



DIGEST OF CASE LAWS (DECEMBER 2009)

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(JOURNALS REFERRED)

30 & 31 DTR, 34 SOT, 121 ITD, 125 & 126 TTJ, 185 Taxman, 227 CTR, 318 ITR, 319 ITR, (part 1), BCAJ & www.itatonline.org

1. Appeal – Tribunal- Additional ground- Interest- s 234B, 254 (1)

Plea against charging of interest under section 234B, could be allowed to be raised by the assessee in appeal before the tribunal notwithstanding the fact that it was not raised by it before lower authorities.

S. Kumars Tyre Manufacturing Company Ltd v CIT (2009) 227 CTR (MP) 181.

2. Appeal -Tribunal – Power to dismiss.– Excise Act – S.35C

Every court or tribunal has an inherent power to dismiss a proceeding for non prosecution when the petitioner/appellant before it does not wish to prosecute the proceeding.

M/s Chemipol Vs UOI (Bom.) (itatonline.org)

3. Appeal- High Court - Monetary limit – S. 260A, 268A.

Circular /income tax Instruction no 5 of 2008 dt 15-5-2008 , issued by CBDT directing income tax authorities not to file appeals if tax effect is less than 4 lakhs would be applicable to cases pending before High court as on 15-5-2008 either for admission or for final disposal , even though said appeals and /or petitions were filed before High court prior to 15-5-2008 .

CIT v Madhukar K.Inamdar HUF (2009) 185 Taxman 101 (Bom).

See:- CIT Vs. Pithwa Engg. Works 276 ITR 519 (Bom.)

4. Assessment- Notice- Block Assessment- s 143 (2) , 158BC, 260A.

Notice under section 143 (2) not having been issued within one year of filing the return by assessee , block assessment was invalid . No substantial question of law arises.

CIT v Ms Mudra G.Nanawati (2009) 30 DTR (Bom) 108.

5. Assessment- Notice- Block Assessment- 143 (2), 158BC, 292 BB.

A.O having, not issued any notice under section 143 (2) before completing the assessment under section 158BC (c) , assessment was bad in law and liable to be quashed . s 292BB does not save the same.

Asstt CIT v Supreme Appar & Associates (2009) 30 DTR (Mumbai) (Trib) 229.

6. Assessment- notice under section 143 (2)- validity- s 143 (2).

Assessment order passed either without serving notice under section 143 (2) or serving the notice improperly upon the assessee can not be said to be void and the assessment order can not be annulled on this ground

Haryana Sanitary Ware Industries (P) Ltd v ITO (2009) 31 DTR (Del) (Trib) 329

7. Assessment Records – demand by the Third Party – RTI Act – S. 3,8,9.

The Appellant, as informer, is assisting the Department by bringing instances of tax evasion to its notice, and if he is using information that he has received through RTI Applications for this purpose, it cannot be considered to be misuse of



information in any way, nor can it be considered to be an unwarranted invasion of privacy of the assessee. Accordingly PIO was directed to provide inspection of records and the other information sought by the applicant.

Rakesh Kumar Gupta Vs. PIO (itatonline.org)

8. Bad Debt – burden lies on assessee to prove – S. 36 (1) (vii).

Writing off of the bad debt in the books of accounts is not conclusive and the AO is not precluded from making inquiries as to whether the entries are genuine and not imaginary or fanciful. The AO has the power u/s 143(2) to see that the entries are not mere paper work or fake and at the same time, the wisdom of the assessee cannot be questioned and no demonstrative or infallible proof of bad debt having become bad should be required. Commercial expediency is to be seen from the point of view of assessee depending on nature of transaction, capacity of debtor etc.

CIT vs. Kohli Brothers Color Lab (All.)(itatonline.org)

9. Business Expenditure- Payment of demurrage- U/s. 40 (a)(i)

Tax having not been deducted at source from payment of demurrage charges to foreign shipping company, s. 40(a)(i) was clearly attracted; assessee being a resident company, there was no question of invoking s.172

CIT v. Orient (Goa) (P) Ltd. [2009 30 DTR (Bom) 129]

10. Business Expenditure - Reimbursement of expenditure to parent, non-resident company – s.40 (a) (i)

No income accrued or arose to the payee from the payment made by the assessee to its non-resident parent company in respect of the expenditure incurred by the latter in connection with the business activity carried on by assessee was not required to deduct tax at source and therefore, the payments could not be disallowed by invoking the provision s of s.40 (a) (i); disallowance could not be made also for the reason that the income of the assessee is to be computed as per the special provisions of s.42 which overrides the general provisions of computation of income.

Cairn Energy India Pvt. Ltd v. Asst CIT. [2009 30 DTR (Chennai) (Trib.) 258]

11. Business expenditure - Disallowance - Discounting charges- S. 2 (28A), 40 (a) (i), 195.

Discounting charges on discounting bills of exchange do not amount to interest and therefore , assessee was not under any obligation to deduct tax at source s 195, and hence the discounting charges cannot be disallowed by invoking s 40(a) (i).

Asst CIT v Cargill Global Trading (I) (p) Ltd (2009) 31 DTR (Del 0 (Trib) 289.

12. Business expenditure - Capital or Revenue - Advance lease rent - S. 37 (1).

Assessee acquiring land on lease for a period of 99 years, making payment of advance rent in the sum of Rs 48 crores, and paying monthly rent of Rs 40 per month, advance rent paid was allowable revenue expenditure.

Dy. CIT v Sun Pharmaceutical Ind LTD (2009) 227 CTR (Guj) 206.

Editorial- see **Joint CIT v Mukund Ltd** (2007) 291 ITR (AT) 249 (Mumbai) (SB). Lump sum paid as premium for securing lease hold right held as capital expenditure.

13. Business Expenditure - Feasibility report of new project – S. 37 (1).

If expenditure incurred for preparation of feasibility report of a new project, is in respect of same business which is already carried on by assessee, even if it is for expansion of business , namely to start a new unit which is same as earlier business , and there is unity of control and a common fund such expenditure is to be treated as revenue expenditure.

CIT v Priya Viilage Road shows Ltd (2009) 185 Taxman 44 (Delhi)

14. Business expenditure - Puja expenses - s 37 (1).



Expenditure incurred on Vishwakarma Puja by a company cannot be treated as expenditure wholly and exclusively for the purposes of business of the company, and it cannot be allowed any deduction under section 37(1) towards such expenditure.

Hira Ferro Alloys Ltd v DY CIT (2009) 31 DTR (Chhattisgarh) 20.

15. Business expenditure - cost of production of TV serial – Rule 9A of Income Tax Rules.

Feature film which was exclusively for telecast on TV Rule 9A will be applicable as the film was released for exhibition for less than 90 days.

Vieshesh Films (P) Ltd v DY CIT (2009) 126 TTJ (Mumbai) 271.

16. Business expenditure – Contribution to provident fund-Deduction on actual payment- S.43B

Contribution to provident fund, made before due date of filing of return allowable as deduction. The deletion of the second proviso to s. 43B, and the amendment to the first proviso, by the Finance Act, 2003 was to overcome implementation problems. Consequently, the amendments, though made applicable by Parliament only with effect from 1.4.2004, were curative in nature and would apply retrospectively w.e.f. 1.4.1988.

CIT vs. Alom Extrusions Ltd (2009) 319 ITR 306 (SC), (2009) 185 Taxman 416 (SC) (itatonline.org)

Editorial – Pamvi Tissues 313 ITR 137 (Bom), impliedly overruled.

17. Business expenditure - Interest on Deep Discount Bonds - Mercantile system of accounting – S. 36 (I) (iii), 43B.

Interest accrued on deep Discount Bonds, though payable on maturity on some later date was in view of mercantile system of accounting followed by assessee, there being no loan or advance or borrowing by assessee, section 43B, was not allowable.

Gujarat Toll Road Investment Co Ltd v Asst CIT (2009) 126 TTJ (Ahd) 262.

18. Block assessment- Computation of undisclosed income - s 158BB.

Loans which were shown by the assessee in the balance sheet filed with the return for an earlier year cannot be treated as bogus and addition cannot be made merely because interest has not been paid.

Estimation by Tehsildar cannot be basis to make addition as income from undisclosed source.

Asst. CIT v Subhash Verma (2009) 125 TTJ (Del) (SB) 865.

19. Block assessment- Limitation- s 158BE.

Last valid panchnama has been drawn on August 7, 1996, the date on which seizure was made and therefore, the assessment proceedings ought to have been completed before August 30, 1997. The Tribunal held that the last Panchanama Dt. October 10, 1996, drawn after conclusion of search was not valid as no seizure was made on that date. (ITA no 904 of 2007 Dt. 1-7-2008 (Kar)

CIT v Children's Education Society. SLP (Civil) no 17330 of 2009 dt 17-7-2009 (2009) 319 ITR 2 (st).

Editorial: See: (a) S. K. Katyal (2008) 16 DTR 285 (Del.)

(b) CIT vs. Plastika Enterprises (2009) 23 DTR 333 (Bom.)

(c) Nandlal M. Gandhi Vs. ACIT (2008) 115 ITD 1 (Mum.) (TM)

20. Capital Gains – Residential house – Land appurtenant- S. 54, 54 F.

Cost of vacant land appurtenant to and forming part of a residential unit is to be considered for claim of exemption under section 54 F, even if no construction has been done on appurtenant land.



Addl. CIT v Narendra Mohan Uniyal (2009) 34 SOT 152 (Delhi).

21. Capital Gain – TDR – FSI - Consideration – Not chargeable - S. 45.

Consideration received for permission to use TDR / FSI not chargeable to tax as the cost of acquisition being nil.

Om Shanti Co-op Society vs. ITO (ITAT Mumbai) (itatonline.org)

22. Capital gains- Stamp duty valuation – S. 50C.

If there is objection from assessee's side regarding sale consideration without challenging stamp duty valuation, then valuation should be referred to valuation officer who is an expert and who can do correct valuation.

Ajmal Fragrances & Fashions (P) Ltd v Asstt. CIT (2009) 34 SOT 57.(Mum).

23. Capital gains – Computation–Interest capitalised-S 48.

Interest was paid because instalments could not be paid in time and same had become part of cost of acquisition, hence the interest capitalised has to be considered as part of cost of acquisition.

Ajmal Fragrances & Fashions (P) Ltd (2009) 34 SOT 57 (Mum).

24. Capital Gains – Exemption – Extension of existing building.-s 54 F

Mere extension of existing building would not give benefit to assessee under section 54 F.

Asstt .CIT v T.N. Gopla (2009) 121 ITD 352 (Chennai) (TM).

25. Capital gains - short term or long term - dissolution – period of holdings - S. 2 (42A), 49 (1) (iii) (b).

On dissolution the property was taken over by the partner. Partner sold the property within three days of acquiring it. Sale has to be treated as short term. The benefit of section 49 (1) (iii) (b) is not available.

P.P.Menon v CIT (2009) 31 DTR (Ker) 159 .

26. Capital gains - Slump Sale – S. 48, 50. 50A.

Sale proceeds received by the from sale of a going concern of one division of assessee, which was slump sale and not a sale of block of assets , section 50 was not applicable .

CIT v MaxIndia Ltd (2009) 319 ITR 68 (P&H).

27. Capital gains- reference to valuation officer- s 50C.

In the event of the assessee contending that valuation as done by Stamp valuation Authority is not acceptable to him and asking the assessing officer to make a reference to the valuation officer , it is mandatory on the part of the assessing officer to make such a reference notwithstanding that the assessee has not filed an appeal against such valuation.

Kalpataru Industries v ITO. 265 (2009) 41 – B . BCAJ December 32

28. Capital or revenue- compensation for termination of agreement- s 4.

Compensation received by assessee from the other party for termination of the agreement for transfer of property to be treated as capital receipt and not as revenue receipt.

S. Zoraster & Co v CIT (2009) 31 DTR (Raj) 107.

29. Capital or revenue expenditure- s 37.



Payment of royalty at rate calculated, per piece of production is revenue expenditure.

CIT v Sharada Motor Industries Ltd (2009) 319 ITR 109 (Delhi).

30. Carry forward and set-off- unabsorbed depreciation - S. 10 A

In view of s. 10 A(6) by the finance Act, 2003, unabsorbed depreciation relating to asst. yr. 1993-94 and 1995-96 of an industrial unit located in free trade zone cannot be set-off against income of the unit for the asst. yr. 2003-04.

Phoenix Lamps Ltd v. Add. CIT. [2009 30 DTR (Del) (Trib) 245]

31. Cash credits- Gifts- s 68.

Assessee had filed, confirmation, of the person from whom the gift was given. Genuineness of the transaction of gift and the capacity of the donor stood established. Addition can not be made under section 68. (ITA NO 1108 of 2008 dt 26-9-2008)

CIT v Asha Hampannavar SLP (Civil no. 16370 of 2009 Dt. 14-7-2009. (2009) 319 ITR (St.) 5 (sc)).

32. Charitable or religious trust – s 11.

A trust established to carry out partly charitable purposes and partly religious purposes would be entitled to exemption under section 11.

Society of Presentation Sisters v ITO (2009) 121 ITD 422 (Cochin) (TM).

33. Concession of law- admission- Binding effect-143 (3).

Admission or concession by a counsel made inadvertently or under a mistaken impression of law will not only bind on his client, but also same can not ensure to the benefit of other party. Party can resile from such concession.

DY CIT v K.S.Suresh (2009) 319 ITR 1 (Mad).

34. Deduction -Computation – gross total income - Adjustment of Brought forward loss, depreciation etc. –s.80I

Gross Total income of the assessee has first to be computed in accordance with the Act and thus profit of assessee new unit had first to be adjusted against other unit 's losses and if there was no positive income. Deduction u/s. 80 I could not be allowed.

Commissioner of Income Tax v. Shree Synthetics Ltd. [2009 30 DTR (MP):Indore Bench]

35. Deduction of tax at source-Ad-interim – Stay recovery granted.- S.195.

In a SLP filed against the judgement of the Karnataka High Court in CIT vs. Samsung Electronics co Ltd (2009) 185 Taxman 313 (Kar). the court held that liability can not be avoided on ground of non taxability of receipt, the Supreme Court, by an ad-interim order dated 18.12.2009 directed issue of notice to the Respondents and also directed "Stay of recovery till further orders".

G.E. India Technology vs. CIT (SC) (itatonline.org).

36. Deduction of tax at source-Fess for professional or technical services. – s 194 J.

Third party Administrator (TPA), who is responsible for making payment to hospitals for rendering medical services to policy holders under various health insurance policies issued by several insurers, is obliged to deduct tax at source under section 194 J from payments made to hospitals.

Medi. Assist India TPA (P) Ltd v Dy CIT (TDS) (2009) 184 Taxman 359 (Kar).

37. Deduction of tax at source- franchisee- s 194 I.



Payments made by the assessee to its franchisee would not bear the character of rent in the absence of any lessor – lessee relationship.

CIT v NIIT Ltd (2009) 184 Taxman 472 (Delhi), (2009) 30 DTR 49 (Delhi)

38. Deduction - infrastructure projects -s 80IA (4).

Deduction under section 80IA (4) is not available to contractors.

B.T.Patil & sons v ACIT. (2009) 32 DTR (Mum.) (TM) (Trib.) ,Itatonline.org. Income tax review December p 166.

39. Deduction of Tax at source-Payment by society to its members- s 194 C.

Payments made by assessee society to the truck owners who are its members after receiving the payments from the companies for transporting their goods are not subject to TDS under section 194 C (2), as there is no sub contracts with the said companies on behalf of its members.

CIT v Ambuja Darla Kashlog Mangu Transport co –op Society.(2009) 31 DTR (HP) 49.

40. Deduction of tax at source - payment to non resident-technical documents- s 9, 9(1) (vi),195.

Assessee company had purchased plant in the form of technical documents including designs, drawings etc, and the title in the documents stood transferred to assessee on payment to foreign company and therefore the payment could not be termed as royalty so as to attract TDS.

CIT v Maggronic Devices (P) ltd (2009) 31 DTR (HP) 65.

41. Deduction – Cutting & Polishing marbles block – ‘Production’ – S.80IA.

The activity of polishing and conversion of blocks into polished slabs and tiles amounts to “manufacture” or “production” because the conversion of blocks into polished slabs and tiles results in emergence of a new and distinct commodity. There is accordingly “manufacture or production” for s. 80-IA

ITO vs. Arihant Tiles & Marbles (SC) (itatonline.org)

42. Deemed Dividend- Loans for business advantages. S 2 (22) (e).

The amount advanced for business transaction would not fall within the definition of “deemed dividend” .

CIT v Creative Dying & Printing (P) Ltd (2009) 184 Taxman 483 (Delhi)

43. Deduction – Export- Fabrication / Processing charges – s 80 HHC.

The processing/fabrication charges on the goods which were ultimately exported by other exports for whom processing was undertaken by the assessee , such income would form part of one of the components of business profits, as the said activity would have direct and immediate nexus with the activity of export.

Southern Sea Foods Ltd v JT .CIT (2009) 184 Taxman 86 (SC).

44. Deduction – Industrial Undertakings- s 80 IB -80HHC.

The assessee is not entitled to simultaneous deduction of both sections 80 HHC, and 80 IB, while computing deduction under section 80HHC, in view of specific exclusion under section 80 IB (13) hence deduction granted under section 80 IB has to be excluded.

Olam Exports India Ltd v CIT b(2009 0 184 Taxman 373 (Ker).

45. Deduction – housing project- project percentage method- s 80 IB (10).



An assessee developing a housing project and fulfilling all other requirements of section 80 IB (10), can adopt “project percentage method” to arrive at the eligible profits for claiming deduction under the said section, deduction can not be postponed to later year ie.on completion of project.

B.K.Patel Enterprises v Dy CIT (2009) 125 TTJ (Pune) 974.

46. Deduction – Business Expenditure - Share of partner in partnership firm – S. 10(2A)14A.Rule 8D,& 28 (V).

Partnership firm is a separate assessable entity for the purpose of income tax Act. Income charged in the hands of partnership firm can not be treated as non exempt income in the hands of such firm and therefore, provisions of section 14A, are applicable in computing the total income of such partner in respect of his share in profits of the firm. Assessee partner having received salary from the partnership firm besides share of profit, disallowance under section 14A has to be worked out as per the provisions of rule 8D same being retrospective.

Dharamsingh M.Popat v Asstt CIT (2009) 31 DTR (Mumbai) (Trib) 295.

47. Depreciation -Block of Assets – Individual User – S. 32.

As per s. 32(1) the asset is to be owned and “used” for the purpose of business or profession, the expression “used for the purpose of business” when applied to block asset would mean use of block asset and not any specific items in the said block as individual assets have lost their identity after becoming inseparable part of the block asset.

CIT vs. Bharat Aluminium (Delhi High Court) (itatonline.org)

48. Depreciation – Good will – Revision - s 32, 263.

True test of depreciation is character of an asset and not its description , therefore , even if an asset is described as “goodwill” but it fits in description of section 32 (1) (ii) , depreciation is to be granted thereon , hence the revision order is bad in law.

Hindustan Coca Cola Beverages (P) Ltd Vs Dy. CIT (2009) 34 SOT 171 (Delhi).

49. Depreciation-Sale and lease back transaction vis-a-vis tax avoidance –s.32(1)(ii)

Assessee having sold the machinery and then acquired the same on lease and lease rental was also paid, it could not be said that transaction was sham or a device, and therefore depreciation was allowable.

CIT v. Punjab State Electricity Board. [2009 30 DTR (P&H) 153]

50. Depreciation – Workers quarters- s 32 (1) (iv).

Workers quarters having been leased out as a part of the plant and income derived as assessed as business income, the assessee was entitled to depreciation @ 40 percent under section 32 (1) (iv) in respect of workers quarters.

CIT v Rieta Biscuit Co (P) Ltd (2009) 31 DTR (P&H) 89.

51. Deduction –Business expenditure-exempted income – S. 14A.

It could not be assumed that assessee did not incur any expenditure in earning dividend and therefore disallowance under section 14A restricted to I percent of tax free dividend received by the assessee.

EIH Associated Hotels Ltd v Dy CIT (2009) 126 TTJ (Kol) 246.

52. Exemption –splitting up or reconstruction – s 10A.

Assessee having taken over the medical transcription unit from another company along with obligation of exports , etc , it is a case of purchase of business undertaking in view of circular no F. No 15/S/63 –ITA -1) dt 13 Dec 1963, it can not be said



to be a case of formation of undertaking by using assets previously used and, therefore, assessee is entitled to deduction under section 10A, more so as deduction has already been allowed to the assessee for two assessment years.

ITO v Heartland K.G. Information LTD. (2009) 31 DTR (Chennai) (Trib) 98.

53. Exemption – Manufacture- s10B.

Activity of processing of stone, marble, granite, etc., amounts to manufacture and therefore assessee was entitled to exemption under s 10B.

CIT v Ramsons Organics Ltd (2009) 31 DTR (Del) 83.

54. Export-oriented undertaking- s 10B.

Language of section 10B, provides for exemption with respect to any “profits and gains” of business and profession and same is not confined to “profits and gains” of business provided under section 14 (D), hence interest income received by assessee from its sister concern would fall within expression “profits and gains” and assessee would be entitled to exemption under section 10B in respect of such interest income.

CIT v Hycron India Ltd (2009) 185 Taxman 70 (Raj).

55. Exemption – Keyman insurance- s 10 (10D).

In view of the conflicting clarification given by the LIC, regarding the status of keyman insurance policy after assignment, issue regarding taxability of the amounts received on the maturity of such policy remanded to AO for fresh consideration after obtaining clarification from higher authorities of LIC.

Rajan Nanda v Dy CIT (2009) 31 DTR (Del) (Trib) 249.

56. Exemption – setting of loss- s 10A, 70.

Since 10A, was not forming part of sections mentioned in section 29, business losses of the undertaking whose income was not exempt under section 10A, can not be set off against profits of the undertaking whose income is exempt. Loss of the non STPI is allowed to be carried forward.

ACIT v Honeywell Technology Solutions Lab Pvt Ltd 263 (2009) 41 - B BCAJ p 34. (December)

57. Income from Undisclosed Sources- Loose sheets- s 69.

Loose sheets by them self may not be enough to justify addition on estimated basis even though the explanation of the assessee is found unbelievable and circumstances may be pointing other wise.

CIT v Atam Valves (P) Ltd (2009) 184 Taxman 6 (P & H).

58. Income from undisclosed source - slips- 69A.

Amount shown and recorded on slips found during survey having been advanced to one person for purchase of land and that person having confirmed the same, no addition was called for simply on the basis of presumption.

Prakash Motwani v ITO (2009) 125 TTJ (Agra) (TM).941.

59. Income do not form part of total income- Voluntary retirement- s 10 (10C).

An employee, who takes voluntary retirement, is entitled to exemption under section 10 (10C).

Dy CIT v Krishana Gopla Saha (2009) 121 ITD 368 (Kol) (TM).

60. Income – remission or cessation of trading liability- one time settlement of loan by bank. s 41 (1).



Assessee had not got any deduction on account of acquisition of capital assets as it had been reflected in the balance sheet and not in the profit and loss account and the remission of the principal amount of loan obtained from the bank and financial institution had not been claimed as expenditure or trading liability in any earlier year, section 41 (1) was not applicable. (followed **Mahindra & Mahindra Ltd v CIT** (2003 /261 ITR 501(Bom)).

CIT v Tosha International .SLP. (civil) no 18699 of 2009 dt 24-7-2009 (2009) 319 ITR (st) 7. (sc)

61. Income- Notional gain on foreign currency swap- s 5.

Notional gain arising on revaluation of foreign currency loan at the end of relevant previous year is not a real income and therefore, it is not taxable even though assessee is following mercantile system of accounting.

EIH Associated Hotels Ltd v DY CIT (2009) 126 TTJ (Kol) 246.

62. Interest-Book profit- s 115JA, 234B, 234C.

Interest under sections 234B, and 234C, is chargeable on income computed under section 115JA.

Kanel Oil & Export Inds Ltd v JCIT (2009) 126 TTJ 158 (Ahd) (TM). (itatonline.org).

Editorial:- See: Bombay High court - Snowcem India Ltd v DY CIT (2009) 221 CTR 594 (Bom).

63. Interest- waiver or reduction- s 234A, 234B, 234C.

Assessee filing returns voluntarily and paying taxes due to his over busy schedule during the relevant assessment years constituted as 'unavoidable circumstances' within the meaning of cl. 2(e) of CBDT Notification No.400/234/1995-IT (B) and entitle him for waiver of interest under s. 234A, 234B, 234C levied upon by him for failure to file returns within the time allowed u/s. 139(1)/(4).

S. Nagoor Babu @ Mano Vs. CCIT & ANR (2009) 227 CTR 287(Mad.)

64. MAT- Book profits- Company- s 115JB.

For the purpose of adjustment under section 115JB, ordinary business loss and statutory depreciation have been differentiated and either the amount of brought forward loss or unabsorbed depreciation, which ever is less is to be deducted and not both.

Dy. CIT v Costal Resorts (I) Ltd (2009) 31 DTR (Coch) (Trib) 283.

65. Notice by affixture- Reassessment- s 148, 292BB.

In the absence of anything to show that there was any urgency to serve the notice under section 148 on the very next day after it was issued or any material on record to show or suggest that any effort was made by the AO to serve the notice in the normal course before issuing the directions to serve the same by affixture was not valid service. S 292BB inserted w.e.f 1st April 2008, has not retrospective operation , and therefore , it was no application for asst year 2001-02.

Arun Lal v Asst CIT (2009) 30 DTR (Agra) (TM) 178.

66. Penalty – concealment- disclosure of additional income by a letter-s 271 (1) (c), Expln 5.

Authorised officer having not recorded assessee's, statement under section 132 (4) , during the course of search, the disclosure of additional income made by the assessee through a letter addressed to the Asstt Director of IT (Inv) immediately after conclusion of the search which has shown in the return of income , which has been accepted without any variation , has to be construed as a bona fide voluntary disclosure and therefore , penalty under section 271 (1) (C) is not leviable in view of expln 5 .

Hissaria Brothers v DY CIT (2009) 31 DTR (Jd) (Trib) 223.



67. Penalty – Concealment - Search and Seizure - s 153A, 271 (1)(c).

Additional income declared in returns filed in response to notice under section 153A, did not fall under category of return mentioned in Explanation 5 (2) to section 271 (1) (c), assesses were not entitled to immunity from penalty.

Asst CIT v Kirti Dahyabhai Patel (2009) 121 ITD 159 (Ahd) (TM).

68. Right to Practise law -Eligibility – Foreign Law Firms – RBI Act, FERA Act – S. 29.

Foreign Law Firms are not eligible to open liaison offices or to practice law in India. Even giving an opinion on a legal matter amounts to “practise of law”. Non-Advocates cannot practise law.

Lawyers Collective vs. Bar Council (Bom.) (itatonline.org)

69. Reassessment-Change of opinion- 148.

Where the assessment order does not contain any discussion on a particular issue, the same may be rendered without application of mind, and in that case, there is no question of change of opinion, in such cases mere production of books of account is also no sufficient as per s 147, Explanation 1 and therefore reopening would be valid.

Ema India Ltd v Asst CIT (2009) 30 DTR (All) 82.

70. Rectification of Mistakes – Apparent from records- s 143 (2), 154.

When an assessment is subject – matter of proceedings under section 143 (2), during pendency of such proceedings rectification proceedings under section 154 can not be initiated.

Where there can conceivably be two opinions on a particular issue, provisions of section 154 will not be attracted.

M.P.Telelinks Ltd v Asst CIT (2009) 121 ITD 241 (Agra) (TM).

71. Rectification of mistake- Appellate Tribunal- merger- s 254 (2).

Order under section 254 (2) merges with original order. Second application for rectification not maintainable.

Dr. S. Panneerselvam v Asst CIT (2009) 319 ITR 135 (Mad).

72. Rectification of mistakes – s 154, 143 (2).

When an assessment, is subject –matter of proceedings under section 143 (2), during pendency of such proceedings rectification proceedings under section 154 can not be initiated.

M.P.Telelinks Ltd v Asst CIT. (2009) 121 ITD 241 (Agra) (TM).

73. Rectification of mistakes - Appellate Tribunal- Powers- S. 254 (2)

Tribunal can set aside a matter or remand it to file of Assessing officer for further enquiry to make proper assessment by allowing parties including revenue authorities to raise a contention for first time before it.

Asstt CIT v Amar Mining Co (2009) 121 ITD 273 (Ahd) (TM).

74. Revision – further enquiry - 263.

Commissioner can regard order as erroneous on the ground that in circumstances of case Assessing officer should have made further enquiries before accepting statement made by the assessee.

Rajalakshmi Mills Ltd v ITO. (2009) 121 ITD 343 (Chennai) (SB).

75. Revision – Lack of enquiry- s 263.



AO having made enquiries, elicited replies and thereafter allowed the expenditure on tools and dyes as revenue expenditure, it can not said that it was “lack of enquiry” and therefore, the assessment order passed by the AO can not be revised under section 263.

CIT v Sunbeam Auto Ltd (2009) 31 DTR (Del) 1 (2009) 227 CTR (Del) 133.

76. Search and Seizure- Assessment- limitation- service of order-s 153A.

Assessment order passed on 28th Dec ,2007, but served on 2nd Jan , 2008, beyond the period of limitation of 31st Dec, 2007, was barred by limitation and thus non est in law.

Shantilal Godawat & Ors v Asst CIT (2009) 126 TTJ (Jd) 135.

77. Search and seizure- powers of seizure – S. 132 (1) (ii) (b).

It is open to the department to copy the data relating to the specified three entities of the assessee group from the two laptops which were seized from the possession of auditor of firm.

DI (Inv) v Batliboi & Co. (2009) 31 DTR (SC) 187.

Editorial Note: Delhi High Court Order: S. R. Batliboi & Co. vs. Department of Income Tax (2009) 181 Taxman 9 (Del.)