



Monthly Digest of Case Laws (January 2010)

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Journals Referred: BCAJ, CTR, DTR, ITD, ITR, ITR (Trib), Income Tax Review, SOT, Taxman, Taxation, TLR, TTJ, www.itatonline.org

1. Accounts – Closing Stock – S. 145, 154.

Closing stock of earlier year has to be treated as opening stock of current year and therefore where the opening stock of current year shows a lower value than the value of closing stock of earlier year as finally determined by the AO, the same is amenable to rectification under s. 154.

V. K. J. Builders & Contractors (P) Ltd. v. CIT (2010) 228 CTR 143 (SC).

2. Accounts – Accounting method – S. 145.

Assessee developer having regularly employed project completion method which is an accepted method of accounting, and the central government having not notified AS-7 under section 145(2), AO could not reject the accounts under section 145(3) on the ground that the assessee had not followed the percentage completion method.

Prestige Estate Projects (P) Ltd. v. DCIT (2010) 33 DTR 514 (Bang.) (Trib.)

3. Accounts – Valuation – Government securities - S. 28(i), 145.

Assessee is entitled to change the method of valuation of government securities to market value from cost and claim depreciation on the difference in the diminution of value.

CIT v. Karur Vysya Bank Ltd. (2010) 33 DTR 244 (Mad.)

4. Appellate Tribunal-Power - Search and Seizure - S. 132 (1), 254 (1).

Tribunal has power to examine validity of search in an appeal against block assessment i.e. validity of search warrant.

CIT v. Chika Vyankatesh Sidram (2010) 1 ITR (Trib) 369 (Pune) (2010) 122 ITD 293 (Pune).

5. Asset – Urban Land – S. 2(ea) (v) & 2 (ea), Expln. 1 (b).

Land belonging to the assessee on which he has unauthorisedly constructed a farm house stands excluded from the definition of 'urban land' as per Expln. 1 (b) to s. 2 (ea) as no construction was permissible on said land and therefore, it cannot be treated as an asset under the WT Act.

CWT v. Lt. Gen. (Retd.) R. K. Mehra (2010) 228 CTR 205 (P&H)

6. Assessment – Loose Sheets - unaccounted loan – S. 143 (3).

Merely on the basis of document recovered from search bearing no signature of assessee or borrower addition can not be made.

Anil Kumar Bhattia v. Asstt CIT (2010) 1 ITR (Trib) 484 (Delhi).

7. Assessment – HUF – S. 171 (9)

Assessee having not been assessed as an HUF ever before the assessment year in question, provision of section 171 could not be invoked to make assessment in the status of HUF.

Tirlochan Singh v. CIT & Anr. (2010) 228 CTR 390 (P&H)



8. Bad Debts – Share Broker – S. 36 (1) (vii), (2).

Where share broker purchasing shares for its clients and paying money against purchase and money receivable from client becoming bad and treated as bad bed. Held that brokerage payable by client is part of bad debt to be taken into account.

CIT v. Bonanza Portfolio Ltd. (2010) 320 ITR 178 (Delhi)

9. Bad debts – Deduction – S. 36 (1) (vii)

Assessee having valid reasons for judging that amount not recoverable. Assessee having obtained a decree to recover debt doesnot mean that debt was not bad. Assessee was entitled to deduction of bad debt.

CIT v. Punjab Tractors Ltd. (2010) 320 ITR 153 (P&H).

10. Bad debts – S. 36 (1) (ii)

Assessee is not required to prove that the debt has become bad. Assessee only to write off the debt as bad in its books. Law with effect from Assessment Year 1989-90.

Lawlys Enterprises Pvt. Ltd. v. CIT (2010) 214 Taxation 256 (Patna)

11. Bad Debts – Mere write-off sufficient – S. 36(1)(vii)

Bad debts need not be proven to be irrecoverable u/s. 36(1)(vii). It is sufficient if they are written off.

TRF Limited vs. CIT (S.C.) Source : www.itatonline.org

12. Balancing charge – Depreciation - S. 32(I), 41 (2).

Assessee company claimed depreciation at 100 % on wind mill project which was allowed. Subsequently the wind mills were destroyed in cyclone against which assessee received certain amount from insurance company. Revenue authorities brought said amount to tax under section 41 (1) of the income Tax Act. The tribunal held that the amount received from insurance company cannot be taxed under section 41 (1).

Rajhans Metals (P) Ltd v. ITO (2010) 122 ITD 189 (Mum).

13. Block Assessment – Notice – S. 143(2), 158BC.

Issue of s. 143 (2) notice is mandatory for block assessment proceedings. Disclosed items cannot be assessed in block assessment. Circulars are binding on the revenue.

ACIT v. Hotel Blue Moon (Supreme Court) Source : www.itatonline.org.

14. Block Assessment – Search – Estimation – S. 132, 158BC.

Block assessment can only be made on the basis of evidence found during search. Where no evidence was found of unaccounted investment addition could not be made on the basis of valuation report of DVO.

CIT v. Pramod Kumar Gupta (2010) 320 ITR 408 (Delhi)

Block of Assets – S.43(6) (c)

15. Book profits – Depreciation – S.115J

MAT companies can provide depreciation as per Income-tax Rules while computing s. 115J book profits referred to Larger Bench.

Dynamic Orthopedics v. CIT (Supreme Court) Source: www.itatonline.org

16. Book Profit – Tax based on book profit – S. 115JB (2), Expln. 1 cl. (b)

Where net profit is less than 10 percent, 10 percent is to be taken as book profit and amount is to be carried to reserve is to be added. Tariff consisting of advance against depreciation is “income received in advance” and not to be added to net profit to ascertain book profit.

National Hydroelectric Power Corporation Ltd. v. CIT (2010) 320 ITR 374 (SC).

17. Book profit - Company - Mutual concern – S. 4, 115 JB.

When the income is exempt under the principle of mutuality, said income can not be brought to tax under the provisions of s 115JB.

Delhi Gymkhana Club Ltd v. Dy. CIT (2010) 35 SOT 335 (Delhi).

18. Book profit – S. 115JB & 80 HHC.

In a case of MAT assessment, deduction under S. 80HHC is to be worked out on the basis of the adjusted book profit under section 115JB.

CIT v. Ambika Cotton Mills Ltd. & Ors. (2010) 33 DTR 183 (Mad.)

19. Business Loss – Sale of Shares – S.260A

The loss incurred by the assessee on the sale of shares held by the assessee should be treated as business loss of the assessee.

CIT & Anr. Vs. Malabar Industrial Co. Ltd. (2010) 320 ITR 486 (Karn.)

20. Business Expenditure – Employees Contribution – PF - S. 43B.

Even employees’ contribution to PF paid before due date of filing ROI is allowable u/s 43B.

CIT v. Aimil Limited (Delhi High Court)

Source : www.itatonline.org

21. Business Expenditure – Closure of business - Retrenchment compensation – Provident fund – S. 37(1).

Where one of the four units of the assessee was closed down. As per tribunal findings the units was continuing to carry on business. Expenditure incurred on payment of retrenchment compensation, interest on monies borrowed for making such payment and for payment of provident fund was allowable.

CIT v. D. C. M. Ltd. (2010) 320 ITR 307 (Delhi)

22. Business Expenditure – Dormancy and lull of Business – S. 37(1)

Assessee maintaining office, retaining staff for export business though export sales substantially gone down. It was a case of business activities and not closure of business. Hence the expenditure was allowable.

CIT v. Anita Jain (2010) 214 Taxation 180 (Del.)

23. Business Expenditure – Exempted Income - Disallowance – S. 10(2A), 14A, & 36(1)(iii)



Share income of assessee company from a firm in which it was partner did not constitute income of the assessee under section 10(2A) and section 14A applied and therefore disallowance was justified in respect of interest free loans given to the firm.

CIT v. Popular Vehicles & Services Ltd. (2010) 33 DTR 140 (Ker.)

24. Business Expenditure – contribution to development of model village - S. 37(1).

Amount paid by assessee financial corporation for the development of model village in Mysore District under AG's Mysore Zilla Panchayath was to promote the business of the assessee and therefore deduction was allowable.

CIT & Anr. v. Karnataka Financial Corporation (2010) 33 DTR 145 (Kar.)

25. Business expenditure- refundable deposits with stock exchange. S. 37.

Refundable deposits placed with stock exchange can not be allowed as deduction under section 37.

DY CIT v. Khandwala Finance Ltd (2010) 122 ITD 111. (MUM).

26. Business expenditure- advertisement – sales promotion- brand building- S. 37.

By incurring expenditure on advertisement and sales promotion, assessee had not acquired any fixed capital asset, but these expenditure were incurred for earning better profits and for facilitating assessee's operation of providing cellular mobile services hence allowable as business expenditure.

ITO v. Spice Communications Ltd (2010) 35 SOT 78 (Delhi).

27. Business expenditure- expenses incurred for keeping the business alive- S. 37.

Assessee is barred from doing business by SEBI till further orders..Assessee contesting order. Expenses incurred in keeping business alive deductible.

KNP Securities . P. Ltd v. Asst CIT (2010) 1 ITR (Trib) 130. (Mumbai).(2010) 33 DTR (Mumbai) (Trib) 210.

28. Business expenditure- abandoned project- S. 37 (1).

Assessee engaged in the business of exploration and production of oil is entitled to deduction of expenditure pertaining to abandoned project.

ONGC v. DY CIT (2010) 33 DTR (Del) (Trib) 22.

29. Business expenditure- sub contractor- S. 40 (a) (ia), 194 C (2).

Assessee taking vehicles on hire for purpose of executing contract not a case of sub contract. Tax need not be deducted at source. Payment allowable.

Mythri Transport Corporation v. Asst .CIT (2010) 1 ITR (Trib) 290 (Visakhapatnam). .

30. Business expenditure- exempted income- share income from partnership firm- S. 10 (2A), 14A, 36 (I) (iii).

Share income of assessee company from a firm in which it was partner did not constitute income of the assessee under section 10 (2A), therefore section 14A is applicable hence proportionate interest on borrowed funds diverted as interest free loans is disallowable.



CIT v. Popular Vehicles & Services Ltd (2010) 33 DTR (Ker) 140.

31. **Business income – right to sue-remission or cessation of trading liability – S. 28 (va),41 (1) 68.**

Compensation received for forgoing right to sue for specific performance of contract not a trading liability, the said amount being on account of capital account is a capital receipt.

Govindbhai C. Patel (2010) 1 ITR (Trib) 34 (Ahmedabad)

32. **Capital Gains – Chargeability – Sale of copyright, patent – S. 45, 48, 55 (2) (a).**

Matter regarding taxability of amount received for transfer of patent, copyright, etc. is remanded for reconsideration as the tribunal had not examined the facts and circumstances of the case vis-à-vis decision in CIT vs. B. C. Srinivasa setty (1981) 128 ITR 294 (SC) case, bearing in mind that the assessee himself had offered to tax, as an amount capable of being ascertained for capital gain and on his own shown an initial cost of acquisition of asset as nil.

CIT & Anr. v. P. R. Seshadri (2010) 228 CTR 334 (Kar.)

33. **Capital Gains – Agricultural land – S. 2(14) (iii).**

Distance of the agricultural land belonging to the assessee within the meaning of s.2(14) (iii) (b) has to be measured in terms of the approach by road and not by a straight line distance on horizontal plane or as per crow's flight.

CIT v. Satinder Pal Singh (2010) 33 DTR 281 (P&H)

34. **Capital gains- stamp valuation – S. 45,50C.**

When sale consideration is less than the price determined by stamp valuation authority, assessing officer has no option but to adopt the valuation made by the stamp valuation authority.

Mohd. Shoib v. Dy. CIT (2010) 1ITR (Trib) 452 (Lucknow),(2010) 127 TTJ (Lucknow) 459.

35. **Capital gains- trade mark- S. 2 (42A), 47 (iv), 48 & 49 (I) (iii) (e).**

Transfer of trade marks being transfer of capital asset , gains arising there from chargeable to capital gains tax. Cost of acquisition being indeterminable long-term capital gains is not liable to any tax .Matter remanded to decide the period of holding and to tax gains if held to be short term gains.

Trent Brands Ltd v. ITO (2010) 127 TTJ (Del) (UO) 65.

36. **Capital gains- Accrual- enhanced compensation- S. 45 (5), 155 (16).**

Enhanced compensation for acquisition of land is taxable in the year of receipt and can not be taxed in different years in which it accrued

ITO v. Roop Singh (2010) 127 TTJ (Del) 377. (2010) 33 DTR (Del) (Trib) 257.

37. **Capital Gains – TDR – S. 45 & 48**

Amount received by the society from the builder for permitting him to construct additional floors on existing building of the society by utilizing TDR FSI belonging to him is not chargeable to tax since there is no cost of acquisition.

Om Shanti Co-op Hsg. Society Ltd. vs. ITO ITA No. 2550/Mum./2008. BCAJ January (2010) Vol. 41-B



38. Capital gains – Speculation Business – S.73

Assessee company earning income from the sale of shares. AO holding that income earned was from speculation and on the fact it was held that income earned was in the nature of capital gains.

Axis Capital markets (India) Ltd. v. ITO ITA No. 4098/Mum./2007 BC&J January (2010) Vol. 41-B.

39. Capital gains- stock option- short term or long term- S. 2 (42A), 2 (42B),17(2), 48, 54EA, 112.

It is the date of grant of the stock option in favour of the assessee that is material for determining the period of holding the asset in question and not the date on which the option was exercised and stock options were converted in to shares. Capital gains arising out of sale of shares acquired through ESOPs have to be assessed as long term capital gains with consequential benefit of indexation and exemption under section 54.

Asstt CIT v. DR. Dhurjati Gupta (2010) 33 DTR (HYd) (Trib) 287.

40. Capital Gains - Business Income – solitary transaction - S. 28(i), 45.

Solitary transaction of purchase and sale of land made by the assessee company after retaining it for about ten years without undertaking any steps towards development of property or treating it as stock in trade cannot be regarded as business activity and, therefore, the gain arising on the sale of land is assessable as capital gains.

ITO v. Baguio Investment (P) Ltd. (2010) 33 DTR 457 (Pune) (Trib.)

41. Capital Gains - Exemption - S. 10 (38) & 70(3)

Non-exempt capital loss cannot be set off against exempt capital gains

G.K. Ramamurthy vs. JCIT (ITAT Mumbai) Source : www.itatonline.org

42. Capital or revenue expenditure-membership card of stock exchange – S. 2 (14), 37.

Membership card of stock exchange is a capital asset and therefore any expenditure incurred to acquire said card is capital in nature.

DY CIT v. Khandwala Finance Ltd (2010) 122 ITD 111 (MUM)

43. Capital or revenue expenditure – repairs - removal of defect - S. 37.

Expenditure incurred for restoring roof to original condition is not a capital expenditure. Expenditure on removal of defect in design of car, relates to stock in trade of assessee is not a capital expenditure.

Honda Sael Cars India Ltd v. Asstt. CIT. (2010) 1 ITR (Trib.) 497 (Delhi).

44. Cash credits – NRE - Foreign Exchange (Immunities) Scheme ,1991. S. 68.

Sum received from NRE account of non-resident Indian is entitled to immunity under Remittances of Foreign Exchange and Investment in Foreign Exchange Bonds (Immunities and Exemptions) Act, 1991. Addition as cash credit can not be made.

Amritlal S. Punamiya HUF v. ITO (2010) 1 ITR (Trib) 242 (Mumbai).

45. Contractual payment – Partnership firm – S. 28



Contractual payment made by the assessee firm to its retiring partners, in terms of partnership deed, is not includible in the total income of the assessee since to that extent income has never reached the hands of the assessee.

RSM & Co. vs. ACIT ITA No. 3269/Mum./2007, January (2010) BCAJ Vol. 41-B

46. Clubbing of income – Total income – S. 28 (v), 64 (1) (ii).

Assessee and his wife partners in a firm. Assessee's wife getting allowance from firm in terms of partnership deed and shown the income in her return as business or profession. Assessment of assessee's wife completed assessing the income under section 28 (v). Income can not be includible in the hands of assessee.

DY. CIT v. A.V. Jose (2010) 1 ITR (Trib) 88 (Cochin).

47. Deduction – interest – S. 80P

Interest on surplus funds is “other income” and not eligible for deduction u/s 80P

The Totgars’ Cooperative v. ITO (Supreme Court) source: www.itatonline.org

48. Deduction – Manufacture – S. 80IA.

Twisting and texturising POY is “manufacture”. Department must examine process. Opinion of expert must be considered.

CIT v. Emptee Poly-Yarn (2010) 320 ITR 665 (SC) Source : www.itatonline.org.

49. Deduction – setoff of losses - S. 10A

Deduction has to be made at the stage of computing the income under head “Profits & gains” and not at the stage of computing the gross total income. The deduction u/s 10A attaches to the undertaking and not to the assessee. The losses of a non-eligible unit cannot be set off against the profits of an eligible unit and are eligible to be set-off against other income or to be carried forward.

Scientific Atlanta v. ACIT (ITAT Chennai Special Bench) Source : www.itatonline.org

50. Deduction - Manufacture – production - Limestone- S. 80 IA, 80IB.

Process of converting limestone in to lime powder is a manufacturing activity within the meaning of s 80 IA and 80IB.

CIT v. Janak Raj Bansal (2010) 33 DTR (HP) 30.

51. Deduction – Industrial undertaking – S. 80-IA

Freight subsidy provided to the industries set up in remote areas where rail facilities are not available is not income derived from the business of the industrial undertaking and cannot be included in the profits eligible for deduction under section 80-IA.

CIT v. Kiran Enterprises (2010) 228 CTR 101 (HP)

52. Deduction- manufacture- milling of wheat in to rawa - S. 80IB.



Milling of wheat in to rawa, bran atta and maida can be considered as manufacture or production of distinct article ,things for the purpose of deduction under section 80 IB.

Dy. CIT v. Sri Sai Roller Flour Mills (P) Ltd (2010) 35 SOT 345 (HYD).

53. Deduction - derived from – Excise duty refund - interest subsidy -Industrial undertaking – S. 80IB.

Excise duty and interest subsidy have no first generation or proximate nexus or source, which is essential for any profit to be treated as ‘derived from’ the industrial undertaking and therefore such receipts are not eligible for deduction under section 80IB.

Shree Balaji Alloys v. ITO (2010) 33 DTR (Asr) (Trib) 67.

54. Deduction – professional income – Foreign Sources – S.80RR.

Income earned by the assessee by exercise of his profession as a chartered accountant which has nothing to do with the exercise of his profession as an author is not entitled to deduction under section 80RR.

Dilip K. Sheth v. ITO (2010) 33 DTR 561 (Mum.) (Trib.)

55. Deduction – Industrial undertaking - Employment of new workmen - S.80JAA.

Since in proviso , to clause (I) of Explanation to section 80JAA expression ‘existing number of workmen employed’ has been used and not expression ‘existing number of regular workman employed’ for the purpose of computing deduction under section 80JAA, percentage ,increase in number of regular workmen has to be determined with reference to existing number of workmen employed in industrial undertaking.

Panacea Biotec Ltd v. Asstt CIT (2010) 122 ITD 199 (Delhi).

56. Deduction – Manufacture or Production – S. 80-IB.

Process of crushing of stone into stone concrete i.e., grit, in stone crusher is a manufacturing activity within the meaning of section 80-IB.

D. J. Stone Crusher v. CIT (2010) 33 DTR 267 (HP)

57. Deduction – foreign enterprise - apportionment of expenses – S. 80-O.

Project relocation expenses which could be treated exclusively as domestic expenses and were, therefore, not to be taken into account for apportioning the same between the foreign expenses and domestic expenses while allowing deduction under section 80-O.

CIT v. KSA Technopak (India)(P) Ltd. (2010) 33 DTR 148 (Del.)

58. Deduction of tax at source – Advance Tax – Interest – S. 201(1A), 234A, 234B, 234C

Where the deductor had already discharged tax liability payable under section 201 (1A) of the act and no further interest could be claimed by the revenue from the deductee-employee either under section 234A or section 234B or section 234C.

CIT v. Emilio Ruiz Berdejo (2010) 320 ITR 190 (Bom.), 228 CTR 145.

59. Deduction of tax at source – Appeal – Payment to NRI – S. 195, 201, 246, 248.



Where the appeal against order under section 195(1) and 201 was made, Appellate authorities cannot decide whether payment was assessable or not.

CIT & Anr. v. Samsung Electronics Co. Ltd. (2010) 320 ITR 209 (Kar.), www.itatonline.org

60. Deduction of tax at source - hiring of truck – S. 194C, 40(a) (ia).

Hiring of trucks belong to truck owners without man power ie drivers and conductors , can not be said to be carrying on any work as used in section 194C, and as such no tax was deductible from payments made to truck owners.

DY. CIT v. Satish Aggarwal & Co.(2010) 122 ITD 35 (ASR).

61. Deduction of tax at source- salary –perquisite – S. 2 (24) (iii), (IIIa) (iiib). 17 (I) (iv), 2 (ii) (C), Expln. 201.

Employer providing composite free Bus pick up and drop facility to employees, not taxable as perquisites. Value of facilities enjoyed by all employees as it is impossible of computation , computation machinery fails hence the employer cannot be treated as assessee in default for failure to deduct tax at source.

Transwork Information Services Ltd v. ITO (2010) 1 ITR (Trib.) 58 (Mumbai).

Editorial – see . WNS Global Services (P) Ltd (2009) 33 SOT 445 (Mum)

62. Deduction of tax at source- sub-contractor- S. 194C (2), 40(a) (ia).

Assessee taking vehicles on hire for purpose of executing contract, not a case of sub-contract, tax need not be deducted at source.

Mythri Trnasport Corporation v. Asstt. CIT (2010) 1 ITR (Trib) 290 (Visakahpatnam).

63. Depreciation – Block of assets- S. 2 (11), 32, 43 (6).

Scrap value of the assets which have been written off during the year is to be reduced from the WDV of the block of assets for the purpose of allowing depreciation and not of the individual assets.

Xerox India Ltd v. Asstt CIT (2010) 127 TTJ (Del) 84.

64. Depreciation - Intangible asset – license - S. 32 (1) (ii).

Commercial rights of exploration of mineral oils acquired by assessee by entering in to production sharing agreement with the Russian Government fall under the expression ‘any other business or commercial rights of similar nature’ same being akin to “licence” as stipulated in section 32 (I) (ii) and therefore .they are in the nature of intangible assets eligible for depreciation .

ONGC Videsh Ltd v. Dy CIT (2010) 33 DTR (Del) (Trib) 22.

Editorial – see Bombay High Court CIT v Techno Shares &Stocks Ltd (2009) 184 Taxman 103 (Bom.).

65. Depreciation- actual cost- s 43 (1).

In order to apply expl 3 to section 43 (I), AO has to determine the actual cost of the assets to the assessee which can only mean arm’s length value or real value or worth of assets transferred .Burden is on AO to establish that actual cost is not proper.

Chitra Publicity company (P) Ltd v. Asstt. CIT (2010) 127 TTJ (Ahd.) (TM) 1.



66. Deemed dividend – transaction in the normal course of business- S. 2 (22) (e)

Assessee company having received advances from another company in the normal course of business, same can not be treated as deemed dividend under section 2 (22) (e).

DY CIT v Timeless Fashions (P.) Ltd (2010) 33 DTR (Del.) (Trib.) 48.

67. Exemption- export- Interest on fixed deposits – S. 10A.

Interest earned on fixed deposits and miscellaneous income, is not profit derived by an undertaking from export, hence not exempt under section 10A.

Global Vantage P.Ltd v DY CIT (2010) 1 ITR (Trib) 326 (Delhi).

68. Exempted income – Free trade Zone – Allocation of deductions for two different periods- S. 10A, 80 HHEE.

For the Asst year 2003-04, assessee claimed under section 80HHE in respect of period 1-4-2002 to 13-1-2003 and further claimed deduction under section 10A, in respect of profits from 14-1-2003 to 31-3-2003 as the conditions and registration was obtained only from 14-1-2003. The tribunal held that as the assessee computed profits for two periods on reasonable basis, the claim of assessee is allowed.

ITO v. Vidya Tech Solutions (P.) Ltd (2010) 35 SOT 25 (Delhi).

69. Exemption – STP unit outside STP – S. 10A.

There is no requirement in Notification no 30 (RE) 1992-97 dt 22-3-1994, that a particular unit must be located in side STP and it is enough if the unit situated at a particular location is notified as STP, in view of the said notification, assessee's unit located at Gurgaon with the approval of Government of India is entitled to exemption under section 10A.

Xerox India Ltd v. Asstt CIT (2010) 127 TTJ (Del) 84.

70. Exemption – Free trade Zone – S. 10A.

Profits and gains on domestic sales not exceeding twenty five percent of total sales shall also be deemed to be profits and gains derived from export of articles qualifying deduction under section 10A. Where assessee company had made local sales of raw materials as well as of finished goods to its holding company, value of said sales was to be included in total sales for the purpose of calculating benefit of deduction under section 10A.

Two International (P.) Ltd v. ITO (2010) 122 ITD 255 (Mum).

71. Exemption – Scheduled tribe - Migrated member – S. 10 (26).

Member migrating from his place of origin in one area specified in section 10 (26), to another area also specified therein, benefit of exemption is available.

Pradip KR Taye and others v. UOI (2010) 320 ITR 29 (Gauhati)(FB).

72. Export oriented undertaking – carry forward losses of earlier years - S. 10B.

Against total income of relevant assessment year and, it is out of balance income only that deduction under section 10B can be granted.

Sword Global (I) (P) Ltd. v. ITO (2010) 122 ITD 103 (Chennai).



73. Export – unabsorbed business loss and unabsorbed depreciation - Carry forward and set off - S. 10A.

After the amendment with effect from April 1, 2001, onwards the brought forward loss pertaining to the specific undertaking eligible for deduction under section 10A are allowed to be carried forward and set off against the income of such undertaking in the future assessment year and setoff within the block period itself.

Global Vantage P. Ltd v. DY CIT (2010) 1 ITR (trib.) 326 (Delhi).

74. Income –remission or cessation of liability - S. 41 (1).

Assessee having shown the amount payable by it to another company as it to another company as an existing liability in its books and written back the same, it cannot be said that the aforesaid liability has ceased to exist and therefore it cannot be treated as income by invoking the provisions of section 41(1).

CIT v. GP International Ltd. (2010) 33 DTR 163 (P&H).

75. Income – principle of mutuality – Co-operative society - S. 4.

Bye-laws themselves provided for non-occupation charges. In these circumstances, the principle of mutuality would apply. The non-occupancy charges were not taxable.

Mittal Court Premises Co-operative Society Ltd. (2010) 320 ITR 414 (Bom)

Editorial Ref.: Sind Co. Op. Hsg. Society v. CIT (2009) 317 ITR 47, 182 Taxman 346, 226 CTR 145 (Bom.)

76. Income- Mutuality – club – S. 4.

Assessee was running a recreation club to its members. Its receipts from providing food ,room facilities to its members and their guest was

Delhi Gymkhana Club Ltd. v. DY CIT (2010) 35 SOT 335 (Delhi).

77. Interest – chargeability – S. 115JB, 234B.

Interest under section 234B is chargeable though computation of income is made under s. 115JB, a difficulty or impossibility as pleaded by the assessee cannot be accepted only because it is a liability under the provisions of section 115JB.

CIT & Anr. v. Brindavan Beverages Ltd. (2010) 228 CTR 1 (Kar)

78. International Taxation- Permanent establishment-India –Malaysia DTAA. S. 40 (a) (ia), 90, 195.

Personnel supplied by Malaysian Company were supposed to function under direction, control and supervision of assessee, therefore it could be said that there was no PE of Malaysian company in terms of Article 5 of DTAA, therefore payment received by said company was not taxable in India , consequently provisions of section 195, and 40 (a) (i) could not be invoked.

DY CIT v. Stock Engineer & Contractors B.V. (2010) 122 ITD 49 (Mum.).

79. International Taxation - India - Australia – DTAA – S. 90, Articles 7 & 12.

Where non-resident is taxable under domestic law but there is a provision in treaty between India and country in which nonresident is incorporated to exempt transaction or reduce rigour of taxation to benefit of non –resident, provisions of treaty override provisions of domestic law.



Asstt. CIT v Paradigm Geophysical Pty Ltd. (2010) 122 ITD 155 (Delhi). (2010) 1 ITR (Trib) 178 (Delhi).

80. International taxation – Agent – Arms length – S. 9(1).

Foreign Co not liable to tax in India if Indian agent is paid on arms' length basis

BBC Worldwide v. DDIT (ITAT Delhi) Source : www.itatonline.org

81. International taxation – Fee for included services - TDS – S. 9(1)(vii), 90, 195, 201(1).

Assessee company having entered into a contract with a US company ACSC only for procuring software personnel for the projects of another foreign company in USA, the primary services rendered by ACSC to the assessee under the contract is akin to recruitment and placement service rather than making available any technology, plan, design, etc. and, therefore, the payments made to ACSC cannot come within the purview of 'fee for included services' within the meaning of art. 12(4)(b) of Indo-US DTAA and the same are not chargeable to tax in India and no tax was deductible at source under s. 195.

ACIT v. IIC Systems(P) Ltd. (2010) 33 DTR 422 (Hyd.) (Trib.)

82. International Taxation – Liaison office- DTA- India – South Korea- S. 9 (I) (I) & 90, art 5 & 7.

Liaison office of the south Korean company being engaged in procuring purchase orders in India for the latter after negotiating the deal, there exists a business connection in India. Liaison office is also a PE, with in meaning of art 5 of the DTAA between India and South Korea as it is having freedom to fix the sale price and conclude the contract and therefore, its activities could not be of preparatory or auxiliary nature. Income attributable to the Liaison office is taxable under art 7 of the DTAA.

Dy CIT v. Jebon Corporation India Liaison office (2010) 127 TTJ 98 (Bang).

83. International Taxation – DTAA - India – UK. – S. 90. Art. - 7,13.

Work of to be undertaken by assessee included data collection measurement of dynamic properties of machines ,providing training to engineers nominated by "T" Ltd etc ,it could be concluded that assessee did "make available" technical knowledge , experience , skill and know-how processes to "T" Ltd within the meaning of paragraphs (4)) of article 13 of DTAA and therefore assessment passed by the authorities were confirmed. As regards the second project was concerned , since the role assessee was confined to merely providing independent evaluation of motorcycles prior to their launch and there was no provision for making available any technical knowledge , experience and skill etc to 'T' Ltd , no addition can be made.

TVS Motor Co Ltd v. ITO (2010) 35 SOT 230 (Chennai).

84. International Taxation – DTAA – India - United kingdom – S. 9(1) (vi), Arts 7, (13)(6).

Amount received under license agreement for allowing use of software, not royalty but business profits .Receipts on account of maintenance charges and training fees incidental to software receipts is of same character.

Infrasoft Ltd v. Asstt DIT (2010) 1 ITR (Trib) 390 (Delhi).

85. International taxation – transfer pricing – S.92 B(1).

Notional interest on interest-free loans can be assessed under transfer pricing law

Perot Systems TSI v. DCIT (ITAT Delhi) Source : www.itatonline.org

86. International taxation – DTAA- India –Singapore- S. 9(I) (vii), 195, 197, 201 (1), 201 (IA), art. 12.

AO having issued certificate under section 197 for no deduction of tax at source, AO could not subsequently treat the assessee as an assessee in default under section 201.

Bovis Lend Lease (India) (P) Ltd v. ITO (2010 0 127 TTJ (Bang) (UO) 25.

87. International Taxation- Transfer pricing - arm's length price S. 92C (2)

Benefit of 5 percent disallowed on the ground difference between arm's length price determined and value of transaction declared exceeding 5 percent of arm's length price. International comparable was not accepted as relevant data required to make requisite adjustments difficult to obtain in relation to foreign comparable..

Global Vantage P Ltd v. DY CIT (2010) 1 ITR (Trib) 326 (Delhi).

88. International taxation - permanent establishment - Technical services – DTAA - India – USA – Art. 4, 12(4) (b), 5 (c).

Non resident (Indian company) entering in to agreement with Defense Research Development Organization to assist in identification of global technologies for existing defense related innovations, .Lump sum paid by the applicant, activities of Institute of taxes University is not technical services ,not taxable in India.

Federation of Indian Chambers of commerce and Industry, in Re:(2010) 320 ITR 124 (AAR).

88. Income- capital or revenue receipt – incentive - subsidy – S. 4.

Incentives in the form of excise duty refund and interest subsidy which has been granted for substantial expansion of unit, only after commencement of production and not for setting up of new industries or to purchase capital assets , same constitute revenue receipt.

Shree Balaji Alloya v ITO (2010) 33 DTR (As) (Trib) 67.(2010) 127 TTJ (Asr) 129.

89. Investigation - duty of officer - passenger traveling by air - S.119.

Guidelines issued by CBDT dt nov 18, 2009,to be followed by AIR Intelligence Units or Investigation Units dealing with air passengers with valuables at the airport of embarkation or destination ,to avoid any harassment and undue inconvenience to them, keeping confidential any premature disclosure to the media and dropping the passenger at the place he wanted to go etc.

Rajendran Chingaravelu v. R.K.Mishra Addl CIT.(2010) 320 ITR 1 (SC)

90. Penalty – concealment - S. 271 (1) (c)

Assessee having offered an explanation as to why the impugned contract receipts could not be included in the relevant assessment year which is supported by an affidavit of his chartered accountant as well auditor's report in Form No. 3CD, CIT (A) and the Tribunal were justified in accepting the same and setting aside the penalty under s. 271 (1) (c).

CIT & Anr. Vs. N. Nagaraj Ballal (2010) 33 DTR 156 (Kar.)

91. Penalty – concealment - search and seizure – S. 158BFA (2).



Merely because the assessee has withdrawn the appeal against addition in quantum, in the absence of any discussion whatsoever in the penalty order to suggest any independent appraisal of additions or documents has been done in the penalty proceedings levy of penalty is liable to be deleted.

Nemchand Jain & Sons v. DY CIT (2010) 33 DTR (Kol) (Trib) 178.

92. Recovery of tax – penal interest – waiver of interest – S.220 (2A)

Discretion to waive interest should be exercised judicially. The order should give reasons and rejection of application for waiver without giving reasons is held to be not valid.

Mani v. CIT (2010) 320 ITR 472 (Mad.)

93. Reassessment – Material facts - S.147.

Reopening u/s 147 not valid if there is no finding regarding failure to disclose material facts.

Bhavesh Developers v. AO (Bombay High Court) Source : www.itatonline.org.

94. Reassessment – reason to believe – S.147, Explan. 2 to S. 147, & 148.

On the basis of definite information that a certain bank account in then bank in the name of the assessee was used to provide accommodation entries, the AO had a prime facie belief that assessee's income had escaped assessment and therefore reopening as sustainable.

Rishi Grover vs. ACIT (2010) 33 DTR 309 (Asr.) (Trib.)

95. Reassessment- notice – Service – Approval – S. 147, 148, Civil procedure code . O 5 R 20.

The notice was served only by affixture without attempting to serve notice on the assessee and there was neither any noting in the record by the Assessing officer that the assessee had refused to accept the notice through affixture . The Assessing officer has not served the notice on the assessee in compliance with the provisions of Order 5 rule 20 of the Code of Civil Procedure 1908,hence reassessment is bad in law.On the facts the notice was issued in march 2003 and approval was obtained in October 2003.

Dy CIT v K.C. Singhania (2010) ITR (Trib) 205.

96. Revenue or capital expenditure - Technical know how – S. 37

In collaboration agreement assessee obtained only right to use technical know how. Payment of lump sum fees and royalty is allowable as revenue expenditure.

Honda Siel Cars India Limited vs. ACIT, Circle, Noida (2010) 40 TLR (Part 466) 1 (Delhi) (AT).

97. Salary-perquisites - Stock options- S. 17 (iia).

Conversion of warrants into equity shares under scheme ,benefit extended to assessee by virtue of employment hence difference between price of shares at time of exercise of option and predetermined price is liable to tax as perquisite under section 17 (2) (iia).

Asstt CIT v. Tripti Sharma (smt). (2010) 1 ITR (Trib) 471 (Mumbai) .

98. Search and Seizure – Assessment – S. 153A.



S.153A does not authorize de novo assessment. Non-pending assessments do not abate. Additions must be confined to search material.

Anil Kumar Bhatia v. ACIT (ITAT Delhi) Source: www.itatonline.org

99. Search and Seizure – Block Assessment – jurisdiction – S.127, 158BD.

Where the notice issued and return filed pursuant thereto, proceedings dropped on ground of lack of jurisdiction and transferred to another officer. Held that transfer not permissible without following procedure.

Subhas Chandra Bhaniramka v. ACIT (2010) 320 ITR 349 (Cal.)

100. Settlement commission – judicial review – S. 245D

The court's power of judicial review on the decision of the settlement commission is very restricted. The court can only consider whether the order of the settlement commission is contrary to the provisions of the Income Tax Act.

Mahavir Rolling Mills Pvt. Ltd. v. Income Tax Settlement Commission & Anr. (2010) 40 TLR (Part-40) 18 (Guj.)

101. Transfer – stamp valuation – S. 50C.

Substitution of sales consideration on transfer of land and building with the value adopted by the stamp valuation authority. Assessee objecting to the substitution of sales price. AO has no discretion and should refer the matter to valuation officer to determine fair value.

Abbas T. Reshamwala v. ITO ITA No. 3093/Mum./2009. January (2010) BCAJ Vol. 41-B

102. Unexplained investment- sale value- stamp valuation- S. 50C, 69B, 143 (3).

Difference between consideration shown in sale deed and valuation taken for stamp purposes can not be added as unexplained investment.

ITO v Fitwell Logic system P. Ltd (2010) 1 ITR (Trib) 286 (Delhi).

103. Unexplained money - Statement in the course of survey – S. 69A, 133A.

In the course of survey excess cash was found, the assessee,s statement was recorded under section 131, he offered the same as income. In the return the assessee has not shown the income offered in the course of survey. The explanation was offered stating that the said amount was withdrawal from the bank. The tribunal confirmed the addition by applying the test of human probabilities.

Shree Mahalaxmi Rice Mill v ITO (2010) 122 ITD 1 (Nagpur) (TM).

104. Wealth tax - asset- cash in hand - S. 2 (ea) (vi).

Cash in hand in excess of Rs. 50000 held by individual assesses forms part of assets under section 2 (ea) (vi).

CIT v K.R.Ushasree & Ors (2010) 33 DTR (Ker) 112.