpose of the business, reasonableness of the expenditure has to be adjudged from the point of view of the business and not of the revenue. (*CIT vs. Walchand & Co. P. Ltd. [1967] 65 ITR 381*; *J. K. Woollen Manufacturers vs. CIT [1969] 72 ITR 612* and *CIT vs. Edward Keventer (Pvt.) Ltd. [1978] 115 ITR 149*).
 4. Remuneration to Managing Agents allowable only in the year in which it is sanctioned by the *Central Govt.* (*Nonsuch Tea Estate Ltd. vs. CIT [1975] 98 ITR 189*). This principle will extend to cases where sanction for payment of remuneration to directors, selling agents etc. needs to be obtained under Cos. Act.
 5. Following not allowed as Business Expenditure
 - Penalty or fines levied for contravention of statutory provisions (*Haji Aziz & Abdul Shakoor Bros. vs. CIT [1961] 41 ITR 350*); Payments opposed to public policy and/or against any law (*Maddi Venkataraman & Co. (P.) Ltd. vs. CIT [1998] 229 ITR 534*)
 - Interest paid on monies borrowed to meet assessee's personal obligations (*CIT vs. Madhav Prasad Jatia [1979] 118 ITR 200*).

6. Securities purchased on "Cum-interest", the composite price cannot be split up. Interest received for the period prior to acquisition cannot be set off against cost of security and is in the nature of income. (*Vijaya Bank Ltd. vs. CIT (Addl.) [1991] 187 ITR 541*).
7. Purchase of stock-in-trade is expenditure for the purposes of S. 40A(3). (*Attar Singh Gurmukh Singh vs. ITO [1991] 191 ITR 667*).
8. The first proviso to S. 43B, clarifying that sums paid after accounting year but before due date of return are deductible, has retrospective effect. (*Allied Motors (P) Ltd. vs. Union of India [1997] 224 ITR 677*).
9. Accumulated gratuity amount appurtenant to employees of a division transferred to the successor company was held allowable expenditure. (*W.T. Suren & Co. Ltd. vs. C.I.T [1998] 230 ITR 643*).
10. Amount paid for use of patents and designs for a definite period with secrecy clause was held deductible expense being a payment in the nature of licence fees. (*CIT vs. I.A.E.C. (Pumps) Ltd. [1998] 232 ITR 316*).
11. Expenditure which substitutes for revenue expenditure should be considered as revenue expenditure. (*CIT vs. Madras Auto Services (P) Ltd. [1998] 233 ITR 468*).
12. Where expenditure incurred has definite and continuing benefits over specified years, deduction is to be allowed on proportionate basis in each year. (*Madras Industrial Investment Corp. Ltd. vs. C.I.T. [1997] 225 ITR 802*).
13. Payment made to the workmen under a settlement agreement upon closure of some of the units of the assessee held as allowable revenue expenditure (*K. Ravindranathan Nair vs. CIT [2001] 247 ITR 178*).
14. All expenses including rent, repairs, depreciation on guest house are disallowable as per section 37(4) - *Britannia Industries Ltd. v. CIT (2005) 278 ITR 546 (SC)*.
15. The phrase "for the purpose of business" in section 36(1)(iii) has to be given a wider meaning as in section 37(1). The expenditure may not have been incurred under any legal obligation, but yet it is allowable as business expenditure if it was incurred on grounds of commercial expediency (*S. A. Builders Ltd. v. CIT (2007) 288 ITR 1*).

Business Income

1. Rent received by assessee facing financial crisis and temporarily suspending business, from hire for temporary period of 10 years with a view to commercially exploit assets, without intention of closing the business, was held as Business income. (*CIT vs. Vikram Cotton Mills Ltd. [1988] 169 ITR 597*).

2. The law does not oblige a trader to earn maximum profits nor does it bring to tax profits which he could have but did not earn. (*CIT vs. A. Raman & Co. [1968] 67 ITR 11*).
3. Exchange of shares held as stock-in-trade for other shares amounts to realisation of the stock. Difference between book value of original shares and market value of shares received in exchange constitutes business income. (*Orient Trading Co. Ltd. vs. CIT [1997] 224 ITR 371*).

Business Loss

1. Loss from dacoity in a bank allowable — (*CIT vs. Nainital Bank Ltd. [1965] 55 ITR 707*).
2. Loss from embezzlement in the course of business allowable (*Badri Das Daga vs. CIT [1958] 34 ITR 10* and *Associated Banking Corporation of India Ltd. vs. CIT [1965] 56 ITR 1*).
3. Loss in transactions involving transfer of delivery notes without actual delivery of goods treated as speculation loss (*Davenport & Co. Pvt. Ltd. vs. CIT [1975] 100 ITR 715*; *Nirmal Trading Co. vs. CIT [1980] 121 ITR 54* and *Jute Investment Co. Ltd. vs. CIT [1980] 121 ITR 56*).
4. Hedging loss on items banned under the Forward Contracts Regulation Act cannot be set off against other income and cannot be carried forward to subsequent years. (*CIT vs. Kurji Jinabhai Kotecha [1977] 107 ITR 101*).
5. Loss by theft of cash held directly for business operations, is incidental to business and is allowable (*Ramchandrar Shivnarayan vs. CIT [1978] 111 ITR 263*).
6. For the purpose of set off of carried forward loss the decisive test is unity of control and not the nature of the two lines of business. (*B. R. Ltd. vs. V.S.P. Gupta, CIT [1978] 113 ITR 647*).
7. Assessee carrying on illegal business is entitled to claim loss incidental to such business. (*CIT vs. Piara Singh [1980] 124 ITR 40*; *CIT vs. S.C. Kothari [1971] 82 ITR 794 (801-2)*).
8. Damages paid for breach of contract does not amount to speculation loss. (*CIT vs. Shantilal (P.) Ltd. [1983] 144 ITR 57*).
9. Unabsorbed business loss deductible only after current year's depreciation. (*CIT vs. Mother India Refrigeration Ind. P. Ltd. [1985] 155 ITR 711*).
10. On real income theory, loss on revaluation of securities as per 'lower of cost or market value' method of stock valuation adopted consistently for income tax purpose is allowed. The fact of securities being valued at cost in books for statutory compliance is held irrelevant. (*United Commercial Bank vs. CIT [1999] 240 ITR 355*).
11. Heroin drugs forming part of stock in trade was seized and confiscated, loss on account of same was allowable as business loss. Explanation to section 37

is not applicable to such loss as there is a difference between loss and expenditure (Dr. T. A. Quereshi v. CIT (2006) 287 ITR 547).

CBDT Circular

CBDT Circular is binding on departmental authorities. (*UCO Bank vs. C.I.T. [1999] 237 ITR 889*).

Capital Gains

1. "Full value of consideration" cannot be construed as the market value but the price bargained for by the parties to the sale (*CIT vs. George Henderson and Co. Ltd. [1967] 66 ITR 622*).
2. Redemption of preference shares is 'Transfer' liable to capital gains (*Anarkali Sarabhai vs. CIT [1997] 224 ITR 422*).
3. Slump sale of business as a going concern – Gains are liable to tax u/s. 41(2) on itemised basis if slump price is determined on valuation of each asset/liability (*CIT vs. Artex Manufacturing Co. [1997] 227 ITR 260*).

If no evidence of separate itemised valuation available gains on slump sale are not liable to tax u/s. 41(2) (*CIT vs. Electric Control Gear Manufacturing Co. [1997] 227 ITR 278*).

4. But for fiction in section 41(2)/50, excess of sale realisation over WDV/cost of asset is a capital receipt. (*CIT vs. Urmila Parekh [1998] 230 ITR 422*).
5. Up to accumulated profits, shareholder pays dividend tax; while excess chargeable as capital gains. (*CIT vs. G. Narsimhan [1999] 236 ITR 327*).
6. Capital gain is to be computed on commercial principles. (*Miss Dhun Dadabhoy Kapadia vs. G. CIT [1967] 63 ITR 651*).
7. There involves neither transfer nor any consideration accrues to a partner who retires from the firm. (*CIT (Addl.) vs. Mohanbhai Pamabhai [1987] 165 ITR 166*), *Tribhuvandas G. Patel vs. CIT [1999] 236 ITR 515* reversing *Bombay High Court's decision in (CIT vs. Tribhuvandas G. Patel [1978] 115 ITR 95)*
8. A partner's share in a firm is a capital asset (*Rangaswami Naidu vs. CIT (1957) 31 ITR 711*; *A. K. Sharfuddin vs. CIT (1960) 39 ITR 333*).
9. Consideration received on transfer of tenancy rights is a capital receipt liable to capital gains tax. Decision of the Bombay High Court in the case of *Cadell Weaving Mill Co. P. Ltd. v. CIT (2001) 249 ITR 265* affirmed – *CIT v. D. P. Sandu Bros. Chembur P. Ltd. (2005) 273 ITR 1 (SC)*.

Capital or income

Compensation for loss of source of income is a capital receipt (*Oberoi Hotel Pvt. Ltd. vs. CIT (1999) 236 ITR 903*).

Cash Credits

1. If confirmations filed show GIR Nos. or PA Nos. of lenders, the identity of the lenders is established and A.O. cannot add such cash credits as income without further inquiries. (*CIT vs. Orissa Corporation Pvt. Ltd. [1986] 159 ITR 78*).
2. Provisions of S. 69 are discretionary. Not that every unsatisfactory explanation about source of investment could invite addition u/s. 69. (*CIT vs. Smt. P.K. Noorjahan [1999] 237 ITR 570*).

Charitable Trust

1. Advancement or promotion of trade, commerce, and industry is an object of general public utility (*CIT vs. Andhra Chamber of Commerce [1965] 55 ITR 722*).
2. Assessee trust set up to promote exports of diamonds from India and to provide facilities to promote exports and imports of diamonds, etc. was held to be established for charitable purpose. (*Director of Income-tax vs. Bharat Diamond Bourse [2003] 259 ITR 280 (SC)*).
3. Rana community constituted a section of 'public' (*Ahmedabad Rana Caste Association vs. CIT [1971] 82 ITR 704; Ahmedabad Rana Caste Association vs. CIT [1983] 140 ITR 1*).
4. Distribution of profits among the members of the Association introduced an element of private gain. Hence income is taxable (*CIT vs. Indian Sugar Mills Association [1974] 97 ITR 486*).
5. For determining the availability of exemption u/s 11 one has to look at the predominant objects of a trust and not at individual activities. If the objects are charitable, exemption is available (*CIT (Addl.) vs. Surat Art Silk Cloth Manufacturers Ass. [1980] 121 ITR 1; CIT vs. Andhra Chamber of Commerce [1981] 130 ITR 184; CIT vs. Federation of Indian Chambers of Commerce & Industry [1981] 130 ITR 186; CIT (Addl.) vs. Victoria Technical Institute [1991] 188 ITR 57*).
6. Charitable trust will not lose exemption merely because it carries on a business. (*CIT vs. Dharmodayam Co. [1977] 109 ITR 527, Dharmadeepti vs. CIT [1978] 114 ITR 454 and Dharmaposhanam Co. vs. CIT [1978] 114 ITR 463*).
7. Even if part of income of Bar Council is exempt u/s. 10(23A) exemption can be claimed in respect of other income u/s. 11. (*CIT vs. Bar Council of Maharashtra [1981] 130 ITR 28*).
8. S. 11(1)(a) & S. 11(2) are independent of each other. If the unspent surplus is in excess of 25% of the gross income then the balance can be accumulated u/s. 11(2). (*CIT (Addl.) vs. A.L.N. Rao Charitable Trust [1995] 216 ITR 697*).
9. Civil Court has jurisdiction to rectify the trust deed. Decision of civil court binding on the income tax authorities. (*CIT vs. Kamla Town Trust [1996] 217 ITR 699*).

10. Educational Society formed for sole purpose of establishing, running managing or assisting schools/colleges is educational institution whose surplus (including donations received) is exempt u/s. 10(22). (*Aditanar Educational Institution vs. Addl. CIT [1997] 224 ITR 310*).
11. Credit entries in accounts of trust in favour of educational institution and corresponding withdrawals by educational institution would amount to application of income. (*C.I.T. vs. Thanthi Trust [1999] 239 ITR 502*).
12. Accumulation – Exemption u/s. 11(1)(a) of 25% is on gross receipt and not on net balance. [*CIT vs. Programme for Community Organisation [2001] 248 ITR 1*].
13. Intimation required u/s.11(2), read with rule 17, has to be furnished before the assessing authority completes concerned assessment because such requirement is mandatory. (*CIT vs. Nagpur Hotel Owners Association [2001] 247 ITR 201*)

Clubbing of Income

1. 1. Proximate connection between accrual of income and assets transferred necessary. Money gifted to wife introduced as capital in a firm. Share of profits from the firm held as not liable for clubbing with husband's income (*CIT vs. Prahladrai Agarwala [1989] 177 ITR 398; CIT vs. Prem Bhai Parekh [1970] 77 ITR 27*). As per section 10(2A), share of profit from firm is now exempt from tax.
2. 2. 'Income' includes 'loss' for the purpose of S. 64(1)(i). (*CIT vs. J. H. Gotla [1985] 156 ITR 323; CIT vs. P. Doraiswamy Chetty [1990] 183 ITR 559*).
3. 3. S. 64(i) not attracted where husband is partner as karta of HUF and not in individual capacity. (*CIT vs. Shri Om Prakash [1996] 217 ITR 785; CIT vs. Vipinchandra Sanghavi [1995] 215 ITR 753 (Bom.)*).

Deduction

1. For the purposes of Sec. 80HHC, word "profit" would include loss in sub-section (3). However, only if the resultant amount is a positive figure would an assessee be entitled to deduction u/s. 80HHC. If an assessee is not entitled to deduction, he cannot pass the benefit to the supporting manufacturer (*IPCA Laboratory Ltd. 266 ITR 521 (SC)*).
2. Interest received on deposits with Electricity Board was not derived from industrial undertaking and was not entitled to deduction u/s. 80HH (*Pandian Chemicals Ltd. [2003] 262 ITR 278 (SC)*).
3. Diverse services provided by assessee to foreign enterprise for running of the hotel of international standards were regarded as "information concerning industrial, commercial or scientific knowledge, experience or skill made available" within the meaning of S. 80-O. (*CBDT vs. Oberoi Hotels (India) Pvt. Ltd. [1998] 231 ITR 148*). Relevant up to A.Y. 1997-98.

4. Deduction u/s. 80T is to be allowed with reference to net long-term capital gain remaining after set off u/s. 74 (as it stood then) (*Rama Varma vs. CIT* [1994] 205 ITR 433).

Note : This decision is relevant for interpreting provisions of S. 112, as effective from A.Y. 1994-95.

5. Incentive provisions need to be construed liberally so as to advance objective of provisions. (*Bajaj Tempo Ltd. vs. CIT* [1992] 196 ITR 188).
6. Preparation of foodstuff in a hotel from raw materials does not amount to manufacturing or production of article or thing within the meaning of section 80J [*Indian Hotels Co. Ltd. vs. ITO* [2000] 245 ITR 538].
7. Profits earned on counter sales in convertible foreign exchange involving customs clearance entitled to deduction u/s. 80HHC (*CIT vs. Silver & Art Palace* [2003] 259 ITR 684)
8. A co-operative society carrying on banking business would be entitled to deduction u/s. 80P on income statutorily required to be placed in approved securities (*CIT v. Nawanshahar Central Co-op. Bank Ltd.* (2007) 289 ITR 6).
9. "Total Turnover" for the purposes of section 80HHC does not include excise and sales tax (*CIT v. Lakshmi Machine Works* (2007) 290 ITR 667).
10. Restriction that receipt should be in convertible foreign exchange for section 80HHC is not applicable in case of supporting manufacturer (*CIT v. Baby Marine Exports* (2007) 290 ITR 323).

Deduction of Tax at Source

Where the employee's service termination was held illegal by the S.C. and it directed payment of lump sum by way of back wages and compensation in lieu of reinstatement, the employee is to be allowed relief u/s. 89. (*K. C. Joshi vs. Union of India* [1987] 163 ITR 597; *Sant Raj and Others vs. O.P. Singla & Others* [1987] 163 ITR 588).

Deemed Income

Unilateral write back in the books of the assessee cannot give rise to taxability u/s. 41(1). (*CIT vs. Sugauli Sugar Works (P) Ltd.* [1999] 236 ITR 518 followed in *CIT vs. Abdul Ahad* [2001] 247 ITR 710 (J&K) wherein *CIT vs. T.V.S. Sundaram Iyengar & Sons Ltd.* [1996] 222 ITR 344 (SC) distinguished - contrary decisions - *CIT vs. T.V.S. Sundaram Iyengar & Sons Ltd.* [1996] 222 ITR 344 followed in *CIT vs. Sundaram Industries Ltd.* [2002] 253 ITR 396 (Mad)). [Decisions are applicable to pre-amended section 41(1) up to A.Y. 1992-93]

Depreciation

1. On land not allowable (*CIT vs. Alps Theatre* [1967] 65 ITR 377).
2. Interest on monies borrowed during construction period forms part of "actual" cost and depreciation is allowable (*Challapalli Sugar Ltd. vs. CIT* [1975] 98 ITR 167).

3. Drawings, designs etc. can be treated as 'plant' on which depreciation is allowable. (*Scientific Engineering House (P) Ltd. vs. CIT* [1986] 157 ITR 86; *CIT vs. Elecon Engg. Co. Ltd.* [1987] 166 ITR 66).
4. Subsidy received from Government not to be deducted from cost of assets. (*CIT vs. P.J. Chemicals Ltd.* [1994] 210 ITR 830). Also refer explanation 10 to Section 43(1).
5. Carry forward and set off of unabsorbed dep. permissible (prior to the amendment of S. 32(2) in 1996 even if
 - a. The business to which the dep. relates is discontinued.
 - b. The asset in respect of which depreciation is claimed ceases to exist in the year of set off.
 - c. No business is carried on in the year of set off. (*CIT vs. Virmani Industries (P) Ltd.* [1995] 216 ITR 607).
6. For the purpose of section 32, person exercising dominion over property and having right to use and occupy it in his own right would be owner of building. The execution and registration of formal deed held as empty requirement. (*Mysore Minerals Ltd. vs. CIT* [1999] 239 ITR 775).
7. The expression "moneys payable" used in S. 43(6)(C) limits to monetary consideration. Value of reinstated asset would not fall within the meaning "moneys payable". (*CIT vs. Kasturi & Sons Ltd.* [1999] 237 ITR 24).
8. Depreciation claim is optional, A.O. cannot thrust it upon unwilling assessee. (*CIT vs. Mahendra Mills* [2000] 243 ITR 56). [Finance Act, 2001 has amended section 32 to make claim for depreciation mandatory].
9. Nursing home building held as plant (*CIT vs. Dr. B. Venkata Rao* [2000] 111 Taxman 635).
10. Cinema Theatre building is not plant (*CIT vs. Anand Theatres* [2000] 244 ITR 192).

Diversion of Income

If no charge is created on the property it will be treated as application of income and not diversion of income by overriding title. The nature of obligation is decisive in determining whether there is such diversion. (*CIT vs. Sitaldas Tirathdas* [1961] 41 ITR 367; *CIT vs. Motilal Chhadamilal Jain* [1993] 190 ITR 1).

Dividend Income

1. Loan or advance u/s. 2(22)(e) will be treated as 'dividend' even if it is not outstanding at the close of the accounting year. (*Smt. Tarulata Shyam vs. CIT* [1977] 108 ITR 345).
2. Interest paid on unpaid purchase price of shares is allowed as deduction. Damages paid for failure to take delivery of shares when assessee not

carrying on business in shares held to be capital expenditure. (*R. Dalmia vs. CIT* [1977] 110 ITR 644).

3. Interest paid on monies borrowed for investing in shares is allowable u/s. 57(iii) even if no dividend is received on such shares (*CIT vs. Rajendra Prasad Moody* [1978] 115 ITR 519).
4. If a loan is advanced by a private Company to H.U.F. but the shares are held in the name of Karta of H.U.F., such loan will not be covered by the definition of "deemed dividend" (*Rameshwarlal Sanwamal vs. CIT* [1980] 122 ITR 1). Also refer amendment to clause (e).
5. "Accumulated profits" for the purpose of S. 2(22) means actual profit computed on commercial principles; the profit which is capable of being distributed and/or capitalised. (*CIT vs. Urmila Parekh* [1998] 230 ITR 422).
6. Amount taxed u/s. 2(22) goes to reduce accumulated profits for the purpose of S. 2(22). (*CIT vs. G. Narsimhan* [1999] 236 ITR 327).
7. Definition of 'dividend' as contained in section 2(22) would apply to all provisions which contain the term 'dividend' in the Act. (*CIT vs. Mysodet (P) Ltd.* [1999] 237 ITR 35)

Double Taxation Relief

1. Once the Government has signed an agreement with a foreign country for the avoidance of double taxation and notified it, the said agreement would operate even if inconsistent with the provisions of the Act. (*Union of India vs. Azadi Bachao Andolan* 263 ITR 706 (SC)).
2. Provisions of Double Taxation Avoidance Agreement would override the provisions of Income-tax Act. *CIT vs. P.V.A.L. Kulundagan Chettiar* (2004) 267 ITR 654 (SC).

Heads of Income

1. Heads of income are mutually exclusive. If capital receipt is not liable to tax under the head "Capital Gains", the same cannot be brought to tax under the head "Income from other sources". *CIT vs. D. P. Sandu Bros. Chembur P. Ltd.* (2005) 273 ITR 1 (SC).

H.U.F.

1. Coparcener, wife and minor daughters can form H.U.F. (*N. vs. Narendra Nath vs. CWT* [1969] 74 ITR 190).
2. There need not be more than one coparcener to form H.U.F. (*Gowli Budanna vs. CIT* [1966] 60 ITR 293; *Kalyanji Vithaldas vs. CIT* [1937] 5 ITR 90(PC)).
3. Widows can form H.U.F. (*CIT vs. Veerappa Chettiar* [1970] 76 ITR 467).
4. Family signifies a group of persons. A single individual cannot form H.U.F. (*C. Krishna Prasad vs. CIT* [1974] 97 ITR 493).

5. Remuneration received by Karta for services rendered to the Co. is taxable as his individual income even if the shares in the company are held by H.U.F. (*Raj Kumar Singh Hukamchandji vs. CIT* [1970] 78 ITR 33) (Also refer to *V.S.D. Dhanwatey vs. CIT* [1968] 68 ITR 365).
6. Gift out of self-acquired property to sons cannot be treated as H.U.F. property in the hands of sons unless it is specifically given to H.U.F. of sons (*M. P. Periakaruppan Chettiar vs. CIT* [1975] 99 ITR 1).
7. Where family consisted of husband, wife and unmarried daughter income from self acquired property of Karta, which was thrown by him into family hotchpot will be treated as his individual income till the son is born. (*Surjitlal Chhabda vs. CIT* [1975] 101 ITR 776).
8. Burden is on the assessee to prove that the property is joint family property. (*Anil Kumar Roy Choudhary vs. CIT* [1976] 102 ITR 12).
9. Children of a person married under the Special Marriage Act, 1954, would be governed by Hindu Law if they are brought up as Hindus (*CWT vs. R. Sridharan* [1976] 104 ITR 436).
10. A female member of H.U.F. cannot impress her self-acquired property with the character of H.U.F. property (*Pushpa Devi vs. CIT* [1977] 109 ITR 730).
11. When business of H.U.F. is partitioned, the share coming to each coparcener will be his H.U.F. property and cannot be treated as separate property. (*Tolaram Bijoy Kumar vs. CIT* [1978] 112 ITR 750).
12. Principles for determination of share of female members on death of a male member in H.U.F. discussed in the light of S. 6 of Hindu Succession Act. (*Gurupad Magdum vs. Hirabai Magdum* [1981] 129 ITR 440).
13. Partial partition of HUF — mere severance in status not sufficient to establish partition — difference between Hindu Law & S. 171. Till order u/s. 171 income would be assessable in the hands of H.U.F. (*Kalloomal Tapeswari Prasad H.U.F. vs. CIT* [1982] 133 ITR 690).
14. Father can effect partition of HUF properties even if there are minor coparceners. (*Apoorva Shantilal Shah vs. CIT* [1983] 141 ITR 558).
15. When the father dies intestate the amount standing to his credit in the books of a partnership, devolves on the son in his individual capacity and not on the HUF of the son. (*CWT vs. Chander Sen* [1986] 161 ITR 370).
16. Gift by a coparcener of his undivided interest in coparcenary property of Mitakshara HUF without the consent of the other coparceners is void. (*Thamma Venkata Subbamma vs. Thamma Rattamma* [1987] 168 ITR 760).
17. Salary to HUF – partner is HUF's income if salary is a part of the return for investments made by the HUF in the firm. But, if salary is for managing the firm or rendering special services, same is individual's income of a member representing HUF. (*CIT vs. Triloknath Mehrotra and Ors.* [1998] 231 ITR 278, *K.S. Subbiah Pillai vs. CIT* [1999] 237 ITR 11)

18. The basic principle appearing from S. 171 is that in order to claim partition in respect of any property, physical division of property is a pre-requisite. (*CIT vs. Venugopal Inani* [1999] 239 ITR 514).

Income

1. Income-tax is a tax on Real income; i.e., profits computed on commercial principles. (*Poona Electricity Supply Co. Ltd. vs. CIT* [1965] 57 ITR 521).
2. Dividend income on shares held as stock-in-trade is to be treated as business income (*Bengal & Assam Investors Ltd. vs. CIT* [1966] 59 ITR 547) (Also refer *Brooke Bond & Co. Ltd. vs. CIT* [1986] 162 ITR 373).
3. Receipts by a teacher of Vedanta from his disciples treated as income (*P. Krishna Menon vs. CIT* [1959] 35 ITR 48).
4. Insurance claim received on damage of part of the building, plant and machinery is a capital receipt and not liable to tax u/s. 41(2) of the Income-tax Act. (*CIT vs. Sirpur Paper Mills Ltd.* [1978] 112 ITR 776). Also refer to amendment in section 41(2).
5. "Hire Charges" for chartering of ship is not payment for "carriage of goods" and not taxable u/s 172. (*Union of India vs. Gosalia Shipping Pvt. Ltd.* [1978] 113 ITR 307).
6. In computing profits of contractor by applying flat rate to total receipts, the value of materials supplied by the Government at fixed rates for use in the contract should be excluded from the total receipts. (*Brij Bhushan Lal Parduman Kumar vs. CIT* [1978] 115 ITR 524).
7. Profit or loss on appreciation or depreciation of foreign currency (FC) is treated as income if the FC is held as part of circulating capital. If FC is held as fixed capital such profit or loss is of a capital nature (*CIT vs. Tata Locomotive & Engg. Co. Ltd.* [1966] 60 ITR 405; *Sutlej Cotton Mills Ltd. vs. CIT* [1979] 116 ITR 1; *State Bank of India vs. CIT* [1986] 157 ITR 67).
8. Amount collected from customers on 'Dharmada Account' is not a trading receipt and cannot be treated as income of the recipient (*CIT vs. Bijlee Cotton Mills P. Ltd.* [1979] 116 ITR 60).
9. Receipts on account of Salami, premia and compensation were receipts of a capital nature. (*Ukhara Estate Zamindaris Pvt. Ltd. vs. CIT* [1979] 120 ITR 549).
10. Amount credited to the account of Non-resident for commission due on account of services rendered outside India cannot be considered as receipt of income in India. Entire income accrued outside India (*CIT vs. Toshoku Ltd.* [1980] 125 ITR 525).
11. Principles of real income not applicable to capital expenditure. (*CIT vs. Jalan Trading Co. (P.) Ltd.* [1985] 155 ITR 536).

12. For determination of income, entries made in books of account are not conclusive. (*State Bank of India vs. CIT* [1986] 157 ITR 67).
13. Applying real income theory, interest on sticky loans not credited to profit and loss account did not accrue to the assessee. Supreme Court's decisions in *State Bank of Travancore vs. CIT* [1986] 158 ITR 102 and *Kerala Financial Corporation vs. CIT* [1994] 210 ITR 129 are distinguished and/or overruled. (*UCO Bank vs. C.I.T* [1999] 237 ITR 889).
14. Assessee borrowed funds from banks/FIs for setting up factory. Part of borrowed funds, not immediately required was invested in short-term deposits with banks. Assessee adjusted interest thereon from pre-production expenses. Interest income held taxable. (*Tuticorin Alkali Chemical & Fertilizers Ltd. vs. CIT* [1997] 227 ITR 172).
15. Surplus from amounts collected from members for giving certain facilities. Surplus not spent is not exigible to tax even if such surplus may be on account of giving facilities not only to permanent members but even to temporary members and their guests. (*CIT vs. Bankipur Club Ltd.* [1997] 226 ITR 97).
16. On facts, entries in books held not representing real income accrued to the assessee. (*Godhra Electricity Co. Ltd. vs. CIT* [1997] 225 ITR 746 and *CIT vs. Bokaro Steel Ltd.* [1999] 236 ITR 315).
17. Unclaimed trade deposits written back to P/L account is assessable as income. (*CIT vs. T.V.S. Sundaram Iyengar & Sons Ltd.* [1996] 222 ITR 344).

Income Accrual

1. Additional compensation does not accrue when amount awarded is disputed by Government by filing appeal. (*CIT vs. Hindustan Housing & Land Development Trust Ltd.* [1986] 161 ITR 524).
2. Interest on enhanced compensation for land acquired under Land Acquisition Act, accrues from year to year and cannot be assessed in one lump sum in year in which it is awarded by the Court. (*CIT vs. T.N.K. Govindarajulu Chetty* [1987] 165 ITR 231, *Rama Bai vs. CIT* [1990] 181 ITR 400; *K.S. Krishna Rao vs. CIT* [1990] 181 ITR 408).

Income from other sources

Interest on amount borrowed to pay taxes and annuity deposits is not expenditure incurred wholly and exclusively for purpose of earning income and is hence not deductible. (*Smt. Padmavati Jaikrishna vs. CIT (Addl.)* [1987] 166 ITR 176).

Income from House Property (H.P.)

1. Where H.P. is owned by two or more persons whose shares are defined, deduction u/s. 23(2) allowable to each co-owner separately. S. 26 clarifies this. (*CIT vs. Bijoy Kumar Almal* [1995] 215 ITR 22)
2. In the context of S. 22 "owner" is a person who is entitled to receive income in his own right. Amendment introduced by the Finance Act, 1987 to S. 27 is

clarificatory in nature. (*CIT vs. Podar Cement Pvt. Ltd. and Ors. (1997) 226 ITR 625*).

Income or Capital

1. Annual amounts received by assessee on termination of lease is revenue receipt. (*Seth Banarasi Dass Gupta vs. CIT (1987) 166 ITR 783*).
2. Compensation paid to assessee for termination of lease for cutting and removing timber is a capital receipt. (*CIT vs. Bombay Burmah Trading Corporation, (1986) 161 ITR 386*).
3. Compensation for entering into non-compete covenant held as capital receipt. (*CIT vs. Best & Co. Pvt. Ltd. [1966] 60 ITR 11*). [Refer Amendment - Finance Bill, 2002]
4. Loss on sale of investments acquired to boost business is a revenue loss. (*Patnaik & Co. vs. CIT [1986] 161 ITR 365*).
5. Facts of each case will determine whether assessee is a dealer or investor in shares. (*CIT vs. H. Holck Larsen [1986] 160 ITR 67*).
6. During construction of plant, amount received from an activity inextricably connected with construction activity would be non-chargeable capital receipt which would go to reduce cost of construction. (*CIT vs. Bokaro Steel Ltd. [1999] 236 ITR 315*); *CIT vs. Karnataka Power Corp. [2001] 247 ITR 268*).
7. Operational subsidies granted after set up of unit and after commencement of production are supplementary trade receipts taxable as "income". (*Sahney Steel & Press Works Ltd. vs. C.I.T. [1997] 228 ITR 253*).
8. Amount received for loss of source of income to the assessee held as capital receipt (*Oberoji Hotel 236 ITR 903*) [Refer amendment in Finance Act, 2002] - Sec. 28 (vii)

Interest

1. Interest under sections 234A/B is to be levied on income declared in return and not on assessed income (*CIT vs. Ranchi Club Ltd. — [2001] 247 ITR 209*. [Refer also amendment to sections 234A/B and section 140A made by the Finance Act, 2001]).

Contrary view in *CIT vs. Anjum M. H. Ghaswala [2001] 252 ITR 1* – Interest held to be mandatory.

2. Interest u/s. 220(2) is chargeable only if there is demand notice and a default to pay the amount (*Vikrant Tyres Ltd. vs. ITO [2001] 247 ITR 821*).
3. No interest u/s. 234B and 234C can be charged in case of a company whose income is assessed as per section 115J (*CIT v. Kwaliti Biscuits Ltd. (2006) 284 ITR 434*)

Interest on interest

Where there was delay on the part of the department to refund the advance tax and interest thereon, department was ordered to pay interest on such interest by way of compensation – *Sandvik Asia Ltd. v. CIT* (2006) 280 ITR 643 (SC).

Interpretation & Principles

1. Decision by larger Bench of Court would normally prevail over that by a single judge or smaller Bench. (*Sundardas K. Bhatija & Ors. vs. Collector, Thane, Maharashtra & Ors.* (1990) 183 ITR 130) Also refer - *UOI Raghubir Singh* [1989] 178 ITR 548.
2. Ordinarily earlier decision of one Division Bench (DB) of High Court should be followed by other DB of same High Court and in cases of an extraordinary matter, it can be placed before larger Bench. (*Assistant Controller of Estate Duty vs. V.S. Devaki Ammal* [1995] 212 ITR 395).
3. Where counsel is permitted to retire from a case at last moment, court should ensure that notice is given to other party. (*Alok Spices vs. State of Kerala* (1994) 205 ITR 415).
4. There is a fundamental though unwritten axiom that no legislation could have at all intended a double deduction unless clearly expressed. (*Escorts Ltd. vs. UOI* [1993] 199 ITR 43).
5. Facts should be viewed in natural perspective having regard to compulsion of the circumstances of the case. Where it is possible to draw two inferences from the facts and when there is no mala fide motive inferences should be drawn in such a manner that would lead to equity and justice. (*Saroj Aggarwal vs. CIT* [1985] 156 ITR 497).
6. A taxing provision imposing liability is presumed to be not retrospective (*Virtual Soft Systems Ltd. v. CIT* (2007) 289 ITR 83).
7. Taxing statute should be construed on the basis of object sought to be achieved (*Ishikawajimahirima Heavy Industries Ltd. v. DI* (2007) 288 ITR 408).

Investment Allowance

1. Assessee engaged in construction business not entitled to investment allowance u/s. 32A. Dams, canals, buildings, etc. are not 'articles' or 'things' (*CIT vs. N.C. Budharaja & Co.* [1993] 204 ITR 412).
2. Leasing and finance co. is entitled to investment allowance u/s. 32A in respect of hiring of machinery for manufacture by third party. (*CIT vs. Shaan Finance (P) Ltd.* [1998] 231 ITR 308).
3. Hotel business is not entitled to investment allowance with respect to activity of producing foodstuff from raw materials. [*India Hotels Co. Ltd. vs. ITO* — [2000] 245 ITR 538].

Limitation

While condoning delay, Courts should have a pragmatic and liberal approach. (*Collector of Land Acquisition vs. Mst. Katiji and Ors.* [1987] 167 ITR 471); *Balakrishnan vs. M. Krishnamurthy* [1998] 7 SCC 123). .

Method of Accounting

1. If system followed does not disclose true picture of the profits, A.O. is duty bound to reject the system even though followed consistently. Accordingly, stock valuation only at raw material cost was rejected. (*CIT vs. British Paints India Ltd.* [1991] 188 ITR 44).
2. Closing stock of raw material is to be valued at cost net of Modvat element. [*CIT vs. Indo Nippon Chemical Co. Ltd.* — 261 ITR 275 (SC). Refer to amendment by way of Section 145A inserted by Finance (No. 2) Act, 1990.
3. Entries in the accounts cannot decide the taxability of receipts or allowability of expenses (*State Bank of India vs. CIT* 157 ITR 67; *CIT vs. India Discount Co. Ltd.* 75 ITR 191; *Godra Electricity Co. Ltd. vs. CIT* (1997) 225 ITR 746; *CIT vs. Bokaro Steel Ltd.* (1999) 236 ITR 315; *Tuticorin Alkali Chemicals & Fer. Ltd. vs. CIT* 227 ITR 172; *Sutlej Cotton Mills Ltd. vs. CIT* 116 ITR 1).
4. Valuation of stock as per market value which is higher than cost is not a proper method of valuation of stock – *Sanjeev Woolen Mills v. CIT* (2005) 279 ITR 434 (SC).

Mutuality Concept

Principle of mutuality applies to income from house property. Club being mutual concern not exigible to tax under section 22 (*Chemsford Club vs. CIT* [2000]243 ITR 89). *CIT vs. Bankipur Club Ltd.* (1997) 226 ITR 97.

Natural justice

Use of evidence or statement without affording opportunity to assessee. Principles of natural justice are violated and the order may be held to be bad in law (*Kishanchand Chellaram v. CIT* (1980) 125 ITR 713).

Partnership

1. Sub-partnership constitutes diversion of income by overriding title (*Murlidhar Himatsingka vs. CIT* [1966] 62 ITR 323).
2. H.U.F. cannot become partner. Karta can enter into partnership on behalf of H.U.F. (*Ram Laxman Sugar Mills vs. CIT* [1967] 66 ITR 613).
3. Two or more members of H.U.F. can become partners with others and represent H.U.F. in a firm. (*CIT vs. Sir Hukumchand Mannalal & Co.* [1970] 78 ITR 18).
4. A firm cannot enter into partnership with others. (*Textile Supply Co. vs. CIT* [1959] 36 ITR 242 and *Dulichand Laxminarayan vs. CIT* [1956] 29 ITR 535).
5. Interest paid to partner to be adjusted against interest received from partner and only net amount is to be disallowed u/s. 40(b). (*Keshavji Ravji & Co. vs.*

CIT [1990] 183 ITR 1 & Devi Cine Projector Manufacturing Co. vs. CIT [1990] 183 ITR 19).

6. On dissolution and discontinuance of firm, stock-in-trade must be valued at market price and not at lower of cost or market price. (*A.L.A. Firm vs. CIT [1991] 189 ITR 285*).
7. *In case the firm continues with surviving partners, valuation is to be made at cost or market value, whichever is lower (Sakthi Trading Co. vs. CIT (2001) 250 ITR 371.*
8. Karta and individual member of HUF can enter into a valid partnership. (*Chandrakant Manilal Shah vs. CIT [1992] 193 ITR 1*).
9. Sub-partnership merely to finance the business of main firm is not in violation of S. 14 of Andhra Pradesh Abkari Act and therefore entitled to registration u/s. 185 of the I.T. Act, 1961. (*CIT (Addl.) vs. Degan Ganga Reddy G. Ramakrishna & Co. [1995] 214 ITR 650*).

Penalty

1. In respect of penalty u/s 271(1)(c) for concealment of income, the law operating as on the date when return was filed is applicable to the assessee (*Brij Mohan vs. CIT [1979] 120 ITR 1*).
2. Penalty u/s. 271(1)(c) is not leviable if returned income and assessed income is loss. (*CIT vs. Prithipal Singh & Co. [2001] 249 ITR 670*). [Amendment made in cl. (a) to Expl. 4 to sec. 271(1)(c) by Finance Act, 2002 w.e.f. 1/4/2003 & this decision is overruled].
3. Prior to amendment by Finance Act, 2002, no penalty could be levied u/s. 271(1)(c) where returned income and assessed income were loss (*Virtual Soft Systems Ltd. v. CIT (2007) 289 ITR 83*).
4. Where assessee agrees to addition before detection of income, penalty u/s. 271(1)(c) cannot be levied. *Shadilal Sugar & General Mills (1987) 168 ITR 705; CIT vs. Suresh Chandra Mittal (2001) 251 ITR, 9.*

Professional Income

S. 80RRA applies to remuneration received by consultant/technician who need not be a salaried employee of the payer. (*CBDT vs. Aditya VS. Birla [1988] 170 ITR 137*).

Promissory Estoppel

Where a Govt. makes a promise knowing or intending that it could be acted upon by assessee (promisee) and in fact, promisee, acting in reliance on it, alters his position, Govt. would be held bound by promise and promise would be enforceable against the Govt. at instance of the promisee. But there can be no promissory estoppel against the legislature in exercise of its legislative functions, nor can the Govt. be debarred by promissory estoppel from enforcing a statutory prohibition. Doctrine of promissory estoppel cannot be invoked to compel the Govt. to do and act contrary to the law. (*Motilal Padampat Sugar Mills Co. P. Ltd. vs. State of UP [1979] 118 ITR 326; UOI*

vs. Godfrey Philips (I) Ltd [1986] 158 ITR 574; Assistant Commissioner of Commercial Taxes (Asst.) vs. Dharmar & Ors.

Dharmendra Trading Co. [1988] 172 ITR 395).

Prosecution u/ss. 276C, 277 and 278

A company cannot be prosecuted as each of the above sections require imposition of mandatory imprisonment coupled with fine and leaves no choice to Court to impose only fine (*Asstt. Commissioner vs. Velliappa Textiles Ltd. [2003] 263 ITR 550 (SC); Standard Chartered Bank and Others vs. Directorate of Enforcement and Others (2004) 275 ITR 81 (SC).*

Although company cannot be prosecuted, fines, etc. can be imposed on a company (Madhumilan Syntex Ltd. v. UOI (2007) 290 ITR 199).

Recovery of Tax

1. Tax can be recovered from assessee only when it becomes due. Tax becomes due only when notice of demand has been served on assessee. (*Manmohanlal vs. ITO [1987] 168 ITR 616).*
2. In case of a co. which has become a 'deemed public co.' u/s. 43A of the Companies Act, 1956, arrears of tax for period after the co. has become a deemed public co. cannot be recovered from directors of the co. u/s. 179 (M. *Rajamoni Amma vs. Dy. CIT (Assessment) [1992] 195 ITR 873).*

Rectification of Mistakes

1. Mistake apparent from the record must be an obvious and patent mistake — Debatable issues cannot be rectified u/s. 154. (*T.S. Balaram vs. Volkart Bros. [1971] 82 ITR 50).*
2. Apparent mistake of law can be rectified in the same manner as a mistake of fact. (*M.K. Venkatachalam, ITO vs. Bombay Dyeing & Manufacturing Co. [1958] 34 ITR 143).*
3. Mistake arising as a result of subsequent interpretation of law by SC, would constitute a mistake apparent from the record and can be rectified u/s. 154. (CBDT Cir. No. 68 of 17-11-1971).
4. In rectification proceedings, ITO can grant deduction which had not been claimed earlier, provided sufficient data is available on record. (*Anchor Pressings P. Ltd. vs. CIT [1986] 161 ITR 159).*
5. On the basis of subsequent decision of Supreme Court, rectification of order is permissible (*Poothomdu Plantates (P) Ltd. vs. Agri. ITO (1996) 221 ITR 557.*

Resident /NOR

Income earned outside India and income exempt in India are not taxable (*CIT vs. Morgenstern Werner [2003] 259 ITR 486).*

Refund

Government is liable to pay interest on the amount of interest on advance tax which it should have paid to the assessee but has unjustifiably failed to do so. – (*CIT vs. Narendra Doshi* [2002] 254 ITR 606).

Reference to Valuation Officer u/s. 55A

The scope of reference to a Valuation Officer is limited and spelt out in sections 55A and 269L. Apart from the said two sections, AO has no power to make a reference to a Valuation Officer. Since, specific powers have been granted in sections 55A and 269L for making a reference, AO cannot resort to make a reference either u/s. 131(1) or 133(6) or 142(2). (*Smt. Amiya Bala Paul vs. CIT* [2003] 262 ITR 407 (SC))

Reopening of Assessments

1. Finding or direction against a person not connected with the assessee does not entitle the ITO to reopen the assessment. (*S.C. Prashar vs. Vasantsen Dwarkadas* [1963] 49 ITR 1 and *ITO vs. Murlidhar Bhagwandas* [1964] 52 ITR 335).
2.
 - a. Reopening of assessment on the basis of a factual error pointed out by the audit party is permissible under law. (*CIT vs. P.V.S. Beedies (P.) Ltd.* [1999] 237 ITR 13).
 - b. View expressed by an internal audit party on a point of law cannot be regarded as 'information' for purpose of reopening assessment u/s. 147(b). (*Indian and Eastern Newspaper Society vs. CIT* [1979] 119 ITR 996. Decision in *Kasturbhai Lalbhai* 109 ITR 537 reversed).
3. Where ITO relies upon his own records for determining amount of depreciation allowable to assessee and makes a mistake in not taking into account initial depreciation allowed, reopening not permitted. (*Parashuran Pottery Works Co. Ltd. vs. ITO* [1977] 106 ITR 1).
4. Issue of notice within limitation period, service on assessee beyond limitation period. Assessment valid. (*R. K. Upadhyaya vs. Shanabhai P. Patel* [1987] 166 ITR 163).
5. Once valid proceedings initiated u/s. 147, ITO has not only the jurisdiction but it is his duty to complete the whole assessment de novo. (*ITO vs. Mewalal Dwarka Prasad* [1989] 176 ITR 529).

However, in reassessment proceedings u/s. 147, assessee cannot seek a review of concluded items unconnected with escapement of income for purposes of computation of escaped income. (*CIT vs. Sun Engg. Works P. Ltd.* [1992] 198 ITR 297 followed in *Chettinad Corpn. P. Ltd. vs. CIT* [1993] 200 ITR 320).

Revised Return

Belated return u/s. 139(4) cannot be revised u/s. 139(5). (*Kumar Jagdish Chandra Sinha vs. CIT* [1996] 220 ITR 67).

Revision

1. Once an appeal is filed against the order of the AAC before the Tribunal, a revision petition u/s. 25(1) of the Wealth Tax Act would not lie even if it is the Department who has filed the appeal before the Tribunal. (*CWT vs. Mrs. Kasturbai Walchand & Ors. [1989] 177 ITR 188*).
2. CIT has to be satisfied that the order sought to be revised is erroneous and it is prejudicial to the interest of the revenue. When AO adopts one of the views permissible in law, where two views are possible, the order cannot be treated as an erroneous order prejudicial to the interest of the revenue unless the view taken by the AO is unsustainable in law. (*Malabar Industrial Co. Ltd. v. CIT (2000) 243 ITR 83 (SC)*).

Salary Income

1. Commission receivable by an employee at a fixed percentage of turnover will partake the character of salary. P. F. Contribution made by the employer on such commission is allowable deduction. (*Gestetner Duplicators Pvt. Ltd. vs. CIT [1979] 117 ITR 1*).
2. There is no perquisite under section 17(2) in interest free advances given by company to its employee/directors (*V.S. M. Salgaonkar and Bros (P) Ltd. vs. CIT — [2000] 243 ITR 383*). (Refer amendment to section 17(2) read with Rule 3(7)(i)).

Search & Seizure

1. Once an assessment is completed there is no question of making a seizure and proceeding u/s. 132. ITO can only apply to the authorities who hold the amount to pay the same u/s. 226 towards outstanding taxes. (*K. Choyi vs. Syed Abdulla Bafakky Thangal [1980] 123 ITR 435*).
2. Extended retention of books and documents beyond 180 days without communication is invalid. (*CIT vs. Oriental Rubber Works [1984] 145 ITR 477*).
3. Information from CBI that cash was found in possession of individual is not sufficient for authorizing search; consequent search and block assessment not valid (*Union of India vs. Ajit Jain [2003] 260 ITR 80*).

Settlement Commission

1. Unless applicant discloses income not disclosed earlier, application is not maintainable. Commissioner's report can be based on material collected by him even after submission of application for settlement. Settlement Commission can look into the material obtained even after the Commissioner's report. Assessee cannot be allowed to take advantage of comparatively easy course of settlement where material gathered by the department is likely to establish particulars of income or fraud by the assessee. (*CIT vs. Express Newspapers Ltd. [1994] 206 ITR 443*)
2. Scope and Powers of Settlement Commission discussed in detail (*CIT vs. Damani Brothers [2003] 259 ITR 475*)

"Special Bench" — Powers of ITAT President

1. The President may constitute a "Special Bench" by exercising his administrative powers. He may suo motu if it is brought to his notice that any important point is pending requires to be decided by larger bench, constitute a larger bench/special bench and is intra vires his powers u/s. 255(1) r.w. 255(3) and de hors judicial power under Rule 98A of ITAT Rules/Regulations but not capriciously or arbitrarily. (*ITAT vs. Deputy Commissioner IT [1996] 218 ITR 275*).
2. Tribunal refusing adjournment on ground that 11 adjournments already granted — Not justified. Natural justice requires further short adjournment. Also held, Tribunal not justified in refusing to take on record written arguments of Revenue. (*ITAT vs. Deputy Commissioner IT [1996] 218 ITR 275*).

Stay of Recovery

1. Tribunal can grant stay u/s. 254. (*M.K. Mohammed Kunhi 71 ITR 815*).

Tax Deducted at Source

Provisions of S. 194C not restricted to works contract alone. The deduction has to be from whole amount of contract and not merely income component of the amount. Amounts reimbursed to contractor cannot be excluded from sum from which tax is to be deducted (*Associated Cement Co. Ltd. vs. CIT [1993] 201 ITR 435*).

Tax Planning

1. Tax Planning may be legitimate provided it is within the framework of law. Colourable devices cannot be part of tax planning and it is wrong to encourage or entertain the belief that it is honourable to avoid the payment of tax by resorting to dubious methods. It is the obligation of every citizen to pay the taxes honestly without resorting to subterfuges. (*McDowell & Co. Ltd. vs. CTO [1985] 154 ITR 148*). (Note : The ruling of the *House of Lords in Craven vs. White [1990] 183 ITR 216* lays down that only artificial tax avoidance schemes are to be ignored)
2. Where the meaning of documents on record is clear, the documents cannot be ignored merely on the ground that they lead to tax avoidance. (*CWT vs. Arvind Narottam [1988] 173 ITR 479*).
3. One could not accept the submission that an act which is otherwise valid in law can be treated as non est merely on the basis of some underlying motive supposedly resulting in some economic detriment or prejudice to the national interest. (*Union of India vs. Azadi Bachao Andolan [2003] 263 ITR 706 (SC)*).

Transfer of Cases

Reasons recorded for transfer of a case u/s. 127(1) should be communicated. Otherwise the order of transfer will be invalid (*Ajantha Industries vs. CBDT [1976] 102 ITR 281*).

WEALTH-TAX

1. Test laid down for deciding what is Agricultural Land. (Officer in-charge (Court of words) [1976] 105 ITR 133).
2. Trustees of a trust assessable as individual under WT Act. (*CWT vs. Gordhandas Govindram Family Charity Trust* 88 ITR 47, *Trustees of CWT vs. H.E.M. Nizam's Family Trust (Remainder Wealth)* [1977] 108 ITR 555).
3. Where under a lease agreement a part of the unearned increase in the value of the land is to be given to the lessor at the time of transfer of leasehold rights, deduction of such amount which is payable to the lessor can be claimed while determining the market value of the leasehold land in the hands of the lessee. (*CWT vs. P. N. Sikand* [1977] 107 ITR 922).
4. Debt owed, includes Provision for Taxation. (*Kesoram Industries & Cotton Mills Ltd. vs. CWT* [1966] 59 ITR 767 and *Standard Mills Co. Ltd. vs. CWT* [1967] 63 ITR 470).
5. Wealth-tax payable is allowable as deduction. (*H. H. Setu Parvati Bayi vs. CWT* [1968] 69 ITR 864; *CIT vs. Bennett Coleman & Co. Ltd.* [1984] 146 ITR 524).
6. Proposed Dividend, not a debt until dividend is declared at the *General Meeting*. (*Kesoram Industries & Cotton Mills Ltd. vs. CWT* [1966] 59 ITR 767).
7. Tax liabilities, though assessed after valuation date, deductible. (*CWT vs. K. S. N. Bhatt* [1984] 145 ITR 1; *CWT vs. Vadilal Lallubhai* [1984] 145 ITR 7; *Vimalaben Vadilal Mehta* 145 ITR 11).
8. Tax payable under Voluntary Disclosure Scheme is allowable as deduction in computing net wealth. (*Ahmed Ibrahim Sahigra Dhoraji vs. CWT* [1981] 129 ITR 314).
9. Contingent liability created by family arrangement arrived at between parties is allowable as a deduction on the happening of the contingency. (*H. H. Vijayaba of Bhavnagar* [1979] 117 ITR 784).
10. Right of assessee to receive income of trust fund during his life time cannot be considered as an 'annuity' and exemption cannot be claimed u/s. 2(e)(iv). (*CWT vs. P.K. Banerjee* [1980] 125 ITR 641).
11. Monthly tenancy is not an asset. (*F.S. Ghandhi vs. CWT* [1990] 184 ITR 34).
12. Rule 1D is valid and is mandatory in nature. Clause (ii)(e) of Explan. II is complimentary to clause (i)(a) and gross amounts of both — advance tax and provision for tax cannot be deducted from value of assets to value shares under Rule 1D. (*Bharat Hari Singhania vs. CWT* [1994] 207 ITR 1). Also refer (*CIT vs. Shilaben Family Trust & Others* [2001] 248 ITR 183 & *CIT vs. Sitaram Jindal* [2001] 248 ITR 111).
13. Meaning of "Jewellery" includes gold ornaments even prior to insertion of Explan. 1 to S. 5(1)(viii). Explan. 1 is clarificatory and retrospective w.e.f. 1.4.63. (*CWT vs. Smt. Binapani Chakravarti* [1995] 214 ITR 721).

GIFT-TAX

1. No gift tax payable on goodwill of a business which is one of the assets of partnership. (*CGT vs. P. Gheevarghese* [1972] 83 ITR 403).
2. No gift tax payable on unequal partition of H.U.F. property. (*CGT vs. N. S. Getti Chettiar* [1971] 82 ITR 599).
3. Where minor sons are admitted to benefits of partnership and father's share gets reduced, it amounts to gift by father to minor sons of part of goodwill. (*CGT vs. Chhotalal Mohanlal* [1987] 166 ITR 124).
4. Essential ingredient of a gift is that there must be existing property. Gift by book entries not valid unless concern in whose books the entries are made has adequate cash balance or overdraft facility. (*CIT vs. Dr. R. S. Gupta* [1987] 165 ITR 36).
5. Department and assessee can agree upon one of the alternative methods of valuation of shares of a private company but cannot agree to 'break-up' method unless specifically permitted under that law. (*CGT vs. Executors and Trustees of Estate of Late Shri Ambalal Sarabhai* [1988] 170 ITR 144).