



DIGEST OF CASE LAWS (June 2009)

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JOURNALS REFERRED

179 TAXMAN PART 3, 180 TAXMAN, 223 CTR, 118 ITD PART 1, 3, 312 ITR, 22 & 23 DTR, 122 TTJ & 29 & 30 SOT.

A.

APPEAL (HIGH COURT) - MAINTAINABILITY - CLEARANCE FROM COMMITTEE - S. 260A

Appeal filed by the revenue against the assessee, a state owned corporation is dismissed as not maintainable for want of clearance from the Committee on disputes.

CIT vs. Tamilnadu Electricity Board (2009) 223 CTR 389 (Mad.)

APPEAL TRIBUNAL - MAINTAINABILITY - CLEARANCE FROM COMMITTEE ON DISPUTES - S. 253(1) & 253(2)

In the absence of clearance from COD, cross appeals between State PSU and IT Department dismissed as not be maintainable and kept in suspended animation till COD clearance was obtained or reliable evidence was produced showing that COD having mandate in the matter did not exit.

Maharashtra State Warehousing Corpn. Ltd. vs. Dy. CIT (2009) 22 DTR 531 (Pune) (Trib.)

APPELLATE TRIBUNAL - POWER - RECTIFICATION - 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) can not be entertained.

Rahul Jee & Co. (P) Ltd. vs. ACIT (2009) 22 DTR 329 (Del.) (Trib.)

ASSESSMENT - LIMITATION - NOTICE - S. 143(2)(i), 143(2)

Notice under section 143 (2)(i) as well as notice under section 143(2)(ii) are to be issued within time specified in proviso to section 143(2) and the notice issued under section 143(2)(i) can not by itself extend the time for issuance of notice under section 143(2)(ii). Assessee having filed return on 26th Sept., 2001, notice issued under section 143(2)(ii) on 28th July, 2003 was time barred even though the case was initially selected for limited scrutiny under section 143(2)(i).



Bholanath R. Shukla vs. ITO (2009) 21 DTR 270 (Mum.) (Trib.)

ASSESSMENT - VALIDITY - DIRECTION OF HIGHER AUTHORITY - NULLITY – S. 143(3), 148, 150

By no stretch of imagination a higher authority can interfere with the independence of the assessing authority which is the basic feature of any statutory scheme involving adjudicatory process. Thus the assessment order passed by the AO at the instance of the higher authority i.e. CIT is illegal. Section 150 brings within its ambit only such cases where reopening of the proceedings may be necessary to comply with an order of the higher authority. If there is no proceedings before higher authority or if the assessment year in question does not fall for consideration before it, section 150 has no application. CIT therefore had no jurisdiction to issue direction regarding issuance of notice under section 148.

CIT vs. Greenworld Corporation (2009) 23 DTR 185 (SC).

AUTHORITY FOR ADVANCE RULINGS – WRIT – S. 131, 245R, 245S - ARTICLE 226, 227

Authority for advance rulings constituted under Chapter XIXB of the Act is a Tribunal as it is invested with the powers of a Civil Court by virtue of provisions of section 131 and has “trappings of a Court” and thus the ruling of the Authority is amenable to jurisdiction under Art. 227 and more so under Art. 226.

U.A.E. Exchange Centre Ltd. Vs. UOI (2009) 223 CTR 250 (Del.)

B.

BAD DEBTS – S. 36(i)(vii), 36(2)

As per amended provisions of section 36(1)(vii), once the assessee has written off debt in his books of account, it is not requirement of law that he should establish that debt has, in fact become bad.

Suresh Gaggal vs. ITO (2009) 180 Taxman 90 (HP)

BAD DEBT – YEAR OF ALLOWABILITY – S. 36(1)(vii)

Amount written off bonafide in Asst. Year 2000-01 and charged to Profit & Loss account in that year but claimed deduction for the first time in Asst. Year 2001-02 could be allowed as bad debt in later year.

Dy. CIT vs. EDS Electronic Data Systems (India) (P) Ltd. (2009) 23 DTR 10 (Del.) (Trib.)

BUSINESS EXPENDITURE - RETRENCHMENT COMPENSATION OF CLOSED UNIT – S. 37

Expenses pertaining to closed units on account of retrenchment compensation paid to employees and interest on monies borrowed for payment of retrenchment



compensation, provident fund and legal expenses are allowable expenses as the assessee continued the business in other three units.

CIT vs. D.C.M. Ltd. (2009) 179 Taxman 295 (Delhi)

BUSINESS EXPENDITURE - FILM PRODUCTION - S. 37

Expenditure incurred by assessee on film production by way of advertisement for marketing of products manufactured by it was allowable as revenue expenditure, in as much as it was in respect of promoting ongoing products of assessee.

CIT vs. Geoffrey Manners & Co. Ltd. (2009) 180 Taxman 87 (Bom.)

BUSINESS EXPENDITURE - REVISED RETURN - CLAIM MADE FIRST TIME IN THE COURSE OF ASSESSMENT - S. 37(1)

Assessing Officer is obliged to give due relief to assessee or entertain its claims if admissible as per law even though the assessee had not filed the revised return.

Emerson Network Power India (P) Ltd. vs. ACIT (2009) 122 TTJ 67 (Mum.)

Editorial Note: Considering the Goetze (India) Ltd. vs. CIT (2006) 284 ITR 323 (SC). Refer Chicago Pneumatic India Ltd. vs. Dy. CIT (2007) 15 SOT 252 (Mum.)

BUSINESS EXPENDITURE - DISALLOWANCE - S. 40 (a)(ia), 194C

Supply of outsourced manufactured goods by contract manufacturers constituted outright sale and not contract of work within the scope of section 194C, hence assessee was not liable to deduct tax at source from the purchase price of goods paid by assessee to contract manufacturers, therefore, such payment could not be disallowed by invoking section 40(a)(ia)

Tureg Marketibg (P) Ltd. vs. ACIT (2009) 122 TTJ 343 (Del.)

BUSINESS EXPENDITURE - DEFERRED REVENUE EXPENDITURE - S. 37(1)

Deferred revenue expenditure to the extent of 1/10 of total expenditure having been allowed to the assessee in summary assessments as also scrutiny assessments for other assessment years accepting the method of accounting followed by assessee, same could not be disallowed in assessment year in question.

Sportsfield Amusments vs. ITO (2009) 122 TTJ 572 (Mum.)

Editorial Note: See judgement of Mumbai Tribunal in Crystal Audio Ltd. vs. ITO, ITA No. 1303/Mum/2002 Bench 'J' dt. 31-3-2006. (Asst. Year 1995-96)

BUSINESS EXPENDITURE - DISALLOWANCE - BOTTLING FEE - S. 43B

Bottling fee payable by the assessee under the Rajasthan Excise Act, 1950 and rules framed there under receivable by the State for parting with its exclusive



privilege to deal in portable liquor, is not in the nature of any sum payable by way of tax, duty cess and, therefore it cannot be disallowance under section 43B.

CIT vs. McDowell & Co. Ltd. (2009) 23 DTR 136 (SC)

BUSINESS EXPENDITURE – DISALLOWANCE - ACTUAL PAYMENT – S. 43B

Furnishing of bank guarantee is not actual payment of tax or duty as required under section 43B of the Income-tax Act.

CIT vs. McDowell & Co. Ltd (2009) 23 DTR 122 (SC)

BUSINESS LOSS – CAPITAL LOSS - LOAN TO SUBSIDIARY – S. 2(47), 28, 37(1), 45

Loan given by assessee to its subsidiary for acquisition of shares in the joint venture company not being in line with the business activities of the assessee, the irrecoverable amount can not be allowed as a business loss under section 28 or 37, nor as capital loss under section 45 as it is purely a case of disappearance of loan itself and no transfer is involved.

DCM Ltd. vs. Dy. CIT (2009) 23 DTR 163 (Del.) (Trib.)

BLOCK ASSESSMENT - LIMITATION - NOTICE – S. 143(2)

When Assessing Officer does not issue notice under section 143(2) within one year from the end of month in which block return is filed, it would not be open to him to start scrutiny assessment proceedings after end of that period.

ACIT, Aurangabad (Central) vs. Aurangabad Holiday Resorts (P) Ltd. (2009) 118 ITD 1 (Pune)

BLOCK ASSESSMENT – COMPUTATION - UNDISCLOSED INCOME – STATEMENT - S. 158BB

In the absence of recovery of any incriminating material during the search conducted in the premises of the assessee group, the statement of third party could not be used against the assessee in proceedings under Chapter XIVB, especially when the statements were recorded behind the back of the assessee.

CIT vs. Bansal High Carbons (P) Ltd. (2009) 223 CTR 179 (Del.)

BLOCK ASSESSMENT - VALIDITY – ISSUE OF NOTICE – S. 143(2), 158BD & 292BB

Notice issued under section 143(2) having not been issued and served on assessee within a period of one year from the date of filing of return under section 158 BD, Block assessment under section 158BD was null and void.

Jayprakash J. Mangtani vs. ACIT (2009) 22 DTR 320 (Ahd.) (Trib.)



BOOK PROFIT – COMPANY – S. 80HHC, 115JB

For the purpose of calculating book profit under section 115JB under explanation 1 sub-Cl. (iv) the export profits to be excluded from the book profits would be the export profits allowed as a deduction under section 80HHC after restricting the deduction as per the provisions of sub-section (1B) of section 80HHC and not the export profits calculated as per sub-section (3) and 3 (3A) of section 80HHC before applying the restriction contained in sub section (1B) of section 80HHC.

CIT vs. Ajanta Pharma Ltd. (2009) 223 CTR 441 (Bom.) / (2009) 23 DTR 1 (Bom.)(www.itatonline.org)

Editorial Note: Special Bench Judgement in Dy. CIT vs. Syncome Formulations (I) Ltd. (2007) 106 ITD 193 (Mum.) is overruled.

C.

CAPITAL GAINS - BUSINESS INCOME – S. 28, 45

Where property in question was held by assessee for several years in capital account and was shown in balance sheet of assessee as “capital asset” profit earned by assessee on sale of property was to be assessed under head “capital gains” and not under head ‘income from other sources’.

CIT vs. D. C. M. Ltd. (2009) 179 Taxman 295 (Delhi)

CAPITAL GAINS – BUSINESS INCOME - TRANSACTION IN SHARES - S. 28(1), 45

Assessee's claim of short term and long term capital gains from transactions in shares having been allowed on identical facts in earlier years, could not be disallowed merely because in the year under consideration, the Finance Act 2004, had conferred certain benefits on the assessee on such transaction. Modus operandi of assessee remaining the same, assessee's claim deserved acceptance by following rule of consistency.

Gopal Purohit vs. Jt. CIT (2009) 122 TTJ 87 (Mum.)

Editorial Note: Refer Saranath Infrastructure (P) Ltd. vs. ACIT (2009) 120 TTJ 216 (Luck.)

CAPITAL GAINS - COST OF ACQUISITION – S. 48, 55(2)

Assessee an investment company purchasing shares of company SVCL in order to take over RCL a cement manufacturing unit, payment of non-compete fee to promoters of SVCL under agreement between promoters, assessee's flagship company ICL and RCL, not to compete in the line of business with the purpose of improving business of RCL can not be treated as cost of improvement or cost of acquisition of shares of those shares.

ACIT vs. ICL Securities Ltd. (2009) 122 TTJ 1 (Chennai)(TM)



CAPITAL GAINS - INVESTMENT IN MORE THAN ONE RESIDENTIAL HOUSE – S. 54

Expression “a residential house” should not be understood to indicate a singular number; assessee having purchased two residential flats, exemption under section 54 was available, more so as these flats are situated side by side and the builder has effected modification of the flats to make it as one unit.

CIT vs. D. Ananda Basappa, (2009) 223 CTR 186 (Kar.)

Editorial Note:. See Special Bench in ITO vs. M. S. Sushila M. Jhaveri (2007) 107 ITD 327 (Mum.) (SB)

CAPITAL GAINS – COMPUTATION – S. 48

Liability to tax on capital gains would arise in respect of only those capital assets in acquisition of which an element of cost is either actually present or capable of being reckoned and not in respect of those assets in acquisition of which element of cost is altogether inconceivable. Burden is on revenue to prove that assessee had incurred cost for acquiring land. On the facts it was submitted that neither Peswas nor Scindias had incurred any cost for acquiring said land and, therefore, it fell outside, purview of charge of capital gains.

HUF of H. H. Late Sir J. M. Scindia vs. ACIT (2009) 118 ITD 190 (Mum)

CAPITAL GAINS - COST WITH REFERENCE TO CERTAIN MODES OF ACQUISITION - PARTITION OF HUF – S. 48, 49, 171

HUF owned an immoveable property which came to be divided amongst members of HUF, in the process of partition, karta and HUF his wife (assessee) took one half share each of immovable property as property admitted of such physical partition. On partition karta and his wife had undertaken to pay certain amount to one of his sons for acquisition of his one forth share in immovable property Both the assessee claimed the amount as deduction in their respective returns while computing the capital gains. The said claim was disallowed on the ground that the property being HUF the only cost of acquisition in hands of original owner which could be allowed under section 49 whereas amount paid by each of assesses to other two members of HUF would not be covered under section 49. The Court held that the amount paid to other two members of HUF would be termed to be cost of acquisition of additional interest or additional shares acquired by them at the time of partition allowable deduction under section 48 of the Act.

Lalitben Hariprasad vs. CIT (2009) 180 Taxman 213 (Guj.)

CAPITAL GAINS – TRANSFER - FORFEITURE OF SHARE APPLICATION MONEY – S. 2(47), 45

Cancellation of allotment of shares on failure to deposit call money is “transfer” within the meaning of section 2(47) and consequent forfeiture of earnest money amounted to short term capital loss.



Dy. CIT vs. BPL Sanyo Finance Ltd. (2009) 223 CTR 461 (Kar.)

CAPITAL GAINS – COMPUTATION – S.45, 50C

Where immovable property is transferred by a partner to the firm as a capital contribution and registration does not take place by paying stamp duty, the case would be covered under section 45(3) and provisions of section 50C cannot be invoked. Section 50C override section 45(3) only if the sale deed is sought to be registered by paying stamp duty.

Carlton Hotel (P) Ltd. vs. ACIT (2009) 122 TTJ 515 (Luck.)

CAPITAL OR REVENUE EXPENDITURE - COMPUTER SOFTWARE - S. 37

In the absence of anything to show that the software used by the assessee is of enduring nature and will not become outdated, expenditure on computer software was allowable as revenue expenditure.

CIT vs. Varinder Agro Chemicals Ltd. (2009) 22 DTR 127 (P & H)

Editorial Note: See *Amway India Enterprises vs. Dy. CIT* (2008) 111 ITD 112 (Delhi)

CAPITAL OR REVENUE - EXPENDITURE ON REPAIR - LEASED PREMISES - DEPRECIATION – S. 30(a)(ii), 32(i) EXPLN. 1 & 37(i)

In case of expenditure on leased premises in order to make it fit for assessee's business, if any extra facility was created by way of brick works and connected expenditure, the same would be a capital expenditure eligible for depreciation under explanation 1 to section 32(1) and if not, the expenditure would be revenue in nature covered by section 30(a)(ii).

Dy. CIT vs. EDS Electronic Data Systems (India) (P) Ltd. (2009) 23 DTR 10 (Del.) (Trib.)

D.

DEDUCTION – FILING OF AUDIT REPORT - MANDATORY OR DIRECTORY – S. 80IA

Requirement of filing the audit report along with the return is not mandatory and if the audit report is filed at any time before the framing of the assessment, requirement of section 80IA(7) would be met.

CIT vs. Contimeters Electicals (P) Ltd. (2009) 22 DTR 158 (Del.)

Editorial Note: Refer *CIT vs. Ramco International* (2009) 221 CTR 491 (P & H)

DEDUCTION – FILING OF AUDIT REPORT – S. 80I

If an assessee has filed the audit report after filing of return and before assessment, then its right to rely on said audit report can not be taken away.



CIT vs. Jenson & Nicholson India Ltd. (2009) 23 DTR 289 (Cal.)

DEDUCTION – INDUSTRIAL UNDERTAKINGS – WORKERS – S. 80IB

Assessee having filed the names of casual workers as well as the details of payments made to the casual workers and the total number of workers being more than ten relief under section 80IB could not be denied on the basis of number of employees recorded in the attendance register which did not include the names of casual workers.

Rajesh Kapila & Ors. vs. ACIT (2009) 22 DTR 569 (Mum.) (Trib.)

DEDUCTION – DEVELOPER VIS A-VIS CONTRACTOR – S. 80IA

Deduction under section 80IA is available to a developer and not to a contractor.

Dy. CIT vs. East Cost Constructions & Industries Ltd. (2009) 23 DTR 225 (Chennai) (Trib.)

Editorial Note: Radhe Developers vs ITO (2008) 23 SOT 420 (Ahd)

DEDUCTION - EXPORT - COMPUTATION – S. 80HHC, 80IB

Deduction under section 80HHC is to be allowed on the eligible profits without reducing the deduction given under section 80IB.

ACIT vs. Sreeja Housiries (2009) 22 DTR 465 (Chennai) (Trib.)

Editorial Note: ACIT vs. Rohini Garments (2007) 108 ITD 49 (Chennai) (SB) considered. Matter is pending in special Bench at Delhi in Hindustan Mint & Agro Products P. Ltd., Moradabad ITA No. 1537 to 1539/Del/2007 See www.itatonline.org

DEDUCTION - EXPORT – FILING OF AUDIT REPORT - S. 80HHC(4)

Report of Chartered Accountant is mandatory, however, need not be furnished along with return. It is sufficient if report is submitted before completion of assessment.

ITO vs. VXL India Ltd. (2009) 312 ITR 187 (Guj.)

DEPRECIATION – INTANGIBLE ASSET – LICENCE BY STATE GOVERNMENT - S. 32(1)(ii)

Licence granted by State Government for collection of toll on a road which constructed and maintained by the assessee on build, operate and transfer basis in terms of agreement with the State Government for a fixed period of 16 years and 9 months is an intangible asset eligible for depreciation as prescribed under section 32(1)(ii)

Asoka Info (P) Ltd. vs. ACIT (2009) 22 DTR 60 (Pune) (Trib.)



DEEMED DIVIDEND –TRADE ADVANCES – S. 2(22)(e)

Word 'advance' which appears in the company of the word 'Loan' in section 2(22)(e) could only mean such advances which carries with it an obligation of repayment. Trade advances which is in nature of money transacted to give effect to a commercial transaction does not fall within ambit of provisions of section 2(22)(e).

CIT vs. Raj Kumar (2009) 23 DTR 304 (Del.)

DEDUCTION OF TAX AT SOURCE – CONTRACTOR - SUB-CONTRACTORS – S. 194C

Assessee placed orders for manufacture of medicines according to its own specifications and all other relevant decisions for manufacturing had been left to the wisdom of manufacturers and goods were manufactured by manufacturers in their own establishment by purchasing raw material of their own and excise duty was also paid by them directly and property in goods passed over to assessee only when such goods manufactured and delivered to it, in such circumstances agreements entered in to by assessee with the manufacturer could not be termed as works contract and were only contract for sale of goods, hence, provisions of 194C were not applicable on payments made to manufacturers.

Glenmark Pharmaceuticals Ltd. vs. ITO (2009) 30 SOT 19 (Mum.)

DEDUCTION OF TAX AT SOURCE - WORKS CONTRACT - S. 194C

Supply of outsourced manufactured goods by contract manufacturers constituted outright sale and not contract of works within the scope of section 194C, hence, assessee was not liable to deduct tax at source from the purchase price of goods paid by assessee to contract manufacturers.

Tuareg Marketing (P) Ltd. vs. ACIT (2009) 122 TTJ 343 (Del.)

DEDUCTION OF TAX AT SOURCE – PAYMENT TO HOTELS – S. 194C

Facilities / amenities made available by a Hotel to its customers do not constitute "work" within the meaning of section 194C and consequently, Circular no 681 dt. 8th March, 1994 to the extent it holds that services made available by a hotel to its customers are covered under section 194C must be held to be bad in law and is liable to be quashed.

The East India Hotels Ltd & Anr. Vs. CBDT (2009) 223 CTR 133 (Bom.)

DEDUCTION OF TAX AT SOURCE - SALARY – PERQUISITES – S. 17(2)(iii), 192

Expenditure incurred by assessee company on transport facility given to employees from their residence to office and vice versa could not be treated as perquisite in view of Explanation to section 17(2)(iii) and therefore, such expenditure would not attract provision of tax deducted at source under section 192.



Transworks Information Services Ltd. vs. ITO (2009) 29 SOT 543 (Mum.)

DOUBLE TAXATION AVOIDANCE AGREEMENT – INDIA & UAE – ART. S. 5 & 7, INCOME TAX ACT – S. 5(2)(b) & 9(1)(i)

Activity of Petitioner's liaison offices in India which is confined to downloading of information from the main servers located in UAE for drawing cheques on banks in India and despatching the same to the beneficiaries as per the instructions of the NRI remitter is auxiliary to the main activity of the petitioner and falls within the exclusionary clause in art 5(3)(e) of the DTAA between India and UAE. Impugned ruling of the Authority holding that the income of the petitioner is to be deemed to be accruing in India in view of section 5(2)(b) and 9(1)(i) without considering first the provisions of DTAA is quashed.

U. A. E. Exchange Centre Ltd. Vs. UOI (2009) 223 CTR 250 (Del.)

E.

EXEMPTION - EXPORT UNIT - DOMESTIC SALES – S. 10A

By virtue of proviso to section 10A, where domestic Sales exceeded twenty five percent of total sales relief under section 10A, shall be allowed on the domestic sales also to the extent of twenty five percent of total sales in addition to relief available on export sales proper. Relief under section 10A is available on export of eligible goods manufactured as also purchased by assessee.

T. Two International (P) Ltd. vs. ITO (2009) 22 DTR 342 (Mum.) (Trib.)

EXEMPTION – EXPORT ORIENTED UNDERTAKING – MANUFACTURE – S. 10B

Under section 10B, it is not the requirement that the assessee should itself own plant, machinery or equipment and manufacture or produce computer software on the same in order to be eligible for the exemption. Assessee getting computer software developed in its subsidiary under its direct supervision is entitled to exemption under section 10B.

ITO vs. Techdrive (India) (P) Ltd. (2009) 122 TTJ 264 (Del.)

I.

INCOME – BENEFIT OR PERQUISITE - PAYMENT OF LOAN - S. 10(3), 28(iv), 41(1)

Amount paid by share holder company, which purchased all the shareholdings of assessee, for discharging loan of assessee owed to bank which amount was credited by assessee to capital reserve account is not income and can not be taxed either under section 10(3) or 28(iv) or section 41(1) of the Act.

SmartTalk (P) Ltd. vs. ITO (2009) 122 TTJ 782 (Mum.)



**INCOME - REMISSION OR CESSATION OF TRADING LIABILITY -
LIMITATION OF TIME – S. 41(1)**

When the assessee continued to reflect or record liabilities as still payable to creditors and had not written off ultimately in books of account and moreover there was no evidence to indicate that said liabilities had ceased to exit, question of taking such outstanding liabilities as deemed profits did not arise.

DSA Engineers (Bombay) vs. ITO (2009) 30 SOT 31 (Mum.)

**INCOME FROM UNDISCLOSED SOURCES - DISCLOSURE IN THE COURSE
OF SURVEY – S. 69, 133A**

Addition on the basis of admission simplicities made during survey without any supporting material, which surrender was successfully retracted by assessee by annexing foot notes to the return is not sustainable.

Satish Builders vs. ACIT (2009) 23 DTR 171 (Del.) (Trib.)

**INCOME FROM HOUSE PROPERTY - ARREARS OF RENT RECEIVED – S. 22,
23, 25B**

Arrear rent received by assessee pertaining to assessment year 1985-86 could not be brought to tax by invoking provisions of section 25B. Section 25B inserted by Finance Act, 2000, with effect from 1-4-2001, is prospective in operation.

Punalur Paper Mills Ltd vs. ITO (2009) 29 SOT 449 (Cochin)

**INDUSTRIAL UNDERTAKING - PROFITS FROM TRADING ACTIVITY – S.
80IA, 80HH**

Trading activities carried on by the assessee are of the assessee company and not of the industrial undertaking, hence, the assessee is not entitled for deduction under section 80IA on the profits thereon.

Emerson Network Power India (P) Ltd. vs. ACIT (2009) 122 TTJ 67 (Mum.)

INTEREST – MAT CREDIT- S. 234B, 234C, 115JAA, 140A

Provisions of section 234B and 234C are compensatory and not penal hence the interest under these provisions can be charged only if Government is deprived of its revenue. Interest under sections 234B and 234C is to be charged after tax credit (MAT credit) available under section 115JAA is set off against tax payable on total income of year in question. Even prior to amendment to Explanation 1 after section 234B(1) and to Explanation after section 234B(1) and to explanation after section 234C(1) by virtue of Finance Act, 2006 with effect from 1-4-2007, expression “such tax” as appearing in section 140A, would have reference to tax payable on basis of return minus, inter alia, MAT credit claimed setoff in accordance with provisions of section 115JAA and thus, said amendments were merely clarificatory and made explicit what was already implicit.



CIT vs. Jindal Exports Ltd. (2009) 179 Taxman 391 (Delhi)

L.

LOSS – SPECULATION – S. 73

Assessee's main business being earning of share brokerage from purchase and sale of shares on behalf of its customers, loss from purchase and sale of shares by assessee itself constituted speculative business and loss arising there from was speculative loss and could not be set off against income from brokerage by virtue of application of explanation section 73.

Priyasha Meven Finance Ltd. vs. ITO (2009) 22 DTR 473 (Mum.)

N.

NON-RESIDENT – ASSESSMENT - S. 9(1)(vii), 44BB, 44D & 115A

Services rendered by the assessee, a non-resident company to ONGC in connection with maintenance of four modules of soft ware for the purposes of exploration, extraction and production of mineral oils were technical services and therefore, the assessee is liable to pay tax @ 15% under section 44D r.w.s. 115A on the fee charged by it and not @ 10 % under section 44BB.

CIT vs. ONGC Ltd. (2009) 223 CTR 318 (Uttarakhand)

P.

PRECEDENT - DECISION OF JURISDICTIONAL HIGH COURT – S. 254(1)

Tribunal has no jurisdiction to hold that a particular decision of the jurisdictional High Court was rendered per incuriam or sub silentio and that it did not create any binding precedent.

ACIT vs. Sreeja Hosiries (2009) 22 DTR 465 (Chennai) (Trib.)

PRECEDENT - BINDING NATURE OF HIGH COURT DECISION – S. 254 (1)

Once a High Court takes a stand in the matter and there is no contrary stand available from any other High Court, Tribunal is duty bound to follow the same. Tribunal cannot and would not sit in judgement as to whether or not the Courts above were justified in taking the stand that they did.

Maharashtra State Warehousing Corpn. Ltd. vs. Dy. CIT (2009) 22 DTR 531 (Pune) (Trib.)

PENALTY – CONCEALMENT – S. 271(1)(c), (11AC OF CENTRAL EXCISE ACT)

Decision in UOI vs. Dharmendra Textile Processors (2008) 306 ITR 977 (SC), cannot be said to hold that 11AC would apply to every case of non payment or short payment of duty regardless of the conditions expressly mentioned in the section for its application. If the notice under section 11A(1) states that the



escaped duty was the result of any conscious and deliberate wrong doing and in the order passed under section 11A(2) there is a legally tenable finding to that effect then the provision of section 11AC would also attracted.

UOI vs. Rajasthan Spinning & Weaving Mills (2009) 23 DTR 158 (SC)

Editorial Note: Refer ACIT vs. VIP Industries Ltd. (2009) 21 DTR 153 (Mum.) (Trib.) / Kanbay Software India Pvt. Ltd. vs. Dy. CIT (2009) 122 TTJ 721 (Pune), www.itatonline.org / M/s. Jyothy Laboratories Ltd. vs. DCIT, ITA No. 5947/M/05 Bench 'E' dt. 22-1-09 / M/s. Nayma M. Kanchwala vs. ITO, ITA No. 7371/M/05 Bench 'D' dt. 11-2-09./ ITO vs. GACL Finance Ltd., ITA No.6528/M/05, Bench 'B' dt.19-03-2009 (A.Y. 1997- 98)

R.

REVISION – TWO VIEWS - COMPUTATION OF EXPORT PROFIT – S. 80HHC, 80IB, 263

View taken by the Assessing Officer in allowing deduction under section 80 HHC, without reducing from the profit the deduction already allowed under section 80IB was a possible view and therefore the order passed by the Assessing Officer cannot be treated as erroneous, and the order passed by the CIT under section 263 directing the Assessing Officer to compute deduction under section 80HHC by reducing from profit the amount of deduction already allowed under section 80IB is set aside.

Honda Siel Power Products Ltd. vs. CIT (2009) 22 DTR 164 (Del.) (Trib.)

REVISION – ON ISSUE NOT MENTIONED IN SHOW CAUSE – S. 263

Revision on issue not mentioned in show cause notice is not permissible hence, bad in law.

CIT vs. Contimeteres Electicals (P) Ltd. (2009) 22 DTR 158 (Del.)

REASSESSMENT - FULL AND TRUE DISCLOSURE IN THE BALANCE SHEET - NOTICE AFTER EXPIRY OF FOUR YEARS – S. 147, 148

Specific case of Revenue being that good will is not an intangible asset eligible for depreciation, reopening of assessment after expiry of four years on the ground that assessee had failed to disclose the nature of good will resulting in failure to disclose the nature of good will resulting in failure to disclose fully and truly all material facts can not be sustained, more so when the notes and schedule attached to the balance sheet clearly showed that all facts relating to claim of depreciation on good will had been fully disclosed by the assessee.

Supreme Treves (P) Ltd. vs. Dy. CIT (2009) 23 DTR 215 (Bom.)

T.

TRANSFER PRICING –COMPUTATION OF ARM'S LENGTH PRICE – S. 92C



While computing the arm's length price the assessing authorities cannot take only turnover of comparable companies, but ignore large number of other material factors such as function performed, assets employed risk taken (FAR) analysis etc. On the facts of the case the assessee has shown that out of 20 comparable cases only two companies were showing extraordinary profits as they had income from other sources other than business of development of software development. Therefore, additions confirmed by the CIT(A) was set aside.

E. Gain Communication (P) Ltd. vs. ITO (2009) 118 ITD 243 (Pune)

W.

WEALTH TAX – FILM PRODUCTION - COPY RIGHT - S. 5

Assessee engaged in the film production value of assessee's right in film was in nature of copy right, hence, exempt under section 5(1)(v) of the Wealth-tax Act.

CWT vs. Smt. Krishna Kappor (2009) 180 Taxman 190 (Bom.)

WEALTH TAX – HOTEL – HOUSE - EXEMPTION – S. 5(1)(iv)

A hotel cannot be considered to be a house so as to qualify for the exemption under section 5(1)(iv)

CWT vs. Hiro J. Nagpal (2009) 223 CTR 414 (Raj.) (FB) / (2009) 22 DTR 307 (Raj.) (FB)

WEALTH TAX – EXEMPTION – INDUSTRIAL UNDERTAKING – MANUFACTURE - PARTNER – S. 5(1)(xxxii)

Firm engaged in manufacture of jewellery in an industrial undertaking within the meaning of explanation to section 5(1)(xxxii) and therefore, assessee partner is entitled to exemption under section 5(1)(xxxii) in respect of her interest therein.

CWT vs. Smt. Bhanwari Devi & Ors. (2009) 23 DTR 98 (Raj.)