



DIGEST OF CASE LAWS (JULY 2009)

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JOURNALS REFERRED

30 SOT, 118 ITD, 123 TTJ, 180 Taxman, 313 ITR, 23 & 24 DTR, & 224 CTR.

1. AUTHORITY FOR ADVANCE RULING WRIT - S. 245U, ART. 226.

Authority for Advance Rulings is a Tribunal, hence, High Court can issue writ against advance ruling.

U.A.E. Exchange Centre Ltd. vs. UOI (2009) 313 ITR 94 (Delhi)

2. ADVANCE TAX – INTEREST - COMPANY - BOOK PROFIT – S. 115JA, 234B, 234C

Interest under section 234B and 234C, cannot be levied when book profit is computed under section 115JA.

Snowcem India Ltd. vs. Dy. CIT (2009) 313 ITR 170 (Bom.)

3. APPEAL (TRIBUNAL) – APPEAL FEE - NOT MAINTAINABLE - S. 253(6)(d)

Appeal dismissed by CIT(A) as not maintainable hence such orders would fall within clause (d) of section 253(6) and hence, appeal fee would be only Rs. 500/-.

Dr. A. Naresh Babu vs. ITO (2009) 24 DTR 41 (Hyd.)(Trib.)

4. APPEAL – ORDER GIVING EFFECT – S. 246A(1)(a), 264

Appeals are maintainable from fresh orders passed by the AO to give effect to revisional order passed under section 264, but only such issues can be agitated in such appeals which have not attained finality by virtue of order passed under section 264.

Jai Hotels Co. Ltd. vs. Asst. Director of Income-tax (2009) 24 DTR 37 (Del.)

5. APPEAL (TRIBUNAL) RECTIFICATION OF MISTAKES - CONDONATION OF DELAY – S. 254(2)

There is no provision under section 254(2) to entertain rectification application received after the expiry of period of four years nor the provisions of section 5 of the Limitation Act are applicable to proceedings before quasi judicial authorities



like Tribunal and, therefore, condonation of delay in filing miscellaneous application for rectification of order under section 254(1) cannot be allowed.

Rahul Jee & Co. (P) Ltd. vs. ACIT (2009) 123 TTJ 217 (Del)

6. ASSESSMENT – RULE OF CONSISTENCY – PRECEDENT - TRIBUNAL WAS NOT JUSTIFIED IN ALLOWING DEDUCTION RELYING ON THE DECISION REVERSED / OVERRULED BY SUPREME COURT – S. 80HH, 80I, ART. 141

Assessee was allowed deduction in the earlier year and so cannot claim the benefit in the subsequent year based on the judgment passed by the High Court in the Assessee owns case. However, before assessment is made in the subsequent year, principal of law which is applicable to such assessment is clarified by Supreme Court. The principal of law laid down by Supreme Court becomes binding on all the judicial and quasi judicial authorities under Art. 141 of the Constitution and cannot be ignored. Thus, the tribunal by ignoring the mandate of the Supreme Court judgment and continue to give benefit was wrong.

CIT vs. Indian Railways Construction Co. Ltd. (2009) 24 DTR 130 (Del)

7. ASSESSMENT - HUF - PARTITION – S. 171

When there is no order recording partition under section 171(3), original assessment in the status of family attaining finality, assessment to be made as family.

Gaurikanta Barkataky vs. CIT (2009) 313 ITR 34 (Gau.)

8. BUSINESS EXPENDITURE – AD-HOC DISALLOWANCE - TELEPHONE, VEHICLE – S. 37

Ad-hoc disallowance of expenditure without any reason is not proper, further, there is no element of personal user out of telephone expenses, vehicle expenses, car insurance expenses and office expenses of the company.

Rajat Tradecom India (P) Ltd. vs. Dy. CIT (2009) 23 DTR 311 (Ind.)(Trib.)

9. BUSINESS EXPENDITURE – DISALLOWANCE - DEDUCTION OF TAX AT SOURCE – S. 40(a)(iii)

Overseas maintenance allowance paid by assessee by way of reimbursement of maintenance expenses incurred by employees deputed abroad was not part of salary, but covered by Rule 2BB(1)(b), hence, could not be disallowed under section 40(a)(iii) for non deduction of tax at source.



ITO vs. Information Architects (2009) 123 TTJ 35 (Mum.)

10. BUSINESS EXPENDITURE - COMMUNITY ASSISTANCE PROGRAMME – S. 37

Expenditure incurred by the assessee on community assistance programme and the welfare measures undertaken in the vicinity of the manufacturing unit which also benefited its employees is allowable as business expenditure.

CIT vs. Madura Coats Ltd. (2009) 24 DTR 24 (Mad)

11. BUSINESS EXPENDITURE - SETTING UP AND COMMENCEMENT OF BUSINESS - S. 37(1)

The business of assessee cannot be said to have been setup on the date of incorporation of the company as the main objects of the assessee was to acquire the international express business of AFL Ltd., which in turn was subject to necessary approvals of the law. As the setting up and commencement date of business is different and the expenditure incurred after setting up of business i.e. 2nd Nov., 2001, is allowable as revenue expenditure, though business commenced from 1st Jan., 2002.

DHL Express (I) Pvt. Ltd. vs. ACIT (2009) 24 DTR 602 (Mumbai) (Trib.)

12. BUSINESS LOSS - SHARE BROKER – IRRECOVERABLE AMOUNTS FROM CLIENTS – S. 28(i)

Assessee a share broker writing off amounts due from clients in the course of business as irrecoverable, same is allowable as business loss under section 28(i).

Kotak Securities Ltd. vs. Addl. CIT (2009) 24 DTR 214 (Mum.)(Trib.)

13. BLOCK ASSESSMENT - PENALTY – S. 158BFA(2)

Expression “or any expenses deduction or allowance claimed under this Act, which is found to be false” not being there in section 158B(b) at the time of filing the return on 31st May, 2001, penalty under section 158BFA(2) could not be imposed on the basis of disallowance of expenditure claimed and rejection of claim of set off of business loss.

Super Metal Industries vs. Dy. CIT (2009) 123 TTJ 23 (Mumbai)(TM)

14. BLOCK ASSESSMENT - COMPUTATION OF UNDISCLOSED INCOME - SEARCH AND SEIZURE - SHORT OF STOCK - SCRIBBLING PAPERS – S. 132,158BB



In the absence of any corroborative evidence in the possession of the assessee firm or its partners to support its explanation regarding short stock at the time of search, addition in respect of estimated profit on unaccounted sales relatable to stock found was justified.

Addition on account of deficit stock could not be made simply on the basis of some vague scribbling on papers seized in the case of search of an ex-partner of the assessee firm in the absence of anything to connect the contents of said material with the transactions of the firm.

Bhajan Das & Brothers vs. ACIT (2009) 24 DTR 68 (TM) (Trib.)

15. BLOCK ASSESSMENT – REASSESSMENT – S. 147, 148 & 158BC

Provisions of section 147/148 will apply to an assessment for a block period made under Chapter XI B.

CIT vs. Peerchand Ratanlal Baid (HUF) (2009) 24 DTR 209 (Gau.)

16. BLOCK ASSESSMENT - SEARCH AND SEIZURE - SEARCH WARRANT ON DEAD PERSON – S. 132, 158BC

Search warrant issued in the name of dead person, search held to be invalid and assessment based on search also invalid.

CIT vs. Rakesh Kumar (2009) 313 ITR 305 (P & H)

Editorial Note: - SLP rejected (2009) 313 ITR 29 (ST)

17. BUSINESS INCOME - INCOME FROM HOUSE PROPERTY - INCOME FROM WARE HOUSING – S. 22, 28(i)

Assessee not merely letting out its premises for warehousing but being also under obligation to provide adequate security to the material stored apart from receiving and delivering stock, taking physical inventory at regular intervals, to do loading and unloading and stock taking in addition to ensuring proper spray of pesticides in the godown, it was doing a complex commercial activity, hence, receipts were taxable as business income and not income house property, more so when receipts were assessed as business income in the past and there was no change in factual or legal position.

ITO vs. Rasiklal & Co. (P) Ltd. (2009) 123 TTJ 279 (Mum.)

18. CASH CREDITS - GIFT FROM BROTHER - S 68



Addition under section 68 cannot be made in respect of gift received from his real brother by cheque who had annual income of more than Rs. 6.65 lacs, assessed to tax and sufficient creditworthiness.

ACIT vs. Sarv Prakash Kapoor (2009) 24 DTR 91 (Agra) (TM) (Trib.)

19. CAPITAL GAINS - CHARGEABILITY - MONEY RECEIVED FROM INSURANCE COMPANY - S. 43 (6), S.45(IA) & S.50

Expenditure incurred by the assessee on repairs of building damaged tanks and terminals being more than the insurance receipts resulting in to no profits or gains, the provisions of section 43(6)(c)(I) or 45(IA) or 50 were not applicable.

J. R. Enterprises vs. ACIT (2009) 24 DTR 311 (Mum.) (Trib.)

20. CAPITAL GAINS - SLUMP SALE - COST OF ACQUISITION - S. 45, 50

Cost of acquisition of business, transferred lock, stock and barrel being ascertainable even according to assessee's own admission before CIT(A). CIT(A) was justified in holding that the transaction was exigible to capital gains tax, however, as assessee was unable to establish any cost of improvement no benefit on that account will be allowable.

CEAT vs. Dy. CIT (2009) 24 DTR 445 (Mumbai) (Trib.)

21. DEDUCTIONS - DEVELOPER - INFRASTRUCTURE UNDERTAKINGS - S. 80IA(4)

Assessee which is engaged in 'developing' infrastructural facility i.e. road, and not engaged in 'operating and maintaining' said facility, is entitled to benefits of deduction under section 80 IA(4) of the Act.

ACIT vs. Bharat Udyog Ltd. (2009) 118 ITD 336 (Mum.) / (2009) 23 DTR 433 (Mum.)(Trib.)

22. DEDUCTION OF TAX AT SOURCE - FEES FOR PROFESSIONAL OR TECHNICAL SERVICES - TRANSACTION FEE - S. 9(I)(vii), 40(a)(ia), 194 J

Transaction fee paid to stock exchange on the basis of volume of transaction is payment for use facilities provided by stock exchange and not for any services, either technical or managerial, hence, provisions of section 194 J are not attracted and no disallowance can be made by invoking section 40(a)(ia).

Kotak Securities Ltd. vs. Addl. CIT (2009) 24 DTR 214 (Mum.) (Trib.)



23. DEDUCTION OF TAX AT SOURCE - LIMITATION – S. 143, 147, 149, 153, 195, 201(1)

As there is no time limit is prescribed order must be passed within reasonable time which is an order akin to assessment i.e. the time limit on par with time available for assessment or reassessment of recipient. Time of one year is available from initiation of proceedings for passing order.

Mahindra and Mahindra Ltd. vs. Dy. CIT (2009) 313 ITR 263 (AT)(Mum.)(SB)

24. DEDUCTION OF TAX AT SOURCE - ASSESSEE IN DEFAULT – S. 195, 201 (1)

Person responsible for paying not to be treated as in default if recipient pays tax or is not chargeable to tax under Act, but may be liable for interest.

Mahindra and Mahindra Ltd. vs. Dy. CIT (2009) 313 ITR 263 (AT) (Mum.) (SB)

25. DEDUCTION –INFRASTRUCTURAL FACILITY-DEVELOPER.- s. 80 IA

The assessee need not be engaged in the activity of 'operating and maintaining the facility' for availing deduction. As the benefit is given to the developer it pre-supposes income to the developer which would accrue only on the receipt of the money by the developer on transfer of infrastructural facility. It was further held that an assessee was engaged in developing infrastructural facility is also eligible for the benefits of s. 80 IA.

Asst. CIT v. Bharat Udyog Ltd. [2009] 118 ITD 336 (Mum , (2009) 24 SOT 412 (Mum)

26. DEEMED DIVIDEND - DEPOSIT – S. 2(22)(e)

Amount received from a company as security by assessee firm. Assessee firm is not registered shareholder hence amount received as security not assessable as deemed dividend in hands of assessee firm.

CIT vs. Hotel Hilltop (2009) 313 ITR 116 (Raj.)

Editorial Note:- See CIT vs. Bhaumik Colour P. Ltd. (2009) 313 ITR 146 (AT) (Mum.) (SB) / (2009) 118 ITD 1 (Mum.) (SB)

27. DEEMED DIVIDEND- LOAN IN ORDINARY COURSE OF BUSINESS- s.2 (22) (e).

The Tribunal accepted assessee contention that both the companies were non-banking companies and the amounts were given in the ordinary course of business hence the receipt of loan as deemed dividend cannot be taxed .



ITO v. Usha Commercial (P) Ltd. [2009] 30 SOT 37 (Kol) (URO).

28. DEPRECIATION - MOTOR LORRY - S. 32

Higher rate of depreciation is also admissible when motor lorry is used by assessee in his own business of transportation of goods on hire.

CIT vs. S. C. Thakur & Bros. (2009) 180 Taxman 348 (Bom.)

29. DEPRECIATION - MEMBERSHIP CARD OF STOCK EXCHANGE - S. 32

Membership card of stock exchange would be entitled to claim depreciation on the WDV of the membership right of the stock exchange.

Kotak Securities Ltd. vs. Addl. CIT (2009) 24 DTR 214 (Mum.) (Trib.)

30. Depreciation – Trial run- s 32.

Depreciation is allowable even where trial – run production takes place.

Dy CIT v Finolex Cables Ltd (2009) 29 SOT 595 (Pune).

31. EXPORT - COMPUTER SOFTWARE – S. 80HHE

Services rendered by assessee's employees abroad were both for onsite development of software, including services for such development and also in connection with the development or production of computer software entitling assessee to deduction under section 80HHEE.

ITO vs. Information Architects (2009) 123 TTJ 35 (Mum.)

32. EXPORT - DEDUCTION - EXPORT AS WELL AS LOCAL SALES SEPARATE BOOKS OF ACCOUNTS - S. 80HHC

Assessee having maintained separate books of accounts for export business and local business deduction under section 80HHC is to be computed on the basis of total turnover, export turnover and profits of the business of the export division alone and not the total turnover and the profits of the entire business of the assessee.

CIT vs. Sivagami Match Industries (2009) 24 DTR 109 (Mad.)

33. EXPORT - PROFIT ON CANCELLATION FORWARD EXCHANGE CONTRACTS - S. 80HHC

Profits on cancellation of forward exchange contracts were assessee's profits of business, but as such profits were not derived from export activity and were received from banks in India not convertible foreign exchange in terms of sub



section (2) of section 80HHC, 90 percent of the same has to be reduced from profits of business as per Expln. (baa) of section 80HHC.

Dy. CIT vs. Intergold (I) Ltd (2009) 24 DTR 250 (Mum.)(Trib.)

34. EXPORT - LEASE OF RIGHT TO EXPLOIT FILMS OUTSIDE INDIA – S. 80HHC

Telecasting rights fell in the category of articles of trade and commerce and hence, within the category of “merchandise” and the transfer of the said rights by way of lease fell within the meaning “sale” and would attract section 80HHC. Lease of right to exploit films out side India amounts to sale.

CIT vs. B. Suresh (2009) 313 ITR 149 (SC)

Editorial Note:- Abdulgafar A. Nadiadwala vs. ACIT (2004) 267 ITR 488 (Bom.) affirmed.

35. GIFT – HUF - DAUGHTER IN LAW AT THE TIME OF MARRIAGE – S. 2(xii), 3

A karta of the family or father in law has no moral obligation to gift gold ornaments to daughter in law and therefore, gift of gold by the father in law at the time of her marriage is chargeable to gift tax.

CGT vs. Smt. Triveni Devi (2009) 24 DTR 143 (Raj.)

36. HEAD OFFICE EXPENSES - APPLICABILITY OF 44C - EXPENSES INCURRED BY OVERSEAS BRANCHES OF THE ASSESSEE BANK FOR ITS INDIAN OPERATION ARE NOT HIT BY SECTION 44C – S. 37, 44C

The book entries are not very important for determining the correct assessed income. The claim can be made through the ‘computation of income’ route. The provisions of s. 44C are in applicable in a case of expenses incurred exclusively by the bank branches abroad in respect of NRI desk maintained by those branches. Therefore, the provisions of s. 44C of the Income-tax is not applicable in respect of expenses incurred by the overseas branches of the assessee bank for its Indian operations are not hit by section 44C.

Bank of America NT & SA vs. Dy. CIT (2009) 24 DTR 409 (Mum.) (Trib).

37. INCOME FROM UNDISCLOSED SOURCE - BOGUS PURCHASES - POWER OF TRIBUNAL – S. 69, 254(1)

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



ACIT vs. Amar Mining Co. (2009) 24 DTR 139 (Ahd.)(TM)(Trib.)

38. INTEREST ON BORROWED CAPITAL - S. 36(1)(iii)

If there were funds available both interest free and overdraft and / or loans taken a presumption would arise that investment would be out of the interest free funds generated or available with the company, if the interest free funds were sufficient to meet the investments, presumption that the borrowed capital was used for purposes of business hence interest was deductible.

CIT vs. Reliance Utilities and Power Ltd. (2009) 313 ITR 340 (Bom.)

39. INTEREST- CASH SEIZED-s. 158 BFA

Cash seized in search to be taken as tax deposited for the purpose of levy of interest under section 158 BFA.

Asst CIT v. Kwalitiy Bar and Resturant [2009] 118 ITD 108 (Bang).

40. INTERNATIONAL TAXATION - DOUBLE TAXATION AVOIDANCE AGREEMENT - INDIA - SWEDEN - AGREEMENT FEES PAYABLE IN RESPECT OF TECHNICAL CONSULTING SERVICES ARE MANAGEMENT FEES - S. 90, ART. 3(3)

Assessee was not managing the affairs of VSNL. Therefore, technical service rendered by Assessee cannot be treated as "management fees". Besides providing technical service assessee was also engaged in the service of supervising installation of all the terminal equipments and the cables in the terminal buildings. The charges received by the Assessee cannot be treated as a commercial profits. So, technical service charges should be taken as "management charges". The matter decided in favour of revenue.

CIT vs. Swedish International AB (2009) 24 DTR 233 (Bom.)

41. INTERNATIONAL TAXATION - TRANSFER PRICING - STEPS TO BE TAKEN TO DETERMINE THE TNMM

Method adopted by the AO suffered from various deficiencies and infirmities and lacked information and data comparables. Matter remanded to file of TPO for determination of arm's length price relating to transaction in question.

UCB India (P) Ltd. vs. ACIT (2009) 30 SOT 95 (Mum.)

42. INTERNATIONAL TAXATION - FOREIGN COMPANY - ROYALTY - DTAA - INDIA - GERMANY - S. 44D, 115JA, 90



Assessee being a person to whom DTAA applied had option being subjected to tax as per DTAA or Act, which was more beneficial to it, hence, it had rightly subjected it self to tax at reduced rate of 10 percent as per DTAA.

Asstt. DIT vs. Chiron Behring GmbH & Co. (2009) 118 ITD 324 (Mum.)

43. INTERNATIONAL TAXATION - DOUBLE TAXATION AVOIDANCE AGREEMENT - INDIA - CANADA - S. 90, ARTS. 18 & 23

Income of Indian cine artiste from entertainment show in Canada is taxable in Canada only in terms of Art. 18 of the DTAA between India and Canada.

MS Pooja Bhatt vs. Dy. CIT (2009) 123 TTJ 404 (Mum.)

44. INTERNATIONAL TAXATION - DTA - INDIA AND FRANCE - S. 44B, 90, ART. 9

Income earned by the assessee on account of transportation by ships operated by other enterprises under slot chartering arrangement is covered by art.9 and is taxable only in the State of residence and accordingly, such income will be exempt from the Income-tax under the Income-tax Act.

Jt. Director of Income-tax (International Taxation) vs. CMA CGM SA France (2009) 24 DTR 37 (Mum.) (Trib.)

45. INTERNATIONAL TAXATION - TRANSFER PRICING - S. 92C

For determination of ALP under TNMM assessee was justified in taking profit level indicator of comparable companies as operating cash profits without taking into consideration, exclusion of depreciation was justified to eliminate difference in technology used, age of assets used in production, differences in capacity utilisation and different depreciation policies adopted by various companies.

Schefenacker Motherson Ltd. vs. ITO (2009) 24 DTR 561 (Del.)(Trib.)

46. INTERNATIONAL TAXATION - TAXABILITY IN INDIA - S. 9(1)(vii) EXPLN. 2

Underwriting commission paid to lead managers to issue of global depository receipts by Indian party, are business profits which are not taxable in absence of permanent establishment in India. Reimbursement of expenses no element of income hence not taxable.

Mahindra and Mahindra Ltd. vs. Dy. CIT (2009) 313 ITR 263 (AT)(Mum.)(SB)



47. MANUFACTURE OR PRODUCTION - ACTIVITY OF RAILWAY LINE IS CONSTRUCTION ACTIVITY AND CANNOT BE AMOUNTED TO MANUFACTURE OR PRODUCTION ACTIVITY - S 80HH, 80I

The activity of laying down railway line does amount to construction activity and not manufacture or production. The assessee was seeking benefit on the ground that the strength of manufacturing activity carried on by the assessee i.e. manufacturing of numerous parts, components etc. which go into the working and operational railway tracks. The matter to be remitted for fresh consideration as per the parameters laid down by the Supreme Court in N. C. Budharaja and the impugned order of the Tribunal is set aside.

CIT vs. Indian Railways Construction Co. Ltd. (2009) 24 DTR 130 (Del.)

Editorial Note: - See amendment in Finance Bill 2009, Source: www.itatonline.org (Article)

48. PENALTY - CONCEALMENT - REVISED RETURN - S. 148, 271(1)(c)

Assessee having surrendered additional income along with an explanation in the revised return filed in pursuance of notice under section 148, and the assessing authority having not taken, any objection that the assessee's explanation was not bona fide, penalty under section 271(1)(c) is not leviable.

CIT vs. Rajiv Garg & Ors. (2009) 224 CTR 321 (P & H) / (2009) 313 ITR 256 (P & H).

49. PENALTY - CONCEALMENT - S. 271(1)(c)

The assessee has furnished all the relevant material which was neither in accurate nor has concealed any particulars of his income which is necessary for computation of total income. The AO did not find the explanation given by Assessee to be false in spite of this AO imposed penalty on Assessee. As AO has failed to point any exact failure of the Assessee for which penalty was levied u/s. 271(1)(c). As Assessee has furnished all the details and has given substantial evidence penalty cannot be levied by invoking explanation 1.

Mrs. Najma M. Kanchwala vs. ITO (2009) 24 DTR 369 (Mum.)(Trib.)

Editorial Note:- UOI vs. Dharmendra Textile Processors & Ors. (2008) 219 CTR 489 (SC) discussed and distinguished.

50. PRECEDENT - DISMISSAL OF SPECIAL LEAVE AND APPEAL - ART. 136, 141

Dismissal of appeal means that the judgement of appealed has been affirmed.



Snowcem India Ltd. vs. Dy. CIT (2009) 313 ITR 170 (SC)

51. PRECEDENT - HIGH COURT – S.254

Tribunal is not bound by decisions of Courts other than jurisdictional High Court.

Mahindra and Mahindra Ltd. vs. Dy. CIT (2009) 313 ITR 263 (AT) (Mum.)(SB) (309)

52. PRECEDENT - HIGH COURT – S. 254

A solitary judgement of any High Court in country on a particular point or issue should be followed in its letter and spirit by all Benches of Tribunal notwithstanding contrary views expressed by some Benches of Tribunal notwithstanding contrary views expressed by some Benches of Tribunal, unless there is strong reason to deviate from view expressed by High Court.

ITO vs. Ranisati Fabric Mills (P) Ltd. (2009) 118 ITD 293 (Mum.)

53. PROFIT CHARGEABLE TO TAX –LIABILITY PAYABLE TO CREDITORS - 41 (1)

The provision under section 41 (1) could not be applied in the absence of cessation of liabilities, on the mere fact that the amounts were outstanding for more than 3 years and also in case of absence of unilateral entries in the books of accounts.

DSA Engineers (Bombay) v. ITO [2009] 30 SOT 31 (Mum).

54. REVISION - ERRONEOUS AND PREJUDICIAL - LACK OF PROPER ENQUIRY - S. 263

Assessing Officer having accepted the accounts of the assessee after the latter had submitted the details as called for by the Assessing Officer, it could not be said that he has not applied his mind to the relevant issues and therefore, order passed by CIT under section 263 is not sustainable, more so when he did not record a finding as to how the order of the Assessing Officer is erroneous.

Rajiv Agnihotri vs. CIT (2009) 23 DTR 476 (Del.)(Trib.)

55. REVISION – S. 263

Merely because an assessment order does not refer to queries raised by Assessing Officer during course of scrutiny and response of assessee thereto, it can not be said that there has been no enquiry and, hence, assessment is erroneous and prejudicial to interest of revenue.

CIT vs. Ashish Rajpal (2009) 180 Taxman 623 (Delhi)



56. REVISION - ERRONEOUS AND PREJUDICIAL ORDER - ONE POSSIBLE VIEW - S. 263

The assessee claimed that these expenses were in executing the projects regarding development of the packaged software and were revenue in nature. These expenses of the Assessee were considered as ongoing expense and lead to benefit of enduring nature on development of packaged software. Therefore, the order of AO in allowing this expenditure cannot be said to be erroneous and prejudicial to the interest of the Revenue as the view of the AO having followed one possible view.

Flextronics Software System Ltd. vs. CIT (2009) 24 DTR 551 (Del.) (Trib.)

57. SCIENTIFIC RESEARCH EXPENDITURE - IN HOUSE SCIENTIFIC RESEARCH - S. 35(1)(iv)

For claiming deduction under section 35, there should be nexus between scientific research and with business carried on by assessee. If an assessee does not develop in house scientific research activities but is engaged in development and supply of scientific research to business of other assessee, deduction under section 35 would not be available hence expenditure incurred on the subsidiary would not be entitled deduction under section 35.

Ciba India (P) Ltd. vs. ITO (2009) 30 SOT 269 (Mum.)

58. SHIPPING COMPANIES - QUALIFYING COMPANY - TONNAGE TAX - S. 115VC, 115VA, 115VC(d)

Concept of the 'the main object of company' in section 115VC(d), in absence of any provision to contrary in Chapter XII-G, has necessarily to be understood in manner in which that term is understood in common parlance without being tied down to any requirement of Companies Act to classify objects of a company in to principal and ancillary and show them distinctly in object clauses in memorandum of association of company, hence, only on the basis of object clause of company the provisions of tonnage tax can not be denied.

South India Corpn. Ltd. vs. Addl. CIT (2009) 180 Taxman 319 (Ker.)

59. SEARCH AND SEIZURE - SATISFACTION NOTE - S. 132(1)

A copy of the information or the satisfaction note need not furnished to the Petitioner.

Genom Biotech (P) Ltd. & Ors. Vs. Director of IT (Investigation) (2009) 224 CTR 270 (Bom.)



60. SEARCH AND SEIZURE - WARRANT- BLOCK ASSESMENT- s. 132(1), S.158 BC.

No block assessment can be made directly where no search warrant is issued.

Smt. Nasreen Yusuf Dhanani v. Asst CIT [2009] 118 ITD 133 (Mum).

61. Survey- Statement – Assessment – s. 133A.

A **survey** was conducted in the premises of the assessee and was not signed not by the Inspector or by the Assessing officer nor the contents of the statement was explained to the person who gave the statement. The Assessing Officer based on the statement of the person made addition by applying higher gross profit. As the Assessee had also disclosed higher gross profit than in the preceding two years. The tribunal deleted the addition which was made merely on the basis of statement.

Kailash Chand v. ITO [2009] 29 SOT 63 (Jodh) (URO)

62. Speculative Transaction – Future and option (Derivatives) – s.43 (5)(d)

Future and options not to be regarded as an speculation loss when it is treated as a business loss and set off against other incomes in accordance with the provisions of the Income Tax Act. The provisions u/s. 43 (5) is clarifiactory in nature and therefore has retrospective operation.

P.S. Kapur v. Asst. CIT [2209] 29 SOT 587 (Jp.)

Editorial – refer. Dy CIT v SSKI Investors Services (P) Ltd (2009) 29 SOT 78 (Mum) (URO).

63. TAX DEDUCTION AT SOURCE - FEES FOR TECHNICAL SERVICES – S. 194 J, 201, 201(1A)

Fees for technical services would not include purchase of material by the assessee for the purpose of imparting computer education at their centre, hence, provisions of section 194J and for that purpose section 201(1) and 201(1A) are not attracted.

Taxes having been duly paid by the deductee same can not be recovered from the assessee for failure to deduct tax at source.

ACIT vs. Frontline Software Services (P) Ltd. (2009) 24 DTR 232 (Ind.)(Trib.)

64. TAX DEDUCTION AT SOURCE PERQUISITE- TRANSPORT FACILITY FROM RESIDENCE TO OFFICE- S. 17 (2) 192



The employees were given pick and drop facility from their residence to office and employee also paid conveyance allowance to every employee. The tribunal held that use of any vehicle provided by company or an employer for journey by the employee from his residence to office or office place to his residence shall not be regarded as a benefit or amenity liable for tax as perquisite. Further, since it was not perquisite the question of deducting tax at source u/s. 192 in respect of such payments/ expenditure could not arise.

Transworks Information Services Ltd. V. ITO (TDS) [2009] 29 SOT 543 (Mum).

65. WEALTH TAX – PENALTY - LEGAL REPRESENTATIVE – S. 15B, 18, 19

Assessee filing return and receiving notices of initiation of penalty proceedings. Penalty order was passed after death of assessee, the Court held that no penalty can be levied against legal representative.

ACIT vs. Late Shrimant F. P. Gaekwad (2009) 313 ITR 192 (Guj.)