



DIGEST OF CASE LAWS (NOVEMBER 2009)

Compiled by Ajay Singh, Paras Savla, Rahul Hakani, , Sujeet Karkala and Rangesh Banka, Advocates

(JOURNALS REFERRED)

33 SOT, 184 Taxman, 120 ITD, 29 & 30 DTR, Tax world, 318 ITR, 212 Taxation, 226 CTR, 41B-BCAJ, www.itatonline.org

1. Appeal –Commissioner (Appeals)- power of stay. S. 251.

While considering stay application, authority concerned should exercise his power judiciously and should pass order after applying his mind to various aspects of matter, but that would not confer jurisdiction upon authority concerned to sit tight and choose not to pass any order whatsoever on stay application. Court directed the Commissioner (Appeals) to hear stay application and dispose of same within a period of 15 days from date of order.

Smita Agarwal (Ind) v CIT (2009) 184 Taxman 59 (ALL)

2. Appeal- Tribunal- Power of rectification- s 254 (2).

Time limit of four years to make rectification under section 254 (2) applies to both suo motu action of Tribunal as well as action taken on request of parties. Section 254 (2) does not provide for any condonation of delay and moreover, provisions of section 5 of limitation Act, 1963 are not applicable.

Rahul Jee & Co (P) Ltd v Asstt CIT (2009) 120 ITD 481 (Delhi).

3. Appeal – High Court – Condonation of delay - S.260A,Limitation Act s.5 & 29

High court has no power to condone the delay in filing the appeal under s. 260A beyond the prescribed period.

ACIT v .S. Shubhash Traders (2009) 226 CTR 372 (MP)

4. Appeal – High Court- 254 (2) , 260 A, Art 226.

Appeal under section 260A is not maintainable against order of Tribunal under section 254 (2) and therefore writ petition against order under section 254 (2) cannot be rejected on the ground of availability of alter native remedy.

Visvas Promoter (P) Ltd v Income Tax Appellate Tribunal (2009) 30 DTR (Mad) 65.

Editorial. - see Bombay High court Chem Amit vs. ACIT (2005) 272 ITR 397 (Bom)

5. Appeal – High Court- Condonation of delay- 260A, Limitation Act.

Period of limitation prescribed for filing an appeal under section 260A (2) of the IT Act 1961, is not subject to the provisions contained in s 4 to 24 of the Limitation Act , 1963 as provided under section 29 (2) of the Limitation Act ,therefore High court has no power to condone the delay in filing the appeal.

CIT v Mohd Farooq (2009) 29 DTR (All)(FB) 241/ (2009) 226 CTR (ALL) (FB) 360.



Editorial note – see Bombay High Court CIT vs. M/s. Grasim Industries Ltd. Dt. 8/7/2009 N.M. No. 787 of 2009 (source: www.itatonline.org)

6. Bad debt – Business loss – S. 28, 36(1)(vii), 37

Amount paid by the assessee under performance guarantee bond is allowable as business loss/ expenditure. Mere fact that the assessee has claimed the amount written off in the course of business as bad debt does not preclude him from claiming the same as business loss/ expenditure.

Anang Tradevest Pvt. Ltd. Vs. ITO, ITAT ‘A’ Bench, Mumbai. ITA No. 10/ Mum./2008 Dt. 10/8/2009. Source: BCAJ Vol.41-B Part 2 Nov. 2009 Pg. 20

7. Bad Debt – Shares Sold for adjustment – matter remanded – S. 36(1)

As the shares was not delivered for the want of full payment to be made by the sub – broker to the assessee, the transaction being genuine .as the shares are in possession of assessee it could sell off the shares in whatever consideration to be adjusted against the balance amount payable by the sub-broker to the assessee before arriving at the actual figure of bad debt. Matter remanded back to the Tribunal for fresh consideration.

CIT vs. D. B. (India) Securities (2009) 318 ITR 26 (Del.)

8. Bad Debt – deductible – S. 14A, 36(1)(vii), 80HHC

Under section 80HHC and Section 14A, the expenditure incurred from the export income could not be held to be for earning income which did not form part of the total income, which concept was dealt with under section 10 of the Act. Section 80HHC deals with deduction of the element of profit from export from taxable income. Therefore, the claim of bad debt could not be disallowed.

CIT vs. Kings Exports (2009) 318 ITR 100 (P&H).

9. Bad debt- sale consideration received partly. s,36 (2)

Profit on sale of various companies shares have been shown under the head “other income”. when assessee received part of sale consideration balance wrote off as irrecoverable bad debt ,the condition of section 36 (1) ,read with 36 (2) satisfied hence amount written off allowable as bad debts.

CIT v Dalmia (Bros) (P) Ltd (2009) 184 Taxman 240 (Delhi).

10. Block Assessment – Search and Seizure – S. 158BB

Income returned through the revised return and belated return filed after the date of search cannot be excluded in the computation of income for block period.

CIT vs. Utkal Alloys Ltd. (2009) 226 CTR 676 (Ori).

11. Block assessment – Search and Seizure – S158BB

In the absence of any defect found out in the books of account, maintained in regular course of business, no addition can be made to the income disclosed by the assessee in its return of income on the basis of discrepancy worked out on estimation of its stock.



CIT Vs. K.P. Chandradasan (2009) 226 CTR 403 (Del.)

12. Block Assessment – Search and Seizure - S 158 BD ,32

For invoking section 158 BD for the assessment of any person satisfaction must be recorded by the AO and Books of accounts, documents or assets seized or requisitioned to be handed over to the assessing officer having jurisdiction over such person.

CIT vs. Dawn View Farms (P) Ltd. (2009) 212 Taxation 199 (Del.)

13. Block Assessment- Firm and Partners- s 158 BB (1).

In view of cl (2A) of s 10 and proviso to cl (b) of Explanation to sub s 1 of s 158BB, both disclosed and undisclosed income of the firm and not in the hands of partners.

Asstt v K.T.Joseph (2009) 30 DTR (Coch) (TM) (Trib) 156.

14. Business Expenditure – Reimbursement – S.37(1)

Reimbursement of expenditure incurred in running the school is allowable as business expenditure.

Tata International Ltd. Vs. ACIT, ITAT 'I' Bench, Mumbai. ITAT No. 5591/M/2005 dt. 11/9/2009, Source: BCAJ Vol.41-B Part 2 Nov. 2009 Pg. 21

15. Business expenditure- Interest on borrowed capital s.36 (i)(iii)

Interest paid on borrowed capital cannot be disallowed on the ground that the amount was advanced as interest free advance to its 100 percent subsidiary company.

CIT v Dalmia Cement Bharat Ltd (2009) 183 Taxaman 422 (Delhi)

16. Business expenditure- year in deductible. s. 37 (1).

Since the assessee has completed more than 95 percent of project and offered income there from on year –to –year basis, expenses incurred on home for aged and on club house were allowable as business expenditures.

Asstt CIT v Sheth Developers (P) Ltd (2009) 33 SOT 277 (Mum)

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

Income returned through the revised return and belated return filed after the date of search cannot be excluded in the computation of income for block period.

CIT v K.P.Chandrsana (2009) 29 DTR (Ker) 236.

18. Block Assessment- Limitation- s 158BD, 158BE.

Tribunal found that notice under section 158BD dt 24 th Jan 2002, was despatched to the assessee's correct address on 28th Jan 2002, which was served on the assessee on 30th Jan 2002 , and thus last date for the block assessment being 31st January, 2002, assessment order passed on 5th Feb., 2004 was barred by limitation.

CIT v Jagdamba Marbles Ltd (2009) 29 DTR (Del) 301.



19. Capital Gain – Sale of land – Eligible – S. 48

Any capital gain on sale of land where the land purchased out of borrowed funds, the registration charges and interest paid on borrowings is eligible for deduction and indexation.

Ishtiaque Ahmed Vs. ACIT, ITAT 'C' Bench, New Delhi. ITA No. 863/D/2009. Source: BCAJ

20. Capital gain – transfer of capital assets – S. 2(47), 45(3), 45(4) & 47(ii)

When all the old partners retired from the firm on introduction of two new partners and new partners continued the business of firm, there was transfer of capital assets within the meaning of S. 2(47) attracting S. 45(4).

CIT & Anr. Vs. Gurunath Talkies (2009) 226 CTR 474 (Kar.)

21. Capital Gain – Transfer – Not liable to capital gain – S.2(47), 45

The amount received for not competing with the purchaser company in future in the suburbs could not be made taxable under the heading “capital gains”.

CIT VS. Amol Narendra Dalal (2009) 318 ITR 429 (Bom.)

22. Capital gains- Indexation- Foreign Institutional Investor- s. 48, 111A, 112, 115AD.

A Foreign Institutional Investor has to be assessed with regard to capital gain /loss under section 115AD, and is not entitled opt out of provisions of said section and claim to be assessed under section 48 , read with section 112 , with indexation provisions in case of assessment resulting in to capital loss.

Advantage Advisors INC v DY DIT (2009) 33 SOT 46 (Bom).

23. Capital Gain – Index Cost - Indexed cost of gifted assets has to be determined with reference to previous owner – S. 48

The assessee transferred a capital asset which was received by her by way of gift on 1.2.2003. The previous owner had acquired the capital asset on 29.1.1993. In computing capital gains, the assessee claimed that the indexed cost of acquisition had to be worked out by taking the date of acquisition by the previous owner. The AO rejected the claim though the CIT (A) accepted it. On appeal by the Revenue, the issue was referred to the Special Bench. HELD by the Special Bench:

(i) Explanation (iii) to s. 48 defines the term “indexed cost of acquisition” to mean the amount which bears to the cost of acquisition the same proportion as the Cost Inflation Index **for the first year in which the asset was held by the assessee ...**” A literal reading of the provision suggests that one has to go by the year in which the asset was held by the assessee. However, this would be inconsistent with the scheme of the Act as reflected in the definition of “short-term capital asset” in Expl. 1(b) to s. 2 (42A) which provides that **the period for which the asset was held by the previous owner also has to be taken into account. It is not logical that the cost of acquisition and the period of holding is determined with reference to the previous owner and the indexation factor is determined with reference to the date of acquisition by the assessee.** Such an interpretation will lead to absurdity and unjust results and defeat the purpose of the concept of ‘indexed cost of acquisition’. In accordance with the principles of purposive interpretation of statutes, Expl. (iii) to s. 48 has to



be read to mean that **the indexed cost of acquisition has to be computed by taking into account the period for which the asset was held by the previous owner.**

DCIT vs. Manjula Shah (ITAT Mumbai Special Bench) Source: itatonline.org

24. Capital gains- short term or long term-period of holdings- s 2(42A) ,49(1) (iii).

The assessee was partner in a partnership firm. The firm was dissolved on 15-4-2001 and the building was taken over by the assessee. The assessee sold the building on 18-4-2001. The assessee considered the period held by the firm and treated as long term . The court held that since the assessee sold the property within three days from acquiring it, property it has been rightly treated as short term capital asset.

P.P.Menon v CIT (2009) 183 Taxman 242 (Ker)

25. Capital gains –Retirement of partner- s 45 (4).

Section 45 (4) ,has no application in the case of retirement of one partner .Capital gain is not chargeable to tax on the facts of the case also for the reason that the transfer of property to the retiring partner was necessitated on account of family arrangement to avoid a possible dispute.

Asst CIT v Goyal Dresses (2009) 30 DTR (Chennai) (Trib) 75.

26. Charitable Trust – Registration under Section 12A – ss. 2(15), 12A & 12AA

Imparting education with the primary purpose of earning profits cannot be said to be a charitable activity for the purpose of Registration under S.12AA.

CIT Vs. National Institute of Aeronautical Engineering Educational Society. (2009) 226 CTR (Uttarakhand) 582.

27. Charitable Purpose – s 11, 13.

No distinction is made between charitable and religious purposes in section 11 (i) (a) , and therefore , a trust which is partly religious and charitable is entitled to exemption under s 11 (1) (a) ,even otherwise ,maintenance, of mosque and church is to be treated as charitable purpose and not purely religious purpose and therefore , exemption under section 11 (1)(a) could not be denied to the assessee trusts which exist for various charitable purposes besides maintenance of chapels and mosques , on the ground they are partly charitable and partly religious trusts ,once no case is made out for application of provisions of section 13.

The Society of Presentation Sisters v ITO (2009) 30 DTR (Coch)(TM) (Trib)1.

28. Deduction – manufacture – S. 80 HH & 80-I

Activity of laying railway line does not amount to ‘manufacture’ or ‘produce’ for the purpose of allowing deduction under S. 80HHC and 80-I.

CIT Vs. Indian Railway Construction Co. Ltd. (2009) 226 CTR (Del) 49.

29. Deduction – disallowance of expenditure – S. 14A

Any expenditure incurred by the assessee bank for investing in the bonds, even tax free was expenditure incurred for carrying on its business, so as to maintain the required statutory



liquidity ratio and tax free interest is just an incidence to it. Thus, section 14A had no application in the case of the assessee.

State Bank of Travancore vs. ACIT (2009) 318 ITR (AT) 171 (Cochin) (2009) 226 CTR 49 (Del).

30. Deductions- Housing project- built up area. – s 80 IB.

Definition of “built-up area’ in clause (a) of section 80 IB (14) introduced by Finance Act, 2004 , has only prospective effect from 1-4-2005 ,therefore prior to 1-04-2005 balcony would not form part of built up area , irrespective of area of such balcony.

Asstt CIT v Sheth Developers (P) Ltd (2009) 33 SOT 277 (MUM).

31. Depreciation - Goodwill- s 32.

Goodwill is a bundle of rights which include ,inter alia, patents trade marks, licences franchises , etc and they assume importance in commercial world as they represent a particular benefit or advantages or reputation built by a person / company / business house over a period of time and customers associate themselves with such assets hence depreciation would be allowable on same.

Kotak Forex Brokerage Ltd v Asstt CIT (2009) 33 SOT 237 (Mum)

32. Depreciation – Block of asset – Capital gains – s 2 (11) 32 (1) (iii).50.

Building owned by the assessee, as also deemed to be owned by assessee as per Expln, 1 to section 32 (1) in respect of which same rate of depreciation is prescribed have to be taken for determining WDV of block of assets, no loss on account of any shortfall between the individual WDV of building of deemed ownership and any amount realised in respect thereof can be allowed as a capital loss under section 50.

Anand And Anand v Asstt CIT (2009) 29 DTR (Del) 489.

33. Deduction at source- Interest on delayed payment- s 194A, 194 IA.

Interest on delayed payment of enhanced compensation in respect of acquisition of immovable property is revenue receipt exigible to tax under section 4, and therefore ,is liable to deduction of tax at source under section 194 A.

Interest accrued on delayed payment of amount of enhanced compensation in respect of acquisition of agricultural land would not partake character of compensation for “agricultural land” which is excluded from operation of section 194 LA.

Karnail Singh v State of Haryana (2009) 184 Taxaman 257 (Punj & Har.)

34. Deduction of tax at source - Liability cannot be avoided on ground of non-taxability of recipient - S. 195 / 201

The assessee made payments to a foreign company for purchase of ‘shrink-wrapped’/ready-made software without deduction of tax at source u/s 195 (1). The AO held that the payments were chargeable to tax in the hands of the foreign company as “royalty” u/s 9 (1) (vi) and that the assessee was liable u/s 201 for non-deduction of tax and interest thereon. On appeal, this view was confirmed by the CIT (A) though the Tribunal ([94 ITD 91](#)) held that the payments



for software, being a purchase of a 'copyrighted article' and 'goods' as held by in [Tata Consultancy Services](#) 271 ITR 401 (SC), was not liable to tax in India and consequently there was no obligation on the assessee to deduct tax at source u/s 195 (1). On appeal by the Revenue, HELD reversing the Tribunal:

(i) The effect of the judgement of the Supreme Court in [Transmission Corporation of India](#) 239 ITR 587 is that the moment there is a payment to a non-resident, there is an obligation on the payer to deduct tax at source u/s 195 (1). The only way to escape the liability is for the payer to make an application to the AO u/s 195 (2) for non-deduction or for deduction at a lower rate. If the payer does not make an application and obtain an order u/s 195 (2), it is not open to him to argue that the payment has not resulted in taxable income in the hands of the non-resident recipient and that, therefore, there is no failure on the part of the payer to deduct tax u/s 195 (1);

(ii) In an appeal by the payer against an order u/s 201 imposing liability on the payer for failure to deduct tax u/s 195 (1), there is absolutely no scope for the appellate authority to adjudicate whether the non-resident recipient was chargeable to tax or not and the rate at which it was so chargeable. If the appellate authority in the payer's case determines the tax liability of the recipient, there may arise conflicts if in the assessment of the recipient a different view is taken as to its taxable status;

(iii) The Tribunal committed an error in determining in the appeals filed by the payer that the payment to the non-resident was not liable to tax and thereby holding the payer was not liable u/s 201 for non-deduction u/s 195 (1).

CIT vs. Samsung Electronics (Karnataka) ITA No. 2808 of 2005, dt. 24/9/2009 Source: itatonline.org

35. Deduction - Export - deduction is allowable for s. 115JB even if there are no normal profits - S. 80HHC / 115JB

The assessee's income was computed u/s 115JB as it had no income under the normal provisions of the Act. The assessee claimed that despite the absence of normal profits, it was eligible for deduction u/s 80HHC in computing the book profits under Expl. (iv) of s. 115JB in accordance with the judgement of the Special Bench in [Syncome Formulations](#) 106 ITD 193 (Mum) (SB) and that the judgement of the Bombay High Court in [Ajanta Pharma](#) 223 CTR 441 (Bom) (which held that *Syncome Formulations* was overruled) was not applicable. HELD upholding the assessee's plea:

In **Syncome Formulations**, the Special Bench had to consider two questions i.e. (a) method of computation of deduction u/s 80HHC and (b) percentage of deduction allowable in each year. As regards the percentage of deduction, the Special Bench held that the assessee would be entitled to 100% deduction. This view was overruled by the High Court in **Ajanta Pharma** where it was held that in view of s. 80HHC (1B), deduction was only allowable as per the limits set out therein. **However, the first issue as to the method of deduction u/s 80HHC was not before the High Court.** As per [Sun Engineering](#) 198 ITR 297, the observations of a Court have to be read in context. **Consequently, the judgement of the Special Bench on this aspect still held good and the assessee was entitled to deduction u/s 80HHC even though there were no normal profits.**

DCIT vs. Glenmark Laboratories (ITAT Mumbai) Source : itatonline.org



36. Gift – Agricultural land – s 56 (2) (v).

Value of agricultural land by a non –relative can not be added to total income of donee under section 56 (2)(v) of the Act , since agricultural land cannot be considered as “ any sum of money” .

ITO v Kumar Bader - Tax world vol XLII 207 – October 2009

37. Income – Mutuality – interest income not exempted – S.4

Investment of surplus funds by the assessee club with member banks and institutions not with a definite idea of using the same in any specific projects for the further development of the infrastructural facilities of the club did not satisfy the concept of mutuality and therefore benefit of exemption cannot be extended to the interest income.

Madras Gymkhana club Vs. DCIT (2009) 226 CTR (Mad) 176.

38. Income- Mutuality- Transfer fee- non occupancy charges- s 4.

Transfer fee and non occupancy charges received from the members are not taxable on the principle of mutuality.

Mittal Court Premises Co-operative Society Ltd v ITO (2009) 184 Taxman 292. (Bom)

39. Income- Capital or revenue receipt- Non –complete fee- s 4.

Non compete fee received by assessee for refraining from manufacturing and selling time pieces for a period of ten years after the sale of its units while it was continuing with its other business activities constituted revenue receipt.

CIT v Tata Coffee Ltd (2009)29 DTR (Kar) 336.

40. International Taxation – India –Singapore DTA. S. 80 HHC,,90, 263.

A plain reading of s 80 HHC shows that non –resident assessee is not all eligible for deduction under section 80 HHC, exception under cl (4) (a) of art 26 of DTAA between India and Singapore clearly mandates that deduction under section 80 HHC which provides for deduction to residents in India cannot be superceded by this non – discrimination clause of the DTAA. Revision by the commissioner was justified.

Mosraq Ahmed v Asst Director (International Taxation)(2009) 29 DTR (Chennai) (Trib) 410.

41. Interpretation of Taxing Statutes – Retrospective Operation When Given – S.43 (5)

Transaction in derivatives is a speculative transaction as provided under Section 43(5) and the transaction in derivatives was not exempt from the purview of speculative transaction under section 43(5) and the Assessing Officer was right in treating the loss as speculation loss in terms of section 43(5) of the Act.

Shree capital services Ltd. VS ACIT (2009)318 ITR (AT) 1 (Kolkata) [SB].

42. Loss – Speculative – Applicability of Explanation to S. 73.



Explanation to Section 73 is not restricted only to the group of companies, and is applicable to all the companies which carry on business of purchase and sale of shares. Loss originating to the valuation of stock of shares is also covered by Explanation to S.73.

Prasad Agents (P) Ltd. Vs. ITO (2009) 226 CTR 13 (Bom).

43. Notice- s, 282, 292BB.

Notice was not served within stipulated time. Mere giving of dispatch number will not render the said finding to be perverse. In the absence of notice being served, the assessing officer had no jurisdiction to make assessment. Absence of notice can not be held to be curable under section 292BB of the Income tax Act.

CIT vs. Cebon India Ltd (2009) 184 Taxman 290 (Punjab & Har)

44. Penalty – set aside – S.271(1) (c)

A mere omission or negligence by the assessee cannot be treated as false and inaccurate. Accordingly the penalty was deleted.

Nera (India) Limited V. DCIT, ITAT 'F' Bench, New Delhi, ITA No. 107/Del./2009. Source: BCAJ

45. Penalty – set aside – S. 271 (1) (c), 271 (1B)

Assessment order having been made after 1st April, 1989 they are covered by the newly inserted sub section (1B) of S.271. Impugned order passed by the tribunal is set aside and the appeals are remitted to the tribunal for hearing on merits.

CIT vs. India crafts & Ors. (2009) 226 CTR 308 (Del.)

46. Penalty – concealment – Block Assessment- s 158BFA (2).

Amount of undisclosed income shown in the return of income in form NO 2B could not be taken into account for computation of penalty under section 158BFA (2). There is nothing in the language to incorporate the requirement of payment of tax on the “undisclosed income” as a condition for application of second proviso.

DY CIT v Heera Constructions Co (P) Ltd (2009) 29 DTR (Coch) (TM) (Trib) 398.

47. Penalty – Concealment – s 271 (1) (c).

Assessee having claimed depreciation which was found to be based on fabricated invoice and assets having never been installed and used by the lessee and which claim was withdrawn after finding of false claim, it could not be said that assessee disclosed primary facts in a return bona fide and therefore penalty under section 271 (1) (c) was validly levied.

Asstt CIT v TVS Finance & Services Ltd (2009) 30 DTR (Chennai) (TM) (Trib) 81

48. Precedent - Tribunal- s 254 (1).

Judicial propriety demands that a Bench of the Tribunal must follow the judgement of a co-ordinate Bench. Judicial Member was not justified in taking a different view than one taken in an earlier case by a Co-ordinate Bench on identical facts.

The Society of Presentation Sisters v ITO. (2009) 30 DTR (Coch) (TM) (Trib) 1.



49. Precedent –Binding nature-s 254 (1).

Decision of High Court of different jurisdiction is not binding on Tribunal.

Visvas Promoters (P) Ltd v ITO (2009) 30 DTR (Mad) 65/ (2009) 226 CTR 638 (Mad).

50. Precedent – Binding Nature - Special Bench judgement may prevail over non-jurisdictional High Court judgement – S. 254(1)

The Tribunal had to consider whether an assessee liable to pay Minimum Alternate Tax u/s 115JA was also liable to pay interest u/ss 234B & 234C for short-fall in payment of advance tax. The Judicial Member followed the judgement of the Bombay High Court in [Snowcem India Ltd](#) 313 ITR 170 and held that interest u/ss 234B and 234C could not be levied when book profits was computed u/s 115JA. The Accountant Member dissented and followed the earlier judgement of the Special Bench in **Ashima Syntex Ltd** 117 ITD 1 where a contrary view was taken. The Third Member had to consider whether the judgment of a non-jurisdictional High Court would prevail over that of the Special Bench of the Tribunal. HELD by the Third Member:

(i) The view that the High Court is above the Tribunal in the judicial hierarchy and that the judgement of a non-jurisdictional High Court would prevail over that of the Special Bench is subject to two exceptions. The first exception is where there is only one judgment of a High Court on the issue and no contrary view has been expressed by any other High Court. But **when there are several decisions of non-jurisdictional High Courts expressing contrary views, the Tribunal is free to choose that view which appeals to it and in certain circumstances the view which is favourable to the taxpayer may be adopted;**

(ii) The second exception is where the judgment of the non-jurisdictional High Court, though the only judgment on the point, is 'per incuriam' i.e. is rendered without having been informed about certain statutory provisions or binding precedents that are directly relevant. **A 'per incuriam' judgement need not be given effect to by a lower court;**

(iii) In [Snowcem India Ltd](#), the Bombay High Court decided in favour of the assessee following the precedents rendered in the context of s. 115J. **However, its attention was not drawn to sub-sec (4) of 115 JA which, according to the department, makes all the difference between s. 115J and s. 115JA.** Accordingly, the judgment cannot be relied upon by the assessee as being entirely in its favour on all the aspects of section 115JA and therefore it cannot be said that it should be followed in preference to the order of the Special Bench in **Ashima Syntex**;

(iv) Consequently, **the judgement of the Special Bench had to be followed and it had to be held that the assessee was liable to pay interest u/ss 234B & 234C even when income was computed u/s 115JA.**

Kanel Oil vs. JCIT (ITAT Ahmedabad Third Member) source: itatonline.org

51. Reassessment- Sanction of Commissioner- s 148, 151.

Sanction of Commissioner to notice issued under section 148 is a must for reopening assessment after four years.

Asstt CIT v M.P.Export Corpon Ltd (2009) 120 ITD 460 (Indore)



52. Succession to business –s 170.

Change in shareholding of the company does not change the legal identity of the company and therefore s 170 does not apply to such a case.

CIT v Panchratna Hotels (P) Ltd (2009) 29 DTR (HP) 73.

53. Tax audit - Business income- s 44AB.

In case of an individual carrying on business as a sole proprietor, it is necessary to comply with provisions of section 44AB, only in respect of his business income and not in respect of other income.

Ghai Construction v State of Maharashtra (2009) 184 Taxman 52 (Bom).