



DIGEST OF CASE LAWS (MAY 2009)

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SUPREME COURT

BLOCK ASSESSMENT – TRANSACTIONS DISCLOSED IN RETURNS AND SUBJECT TO REGULAR ASSESSMENT - S. 158 BC.

Bombay High Court in ITA No 748 of 2007 dt.30-6-2008., following the judgment CIT vs. Vikram A. Doshi (2002) 256 ITR 129 (Bom) refused to refer the questions relating to transactions which it could not be said to give rise to undisclosed income to be assessed in block assessment as they had been disclosed in the returns and were the subject matter of regular assessment.

CIT vs. Nirmal Bang Securities P Ltd. S.L.P. (C) No. 6221 of 2009 dt 2-3-2009 (2009) 312 ITR (St). 7 (SLP rejection.)

INTEREST- S 234A.

Assessee having paid the tax before the due date of filing of return which was less than the tax payable on the returned income which has been accepted, interest under section 234A is not chargeable for delayed filing of return. (See Delhi High Court (2002)254 ITR 755.)

CIT vs. Pranoy Roy & Anr (2009) 222 CTR (SC) 6.

INTEREST – TDS- S 201 (1) & 201 (1A)

Interest under section 201 (1A) is compensatory measure for withholding the tax which ought to have gone to the exchequer, levy of interest is mandatory and absence of liability for tax will not dilute the default, as far as the period of default is concerned, the period starts from the date of deductibility till the date of actual payment of tax. Date of payment by the concerned employee can be treated as the date of actual payment.

CIT v Elli Lilly & Company (India) (P) Ltd & other (2009) 21 DTR (SC) 74.(2009) 178 Taxman 505 (SC)

PENALTY – TDS- REASONABLE CAUSE-S. 271C, 273B.

Assesses were under genuine and bona fide belief that there was no obligation to deduct tax at source from the home salary paid by the foreign company / head office, consequently, penalty under section 271 C is not leviable in any case.

CIT v Elli Lilly & Company (India) (P) Ltd & other (2009) 21 DTR (SC) 74.(2009) 178 Taxman 505 (SC)

PENALTY – 11AC OF EXCISE ACT – CONCEALMENT RATIO OF – DHARMENDRA TEXTILES EXPLAINED – S. 271(1)(C)



The Supreme Court examined the decision of UOI vs. Dharamendra Textiles Processes and Others (2008) 306 ITR 277 and held that the decision in Dharamendra Textile Processes and Others cannot be said to hold that section 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. The decision in Dharamendra Textile must, therefore, be understood to mean that though the application of section 11AC would depend upon the existence or otherwise of the conditions expressly stated in the section, once the section is applicable in a case the concerned authority would have no discretion in quantifying the amount and penalty must be imposed equal to the duty determined under sub-section (2) of section 11A. That is what Dharamendra Textile decides.

UOI vs. Rajasthan Spinning (Supreme Court) (Source : www.itatonline.org)

TDS – SALARY- EXPATRIATE EMPLOYEES BY FOREIGN COMPANY – S. 9 (1) (II). 192 (1).

Section 192 (1) has to be read with section 9 (1) (ii) read with the Explanation thereto. Assessee was duty bound to deduct tax at source under section 192 (1) from the home salary / special allowance (s) paid abroad to expatriate employees by the foreign company, particularly when no work stood performed for the foreign company and the total remuneration was paid only on account of services rendered in India during the period in question.

CIT v Elli Lilly & Company (India) (P) Ltd & other (2009) 21 DTR (SC) 74.(2009) 178 Taxman 505 (SC)

HIGH COURTS

BUSINESS EXPENDITURE- CAPITAL OR REVENUE- STAMP DUTY AND REGISTRATION CHARGES- S 37.

Expenditure incurred on stamp duty and registration charges at the time of execution of lease agreement for taking on lease the fruit processing plant was allowable as revenue expenditure.

CIT v Gopal Associates (2009) 222 CTR (HP) 307.

BUSINESS EXPENDITURE- INCENTIVE COMMISSION- SISTER CONCERNS - S 40A(2).

Incentive commission paid to sister concern was allowed in earlier years. Sister concern paying tax at higher rate. Provision of section 40A(2) cannot be applied as the case is not evasion of tax.

CIT v Indo Saudi Services (Travel) P.Ltd (2009) 310 ITR 306 (Bom).

CASH CREDIT – SOURCE OF SOURCE- LOAN- S. 68.

A.O. is not permitted to examine the source of source once the assessee is able to establish that the transaction with his creditor is genuine and identity and creditworthiness of the creditor have been established.

CIT v Diamond Products Ltd (2009) 21 DTR (Del) 9.



CAPITAL GAINS – INVESTMENT IN MORE THAN ONE RESIDENTIAL UNITS - 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 effected modification of the flats to make it as one unit.

CIT v D.Ananda Basappa (2009) 20 DTR (Kar) 266.

Editorial – see Special Bench ITO vs Sushila M. Jhaveri (2007) 107 ITD 321(Mum)(SB)

DEDUCTION OF TAX AT SOURCE- CONTRACTOR-SUB –CONTRACTOR- CLEARING AND FORWARDING AGENTS- S 194C.

Assessee was a partnership firm carrying on business of clearing and forwarding agents and booking cargo for transportation abroad for various airlines operating in India,. It collected freight charges from exporters who intended to send goods through a particular airline and paid amount to airline or its general agents and for services rendered assessee charged commission from airlines .High court held that since contract was actually between exporter and airline and assessee was only an intermediary ,it was not a “ person responsible” for deduction of tax at source in terms of section 194 C.

CIT v Cargo Linkers (2009) 179 Taxman 151 (Delhi).

EXEMPTION - MANUFACTURE OR PRODUCTION – CUTTING OF GRANITES - EXPORT UNDERTAKING – S 10B.

The activity of cutting ,polishing and sizing of granites amounts to production and assessee engaged in such activity is entitled to exemption under section 10 B.

CIT v Fateh Granite (P) Ltd (2009) 20 DTR (Bom) 257,(2009) 222 CTR (Bom) 638.

FIRM- ASSESSMENT- SALARY TO PARTNER- HUF- S. 40 (b).

Where a joint Hindu family is a partner and the karta of such joint family is given salary , such salary income being reward for service in individual capacity should be eligible deduction .

CIT v Unimax Laboratories (2009) 311 ITR 191 (P& H).

INCOME – ACCRUAL –DUTY DRAWBACK AND CASH ASSISTANCE- SEC.5.

Duty draw back and cash assistance could not be charged to tax on accrual basis.

CIT v Bajaj Auto Ltd. (2009) 20 DTR (Bom) 241.

INCOME – CAPITAL GAINS- INCOME FROM OTHER SOURCES - S -2(24), 45, 56.

The assessee promoter of society entered in to an agreement with developer, however due to certain legal disputes, developer could not honour the commitment. The assessee received certain compensation from the developer. The assessee contended that the amount is not taxable and



alternatively it can be assessed as capital gains. The court held that the amount received by the assessee to indemnify "D" from any action that might have been taken against him by persons who had booked the flats through assessee, was to be assessed as "income from other sources,".

Manoj B. Joshi v 8th ITO (2009) 179 Taxman 30 (Bom).

MAT – BOOK PROFITS S. 115JB R.W.S. 80HHC

S. 115JB allows a deduction from the "book profits" of "the amount of profits eligible for deduction u/s 80HHC, computed under clause (a) of sub-section (3) subject to the conditions specified in that section." Ss (3) and (3A) provide for the method for computation of profits. Once the profits are worked out, then only the profit which is eligible can be deducted. In computing the "eligibility", the limits of s. 80HHC (1B) have to be read in. Accepting the argument that MAT companies are not subject to the limits of s. 80HHC (1B) would mean that they are treated more advantageously than other export companies. There is no rational reason why the legislature would give MAT companies additional benefits than that given to other companies

CIT vs Ajanta Pharma (Bombay High Court) (Source : www.itatonline.org)

Note: The judgements in Syncome Formulations 106 ITD 193 (Mum) (SB) , ACIT V Ajanta Pharma Ltd (2008)21 SOT 101(Mum) and DCIT V Govind Rubber Pvt Ltd 89 ITD 457 (Mum) have been overruled.

The Judgment of the Kerala High Court in CIT v GTN Textiles Ltd (2001) 248 ITR 372 was distinguished.

METHOD OF ACCOUNTING – VALUATION OF STOCK – 145A

To give effect to s. 145A, if there is any change in the closing stock at the end of the year then there must necessarily be a corresponding adjustment made in the opening stock of that year. This does not amount to giving double benefit to the assessee and would be necessary to compute the true and correct profit for the purpose of assessment.

CIT vs. Mahalaxmi Glass (Bombay High Court (Source : www.itatonline.org)

Note: CIT vs. Mahavir Aluminium Ltd (2008) 297 ITR 77 (Delhi) followed.

See Also: Hawkins Cookers vs. ITO (ITAT Mumbai)(2008) 14 DTR 206

P.

PENALTY - TAX AUDIT - REASONABLE CAUSE- LEGAL OPINION- S 44AB, 271B

Legal opinion contained in tax audit Manual published by the Bombay Chartered Accountants Society constituted reasonable cause for the bona fide belief of the assessee that its interest receipts i.e. gross receipts, and not loan advanced i.e. turnover being less than 40 lakhs the provisions of section 44AB are not applicable in its case and therefore, penalty under section 271 B is not leviable.

ITO v Sachinam Trust (2009) 21 DTR (GuJ) 1



PENALTY- TAX AUDIT- REASONABLE CAUSE-INCOME EXEMPT- S , 44B, 271B

In view of the fact that as no tax was payable as per the provision of section 80P, the penalty levied under section 271BB for alleged compliance of section 44BB was rightly deleted by the tribunal.

CIT v Iqbalpur Co-operative Cane Development Union Ltd (2009) 179 Taxaman. 27 (Uttarakhand).

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

Penalty under section 158 BFA(2) is discretionary and not mandatory. Deletion penalty justified.

CIT vs. Dodsai Ltd (2009) 312 ITR 112 (Bom)

WEALTH TAX – DEBT OWED- REFUNDABLE SECURITY DEPOSIT –S 2(M).

Refundable security deposit taken by the assessee from the licence of the property being a debt in respect of the property which is chargeable to wealth tax, is fully deductible as debt owed irrespective of the fact that a part of the amount obtained by the assessee was invested in capital investment Bonds which are not chargeable to wealth tax.

Miss Deanna J Jeejeebhoy v Wealth Tax officer.(2009) 222 CTR (Bom) 202

WEALTH TAX- FINANCE ACT,1983- BUSINESS ASSET-GODOWNS LET OUT-S.40(3)(VI),2 (ea).

If a building is not used by a closely held company for its business but given on lease, it has to be considered for computing its net wealth under section 40(3) (vi) of Finance Act, 1983 and therefore, godowns given on lease by the assessee and not used for its business are includible in the net wealth of the assessee.

Anand Estate (P) Ltd v DY CIT (2009) 20 DTR (Bom) 251.

AUTHORITY FOR ADVANCE RULINGS:

CAPITAL GAINS- COMPUTATION – S. 48, 112 (1).

Benefit of the proviso to section 112 (1) could not be denied to non residents / foreign companies even if they are entitled to a different relief in terms of the first proviso to section 48.

Four Star Oil & Gas Co In Re.(2009) 21 DTR (AAR) 50.

CAPITAL GAINS – BONUS SHARES- COMPUTATION – S 55 (2) (AA).

Rules of computation of cost laid down in various sub –clauses of cl.(aa) of section 55 (2) have been made subject to the provisions of sub cls (1) and (ii) of cls (b) and, therefore, the fair market value prevailing as on 1st April 1981, ought to be taken as the cost of acquisition in the case of bonus shares held by the applicant on that date.

Four Star Oil & Gas Co .IN Re.(2009) 21 DTR(AAR) 50.



TRIBUNAL:

ACCOUNTS-REJECTION –FALL IN SALES- S ,133A,145 (3).

Assessee having shown better profit percentage ,mere fall in sales without any material to show sale outside the book does not warrant rejection of accounts.

Asstt CIT v Ravi Agricultural Industries (2009) 121 TTJ (Agra) (TM) 903. (2009) 117 ITD 338 (AGRA) (TM).

ASSESSMENT – SEARCH – S 153 C READ WITH 153 A AND 158BD.

In terms of section 153 C, if valuables or books of account or documents belonging to other persons are seized then action under section can be taken against that person. In the instance case, books of account or documents did not belong to assessee, hence the assessing officer was not justified in initiating action against him under section 153A read with section 153 C.

P. Srinivas Naik v Asstt CIT (2009) 117 ITD 201 (Bang).

BUSINESS EXPENDITURE- DONATION TO LIBRARY - S 37(1).

Assessee, an advocate made donation to a charitable trust with the specific direction that the interest of the amount would be utilised for purchase of books and magazines and to provide other facilities to advocates practicing in Court. The tribunal held that as there was nothing on record to establish that donation was directly connected and related to business or profession of the assessee the same is not allowable as business expenditure.

A.M. Mathur v Dy CIT (2009) 117 ITD 274 (Indore).

BUSINESS EXPENDITURE- AD HOC DISALLOWANCE- COMPANY –PERSONAL USE- S 37.

Assessee being a company, no ad hoc disallowance could be made out of vehicle running and maintenance and telephone expenses on account of personal user.

CIT v Amtek Auto Ltd (2009) 20 DTR (Del) (Trib) 466.

BUSINESS DISALLOWANCE- REMUNERATION- EXCESSIVE OR UNREASONABLE- S 40 A (2).

For the purpose of applying the provisions of section 40 A (2) the A.O. is required to make inquiry to ascertain whether payment is excessive or unreasonable having regard to fair market value of services.

Jagadamba Rollers Mill Ltd v Asstt (2009) 117 ITD 260 (Nag) (TM).

BUSINESS INCOME – CAPITAL GAINS- PERQUISITE- PARTNER – FIRM – S. 28 (IV) 45(4).



Increase in capital of partners pursuant to revaluation of assets of firm, no benefit or perquisite arose to partners on account in course be applied to bring sum in question to tax in hands of partners of firm. As the firm got converted in to a company, capital gain on such transfer could be brought to tax only in hands of firm and not, in hands of partners under section 45(4).

Dy. CIT v Manish Chedda (2009) 29 SOT 138 (Mum).

BLOCK ASSESSMENT - PENALTY – S. 158BFA.

Additions in block assessment having been made on estimate basis, no penalty under section 158BFA(2) could be imposed in the absence of any positive finding regarding concealment or suppression of income on the part of the assessee.

Asstt CIT v Shanti Kumar Chabra (2009) 121 TTJ (JP) 985 .

CAPITAL GAINS - DEVELOPMENT RIGHTS –AMOUNT RECEIVED BY MEMBER OF SOCIETY- S. 2 (47), 45.

Assessee received certain sum on account of grant of development rights to developer. Assessee has not transferred any rights in or with respect to flat to developer hence there was no transfer of capital asset and section 45 was not attracted.

Deepak S. Shah v ITO (2009) 29 SOT 26 (Mum).

Editorial Note: see Jethalal D. Mehta v Dy CIT (2005) 2 SOT 422 (Mum), ITO v Lotia Co operative Housing Society Ltd (2008) 12 DTR (Mumbai) (Trib) New Shailaja CHS v ITO . ITA no 512/M/2007 Bench B DT 2ND Dec 2008 (Mumbai) www.itatonline.org

CAPITAL GAINS- CONVERSION OF FIRM IN TO COMPANY . S 45(4).

S 45 (4) would not apply in case of transfer at book value of assets and liabilities of a firm to a company and allotment of shares to erstwhile partners in proportionate to their capital. No transfer by way of distribution of capital assets from the credit in partners' capital account, the resultant capital gain is nil and nothing is chargeable.

Aum Chemicals v Asstt .CIT (2009) 20 DTR (Mumbai) (Trib) 502. (2009) 121 TTJ (Mumbai) 933.

CAPITAL GAINS – SALE OF ADDITIONAL FSI- S.2N(14), 2 (47) 45, 48 & 55 (2)(A).

Right to make additional construction on acquisition of additional FSI by operation of Development Control Regulation, 1991 having no cost of acquisition to assessee receipt on transfer thereof was capital receipt and could not be charged to tax as capital gains.

Maheshwar Prakash - Co –Operative Housing Society Ltd v ITO (2009) 121 TTJ (Mumbai) 641.

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

As the payments were made directly to drivers or truck owners by assessee and through suppliers and further they were charging commission from truckwals and not from the assessee. Further it was



found that no payment exceeding Rs. 20000 / was paid to truck owners or drivers, provisions of section 194 C can not be made applicable .

ITO v Boruka Roadlines Ltd (2009) 117 ITD 311 (Mum).

DEDUCTION – INDUSTRIAL UNDERTAKINGS - INFRASTRUCTURE DEVELOPMENT-DEVELOPER – CONTRACTOR –S. 80 IA.

Deduction under section 80 IA is available to a developer and not to a contractor, assessee doing only contract works of insitu cement lining for water supply project of the Gujarat Water Supply and Sewerage Board is not a developer, hence not eligible for deduction under section 80 IA.

Asstt CIT v Indwel Linnings (P) Ltd.(2009) 21 DTR (Chennai) (Trib) 21.

DEDUCTION – INDUSTRIAL UNDERTAKINGS - JOB WORK. S 80IB.

Assessee doing job work in its industrial undertaking by utilising the very same Machinery and labour ,conversion charges in connection with such job work have a direct nexus with the manufacturing activity of assessee ,hence “derived from” industrial undertaking eligible for relief under section 80 IB.

Asstt CIT v Biotech Medicals (P) Ltd (2009) 121 TTJ (Hyd) 858.

DEPRECIATION – INTANGIBLE ASSET- NON COMPETE RIGHT- S 32 (1)(II)

Non compete right acquired by the assessee company is eligible for Depreciation under

cl (ii) of section 32(1) as intangible asset being of the same nature as business /commercial right of a patent etc mentioned in that clause.

ITO vs. Medicorp Technologies India Ltd (2009) 21 DTR (Chennai) (Trib) 69.

EXPORT ORIENTED UNDERTAKING –PROPORTIONATE DEDUCTION – S 10B.

Where assessee an export oriented unit, had domestic sale morethan 25 percent of total sales value during relevant assessment year, it was entitled to partial deduction proportionately on export turnover as per provisions of sub section (4) of section 10B.

Tube Investments of India Ltd v Asstt .CIT (2009) 117 ITD 239 (Chennai) (TM).(2009) 121 TTJ (Chennai) (TM) 577.

EXPORT ORIENTED UNDERTAKINGS-MANUFACTURE OR PRODUCE. OWNERSHIP OF PLANT AND MACHINERY-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 v Techdrive (India) (P) Ltd (2009) 21 DTR (Del) (Trib) 52.



EXEMPTED INCOME- FOREIGN EXCHANGE GAIN – S 10 B.

Gain on account of foreign exchange rate fluctuation qua export proceeds credited /deposited in EEFC account of assessee in foreign exchange is export realisation ,hence constitutes profit derived from export business eligible for exemption under section 10 B.

ITO v Banyan Chemicals Ltd (2009) 117 ITD 376 (Ahd) 376. (2009) 20 DTR (Ahd) (TM) (Trib) 410.

(2009) 121 TTJ (Ahd) TM) 751.(2009) 310 ITR (AT) 384.(Ahmedabad Bench)

INCOME FROM UNDISCLOSED SOURCES-UNEXPLAINED INVESTMENT- S 69.

Addition towards unexplained investment on the basis of retracted admission of assessee's partner and two dumb papers found during search ,without any supporting material was rightly deleted by the CIT(A).

Asstt CIT v Ravi Agricultural Industries (2009) 121 TTJ (Agra) (TM) 903.

PENALTY – CONCEALMENT- LIMITATION – S 249 (3), 271 (1) (C) & 275 (1) (A).

A.O having initiated penalty proceedings on 31st January, 2003 order imposing penalty under section 271 (1)(c) could have been passed within six months thereof or before 31st March 2004 , as per section 275(1) (c), hence order passed by AO on 24th March 2005 was barred by limitation as the quantum appeal was dismissed by CIT (A).

Naresh Kumar Gupta v ITO (2009) 20 DTR (Del) (Trib) 565.

PENALTY- CONCEALMENT- S 271 (1) (C).

A patently wrong claim of deduction attracted penalty under section 271(1)(c), Explanation 1. In cases of falling under Explanation 1 to section 271(1)(c), where AO does not have to prove the explanation of assessee to be false or establish the malafide on the part of assessee in making such wrong and patently impermissible claim, the amount disallowed is deemed to represent income in respect of which particulars have been concealed.

Asst CIT v Supreme Industries Ltd. (2009) 21 DTR (Mumbai) (Trib) 97.

Editorial note- UOI v Dharmendra Textiles Processors (2008) 306 ITR 977 (SC). Applied Gem Granite Karnataka vs. Dy. CIT (2009) 18 DTR (Chennai) (Trib.)

ACIT vs. M/s. VIP Industries Ltd. (2009) 21 DTR (MUM)(TRIB)153

PENALTY S 271(1)(C)

The judgement in UOI vs. Dharmendra Textile Processors has to be understood in the correct perspective. It does not make a radical change in the law nor does it affect the basic scheme of s. 271 (1) (c). Even in K P Madhusudan vs. CIT 251 ITR 99, the assessee's plea to the effect that 'revenue was required to prove mens rea of a criminal offence' before penalty u/s 271(1)(c) can be imposed was rejected. Penalty u/s 271 (1) (c) has been held to be 'civil liability' in contradistinction to



prosecution u/s 276C. It is wrong to infer that because the liability is a “civil liability”, it ceases to be penal in character. There is no contradiction in a liability being a civil liability and the same liability being a penal liability as well, though a civil liability cannot certainly be a criminal liability as well. As observed in *Om Prakash vs. UOI* AIR 1984 SC 1194 @ 1209 “A penalty imposed by the sales tax authorities is a civil liability, though penal in character.

Kanbay Software India Pvt. Ltd. vs. Dy. CIT ITA No.300/PN/2007, dt. 20/4/2009

(Source :www.itatonline.org)

PENALTY-CONCEALMENT S 271(1)(c)

In order for the deeming provision of Explanation 1 to s. 271(1)(c) to apply it must be show either that (a) the assessee fails to offer an explanation, or (b) he offers an explanation which is found to be false, or (c) he offers an explanation which cannot be substantiated or shown to be bona fide. On facts, the claim of deduction on a motor car used for research staff cannot be said to be not bona fide. The judgement of the Supreme Court in *Dharmendra Textiles Processors* which holds that penalty u/s.271(1)(c) is a civil liability and that “willful concealment” and “mens rea” are not essential ingredients for imposing penalty cannot be read to mean that in all cases where addition is confirmed, penalty shall mechanically follow. In order to attract s. 271 (1) (c), there must be “concealment” – the fact that the same is willful or unintentional is irrelevant. Where an assessee genuinely claims a deduction after disclosing necessary facts, there is no “concealment” even if the claim is rejected. If penalty is imposed under such circumstances also there will remain no course open to an assessee to raise disputed claims and such proposition is beyond recognized canons of law

ACIT vs. M/s. VIP Industries Ltd. . (2009) 21 DTR (MUM)(TRIB)153

UNEXPLAINED INVESTMENT – RETRACTED ADMISSION – DUMB PAPERS-- S 69B.133A.

Addition cannot be made as unexplained investment on the basis of retracted admission of assessee’s partner and two dumb papers found during search, without any supporting material.

Asstt CIT v Ravi Agricultural Industries 2009 117 ITD 338 (Agra)(2009) 20 DTR (Agra) (TM) (Trib) 379.