



DIGEST OF CASE LAWS (OCTOBER 2009)

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(JOURNALS REFERRED)

32 SOT, 120 ITD, 124 TTJ, 182 - 183 Taxman, 28 DTR, 212 Taxation, 317 ITR, TLR, VOL 39, 225 CTR

1) Accounting- Change of method – s. 5 & s.145

There being genuine difficulties compelling assessee to change over from mercantile to cash system of accounting as regards to interest income, the change was bonafide hence the CIT(A) and the tribunal were justified in setting aside the order of AO rejecting the change.

Asst CIT v. Coromandal Investment (P) Ltd. [(2009) 225 CTR (Guj) 313]

2) Accrual of income - sales tax refund- s 4, s. 41 (1).

Once an order of refund of sales tax has been passed, the same has to be treated as income notwithstanding pendency of appeal against refund order.

CIT v Beirsdorf (India) Ltd & Anr (2009) 28 DTR (Bom) 188 / (2009) 183 Taxman 178 (Bom)

3) Alternate Dispute Mechanism –u/s. 144C

Parties are advised to resort to Alternate Dispute Resolution Mechanism suggested in s. 144C; competent authority is directed not to reject the application herein made by the assessee on the ground that the proposal has come before the cut-off date and to decide the matter notwithstanding the pendency of the appeal before the CIT (A).

Addl CIT v. HCL Technologies [(2009) 225 CTR (SC) 356]

4) Additional Evidence- Rule 46 A.-Power of Tribunal- s 254 (1).

Tribunal confirming the order of CIT (A) without considering the additional evidence which was crucial. The High court held that the additional evidence goes very root of the matter and a reasonable approach is needed and not the hyper technical approach adopted by the tribunal hence the matter remanded to the Tribunal.

Daljeet Kaur v ITO (2009) 212 Taxation 46 (M.P.)

Editorial – See Smt. Prabhavati Shah vs. CIT (1998) 231 ITR 1 (Bom)

5) Agent- Non –resident- s- 163.

The foreign company was in receipt of some income from the assessee, on account of sale of shares. The Act uses the words “from or through”, instead of the word ‘thorough’ in section 163 (1) (c). Any person in India from or through whom the non-resident is in receipt of any income directly or indirectly can be treated as agent of the non-resident.

Utkal Investments Ltd v Asstt .DIT (2009) 120 TTJ 67 (Mum).

6) Appeal - Tribunal – s. 249 (4), 253.



Against the dismissal of appeal by the CIT (A) for non payment of tax as per returned income, appeal to Tribunal is not maintainable.

Sushil Thomas Abraham v ACIT (2009) 212 Taxation 214 (Ker)

7) Appeal - Tribunal- Fees-s 253 (6).

Total income determined at negative figure, hence fee of Rs.500/- alone payable.

Gilbs Computer Ltd v ITO (2009) 317 ITR 159 (Bom)

Editorial –Andra Pradesh State Electricity Board v ITO (1994) 49 ITD 552 (AP), over ruled.

8) Appeal- Tribunal – Powers- Rectification of Mistake- s. 254 (2), 255.

When the question was pending before the High court, it was not right for the assessee to agitate it before the Tribunal.

It is for the bench to decide whether there should be joint consideration by members before draft order finalised. Merely because there was no specific mention of each argument, the order could not be said to be vitiated by mistake apparent from the record.

Tata Communications Ltd v JCIT (2009) 317 ITR 1 (AT) (Mumbai) (SB) / (2009) 124 TTJ 721 (Mumbai) (SB)

9) Appeal – Tribunal –powers- Direction – 254 (1), 14A.

In the absence of any adverse, finding by the AO against the assessee vis –a-vis applicability of section 14A, Tribunal while accepting the assessee's contention, was not correct, in recording the direction to consider the applicability of section 14A, while remanding the matter.

Topstar Mercantile (P) Ltd v Asstt CIT (2009) 225 CTR (Bom) 351(2009) 28 DTR (Bom) 215.

Editorial – see, DCIT vs. Citizen Hotel, ITA No.5371 & 5803/Mum/2005, A.Y. 1999 – 2000 & 2002 – 03, Bench – D, dated 30th January, 2009, (source: www.itatonline.org)

10) Appeal – Tribunal – Rule 27

Where the CIT (A) decided the ground of reopening against the assessee but decided the ground of merits in favour of the assessee, the assessee is entitled, in an appeal by the Revenue before the Tribunal, to urge, under Rule 27 of the I. T. Rules, that the CIT (A) was wrong in deciding the ground of reopening against the assessee.

ACIT vs. M/s Triace, ITA No. 2827/Mum/04, A.Y. 1995 – 96, Bench – H, dated 26-11-2007 (www.itatonline.org)

11) Authorised representative - Resigned Members & Members who retired before 3.6.2009 can practice before the ITAT- s 288

The Tribunal has inherent jurisdiction to consider whether the parties who are appearing before it are properly entitled under the law to make appearance;



Such Members who had resigned and terminated their contract of employment with the Government before confirmation cannot be said to hold any post and there is no question of any conditions of services being applicable to them after resignation. They cannot be treated as having been “retired” from service for purposes of Rule 13E and were not disqualified from appearing before the ITAT;

On a plain reading of Rule 13E, it is prospective and applies only to Members who were in service as of 3.6.2009 or who join service thereafter. It has no application to Members who retired prior to that date

M/s Concept Creations vs. ACIT, Delhi Special Bench, ITA No. 3370/Del/08 A.Y. 2005-06 dated 15/09/2009.

Source: www.itatonline.org

12) Bad debts - Unilateral writing off sufficient after change of law. S. 36(1)(vii) & 36(2)

Departmental SLP rejected against the Bombay High court where by the High Court dismissed the departmental appeal in ITA no 383 and 437 of 2008.

CIT v Nelco Ltd S. L. P nos 16373-163 74 of 2009 dt 7- 7-2009. (2009) 317 ITR 6 (ST).

Editorial – See Judgment of Mumbai Tribunal Shri Rahendra Y. Shah v ACIT ITA no 1437/Mum/1999, Bench B dt. 21-9-2006. (Asst year 1992-93)

Judgment of Bombay High Court ITA NO 1000 OF 2007 dt. 10th July 2008.

CIT v Rajendra Y. Shah S.L.P. (C) NO 8364 of 2009. Dt 2-4-2009. (2009) 313 ITR (st) 3.

DCIT v Oman International Bank (2009) 313 ITR 128 (Bom),

CIT v Star Chemicals (Bombay) P. Ltd (2009) 313 ITR 126 (Bom).

Matter is referred to special bench in the case of share broker, Shri Shreyas S. Morakhia ITA No. 3374/M/04. Asst. Year 98-99

13) Business Disallowance - Actual payment- s 43 B.

Under Explanation 3 C, conversion of interest amount in to loan would not be deemed to be regarded as “actually paid” amount within the meaning of section 43 B.

Eicher Motors Limited v CIT (2009) 315 ITR 312 (MP).

14) Business expenditure – expenses on issue of debentures – S.37

Expenditure incurred on issue of debentures, whether convertible or non convertible is allowable as revenue expenditure.

S.L.P. CC No.10548/2009 dated 11-08-2009 filed by the department was rejected.

[See CIT vs. Secure Meters Ltd. (2009) 221 CTR 405 (Raj)]

15) Business income –Income from house property- s 22, 28(i).

Assessee running business centre by exploiting property and not merely letting out the property, receipt from such activity be considered as business income and not income from house property.



Harvindarpal Mehata HUF v DCIT (2009) T.L.R. 285. (Mumbai Bench G.)

16) Charitable trust -Registration – S.12A

The tribunal is fully justified in observing that the manner of application of funds and as to whether the applicant-assessee can claim benefit of exemption in terms of s.11 and 12 is a question which has to be examined by the AO at the stage when it is urged and not by the CIT when such question is not before the CIT. The emphasize that while registration is accordance with the provisions of s.12, it is a condition precedent for claiming the benefits u/s. 11 and 12, a registration itself as per s.12A will not automatically confer the benefits of s.11 and 12 on a trust, but the trust will get the benefit only on complying with the requirements of s.11 and 12 which compliance can be examined by the assessee authority, while processing the return filed by the trust.

Director of Income Tax v. Garden City Education Trust (2009) 28 DTR (Kar) 139

17) Capital receipt- interest and rent- s 4.

Interest and rent receipt from its employees and oustees in dam area had a nature of capital receipt as the construction process was still on and business activity not started.

{Followed CIT v Bokoro Steel Ltd (1999) 236 ITR 315 (SC)}

CIT v Tehri Hydro Development Corporation. (2009) T.L.R. 456 (Uttarkhand) / 183 Taxman 246 (Uttarkhand)

18) Capital receipt-Interest- s. 4

Assessee's business having not been set up during the year, its interest income could not be assessed but had to be set off against cost of assets.

Shapoorji Pallanji Power Co Ltd v ITO (2009) 28 DTR (Mumbai) Trib) 12.

19) Capital Gains – ESOP- s 45, 48.

Assessee having made no payment for exercising the right to purchase shares under ESOP, there was no cost of acquisition of such shares to the assessee and therefore, amount received on sale of said shares is not taxable as capital gains, further date of exercise of option and date of sale being the same, there is no difference between the deemed cost of acquisition and actual price realised by the assessee and therefore, no amount is chargeable to tax as capital gains.

Bomi S. Billimoria v Asstt CIT (2009) 124 TTJ (Mumbai) 960.

20) Deduction –Hypothetical Tax- s.10(10CC) & S.16

The deduction on account of hypothetical tax liability is made under tax equalization and only reduces the tax perquisite of the employee and not his income. This aspect of the matter will be relevant in computation of perquisites when the same are to be computed with reference to the salary of the employee. the deduction to be made at the stage of computing the tax perquisite and not the basic salary. There will be no tax impact in this year on account of s. 10 (10CC) in case hypothetical tax is reduced from tax perquisite instead of being reduced from the basic salary.

Income Tax Officer v. Lukas Fole [2009 28 DTR (Pune) (Trib) 210]



21) Depreciation- stock exchange membership card- s.32 (1) (ii) (2).

Expression 'licences' in s.32 (1) (iii) has to be construed restrictively so as to apply to license relating to acquisition /user of intellectual property rights and not all licences; further , s.32 (1) (ii) contemplates is the business or commercial rights relating to intellectual properties and not all categories of business or commercial rights; depreciation is not therefore allowable on the Bombay Stock Exchange Membership Card as it does not fall in any of the categories specified in s. 32 (1) (ii)

Commissioner of Income Tax v. Techno Shares & Stocks Ltd & Ors. (2009) 28 DTR 201 (Bom) / (2009) 225 CTR 337 (Bom) / (2009) 184 Taxman 103 (Bom)

22) Depreciation- Restrictive covenant- s. 32 (1) (iii).

Depreciation on restrictive covenant is not allowable.

Srivatsan Surveyors (P) Ltd v ITO (2009) 32 SOT 268 (Chennai).

Editorial – See ITO vs. Mediacorp Technologies India Ltd (2009) 21 DTR 69 / (2009) 30 SOT 506 (Chennai) (Trib).

23) Depreciation- Lease of machinery – User of asset-s 32.

Lease of machinery before end of accounting year, Lessee installing machinery after end of accounting year is not relevant. The assessee is entitled to depreciation.

CIT v Kotak Mahindra Finance Ltd (2009) 317 ITR 236 (Bom)

24) Depreciation allowable even if asset not used at all for entire year – S.32

The assessee, engaged in shipping business, owned a barge which was included in the block of assets. The barge met with an accident and sank on 6.3.2000 (AY 2000-01). As efforts to retrieve the barge were uneconomical, the barge was sold on as-is-where-is in May 2001 (AY 2002-03). **As the barge was non-operational and not used for business at all in AY 2001-02, the AO denied depreciation.** On appeal by the assessee, the Tribunal took the view that after the insertion of the concept of "block of assets" by the T. L. (A) Act, 1988 w.e.f 1.4.1988 **individual assets had lost their identity and only the "block of assets" had to be considered.** It was held that **the test of "user" had to be applied upon the block of assets as a whole and not on individual assets.** On appeal by the Revenue, the High Court dismissed the appeal holding that the issue was squarely covered in favour of the assessee by its earlier judgements in **Whittle Anderson** 79 ITR 613 and **G. N. Agrawal** 217 ITR 250.

CIT vs. G. R. Shipping (Bombay High Court), ITA no 598 of 2009, dated 28th july, 2009 Source- www.itatonline.org

25) Deduction -Business expenditure- Disallowance- s 14A, rule 8D.

Disallowance under section 14A, can be made in a year in which no exempt income has been earned or received by the assessee.

Cheminvest Ltd v ITO (2009) 124 TTJ (Del) (SB) 577..(2009), 317 ITR (AT) 86 (Delhi) (SB)

Editorial. See, ITO v Daga capital Management P. Ltd (2009) 312 ITR (AT) 1 (Mumbai) (SB)

26) Deduction- Public Provident fund – Limit of one lakh-s 80 C.



Where, amount deposited in PPF Account exceeded Rs.70,000/- prescribed under PPF Scheme ,it was held that in view of fact that Act was amended by Finance Act ,2005 ,permitting an individual to deposit maximum of rupees one lakh in any specified scheme , concerned authorities were to be directed to amend paragraph 3 of PPF Scheme ,1968 in terms of section 80 C and increase maximum limit of subscription to PPF as per Finance Act, 2005.

M.S.Padmarajaiah v Secretary Department of Finance, Government of Karnataka. (2009) 183 Taxman 209 (Kar).

- 27) **Deduction – Profits and gains from Industrial Undertakings- Duty drawback receipts/Duty entitlement Pass Book – Derived from s 80 I, 80 IA, 80 IB.**

Duty drawback receipts /Duty Entitlement pass Book benefits are on account of statutory provisions in Customs Act/Scheme(s) framed by Government, therefore profits so derived do not form part of net profits of eligible industrial undertaking for purposes of sections 80 IB, 80 I and 80 IA.

Liberty India v CIT (2009) 317 ITR 218 (SC) / (2009) 183 Taxman 349 (SC) / (2009) 28 DTR (SC) 73.

- 28) **Deduction – Profits and gains from infrastructure undertakings – Insurance claim- s 80 IA.**

Amount received by Assessee Company from insurance company on account of loss of goods destroyed by fire should be taken in to account in determining profits and gains of an industrial undertaking of types specified under section 80 IA.

CIT v Sportking India Ltd (2009) 183 Taxman 312 (Delhi).

- 29) **Deduction- Computation – Eligible industrial units- s 80 a, 80, B (5) & 80 IB.**

Loss in one unit can not be set off against of other unit, it is a mandatory to work out the eligible amount of deduction under various sections of Chapter VI-A, individually and then such aggregate amounts has to be restricted to the amount of gross total income as computed under section 80 IB (5).

Meera Cotton & Synthetic Mills (P) Ltd v Asst CIT (2009) 28 DTR (Mumbai) (Tribe) 139.

- 30) **Deduction – housing project- percentage completion method. S 80 IB (10).**

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

B.K.Pate Enterprises v DY CIT (2009) 28 DTR (Pune) (Trib) 451.

- 31) **Deduction – DEPB – s. 80HHC**

(i) The argument of the Revenue that DEPB is a post export event and has no relation with the purchase of goods cannot be accepted. **There is a direct relation between DEPB and the customs duty paid on the purchases.** For practical purposes, DEPB is a reimbursement of the cost of purchase to the extent of customs duty;

(ii) **The DEPB benefit (face value) accrues and becomes assessable to tax when the application for DEPB is filed with the concerned authority.** Subsequent events such as sale of DEPB or making



imports for self consumption etc are irrelevant for determining the accrual of the income on account of DEPB;

(iii) Though s. 28 (iiib) refers to a “cash assistance against exports”, it is wide enough to cover the face value of the DEPB benefit;

(iv) S. 28 (iiid) which refers to the “**profits on transfer of the DEPB**” obviously refers only to the “**profit**” element and not the gross sale proceeds of the DEPB. If the Revenue’s argument that the sale proceeds should be considered is accepted there would be absurdity because the face value of the DEPB will then get assessed in the year of receipt of the DEPB and also in the year of its transfer;

(v) Consequently, **only the “profit” (i.e. the sale value less the face value) is required to be considered for purposes of s. 80HHC.**

Topman Exports vs. ITO, Special Bench, ITA No.5769/Mum/2006, A.Y. 2002 – 2003, dated 11th August, 2009 – Source www.itatonline.org

32) Deduction of tax at source - Income deemed or accrued in India – Fees for Technical Services – S. 9, 195 & 201

Amount paid by assessee to non-resident company for rendering technical services for commissioning of power plant in India did not attract tax liability as the technical services were in the nature of theoretical formulation which could be rendered wholly offshore and outside India ; however, ‘start-up services’ and ‘overall responsibility’ involve executory part of the contract which took place in india and therefore, assessee was required to effect TDS out of remuneration paid towards these services.

Jindal Thermal Power Company Ltd. v. Deputy. Commissioner of Income Tax [2009 225 CTR (Kar) 220]

33) Deduction at source- Leave Travel concession – s, 10 (5), 192.

An employer is under no statutory obligation to collect evidence to show that its employee has actually utilised amount paid towards leave travel concession /conveyance allowance for purpose of TDS under section 192.

CIT v ITI Ltd (2009) 183 Taxman 219 (SC)

34) Deduction at source - interest- s 201 (1A).

Since deductee is a Govt undertaking, the taxes may be presumed to have been paid last by due date of filing of the return of income and therefore the liability of the assessee to pay interest on the amount which was to be deducted as TDS ends with in due date of filing of the return by the deductee.

CIT v Trans Bharat Aviation (p) Ltd. (2009) 225 CTR (Del) 415

35) Deduction at source – Upfront fees - Liability to deduct tax vis-a-vis year of assessment of year – s.194I

A person who is responsible for paying to a resident any income by way of rent is required to deduct tax at source u/s 194 I at the time of credit of such income to the account of the payee even if it is not the income of the payee previous year in which it is paid; upfront fee paid by assessee to the lessor which is adjustable against 50% of the annual license fee payable to the lessor was rent and therefore assessee was required to deduct tax at source u/s. 194I at the time of the credit of such amount.



Tax Recovery Officer v. Bharat Hotels Ltd. [2009 28 DTR (Bang) (Trib) 337]

36) Exemption- encoding and decoding an eligible EOU- s.10B.

Assessee having obtained order from the Development Commissioner stating that the assessee has been a-bonded and does not enjoy the status of 100 % EOU, and the same having being produced before AO though not filed before the due date of filling of return as required by s.10 B (8), the assessee has to be held as opted out of the benefit of s.10B and entitled to carry forward the loss.

Torry Harris Sea Foods (P) Ltd. v. Dy. Commissioner of Income Tax [2009 28 DTR (Coch) (Trib) 165.

37) Export -Profits of Business – processing / fabrication charges received from other exporters - S.80HHC.

Assessee having allowed deduction u/s. 80HHC in respect of the processing / fabrication charges on the goods which were ultimately exported by other exporters for whom processing was undertaken by the assessee, following the earlier decision of the High Court against which no appeal was filed special leave petition is liable to be dismissed.

Southern Sea Food Ltd. V. Jt. Commissioner of Income Tax [2009 28 DTR (SC) 108]

38) Income from House property- Lift Charges- s 22.

Charges received for providing lift service were to be assessed as “income from house property”, if uniform service charges are to be collected from every tenant, whether he be in the first floor or top floor. Mere separate agreement for such collection would not make any difference.

CIT v Mohan’s Enterprises (2009) 182 Taxman 24 (Ker)

39) Income from other sources- deduction - s 56 & 57.

Assessee Govt of India enterprise doing construction activities and not business activities of earning interest on deposit. With banks deduction of 2.5% towards administrative cost on the interest income on short term deposit is proper.

CIT v Tehri Hydro Development Corporation (2009) T.L.R. 456 (Uttarkand)

40) International Transaction-DTAA-India and South Africa-s -9.

Commission being payable to South African Company for services rendered abroad and it having no fixed place or agent in India, no income could be taxed in India.

Spahi Projects (P) Ltd, in RE (AAR) (2009) 26 DTR 303 (AAR)

41) International Taxation-Fee for use of satellite is “royalty” under Act & DTAA- s 9 (1)

To constitute “royalty”, it is not necessary that the process should be a “secret process”, nor that the instruments through which the “process” is carried on should be in the control or possession of the payer. The context and factual situation has to be kept in mind to determine that whether the process was “used” by the payer. The fact that the telecasting companies are enabled to telecast their programmes by uplinking and downlinking the same with the help of that process shows that they have “use” of the same. Time of telecast and the nature of programme, all depends upon the telecasting companies and, thus, they are using that process;



(iii) The consideration paid by telecasting companies to satellite companies is for the purpose of providing “use of the process” and consequently assessable as “royalty” under the Act and the DTAA.

New skies satellites N. v. vs ADIT (international Taxation), ITA Nos 5385 to 5387/Del/ 2004, A. Y. 2000-01 to 2002-03, Delhi Special Bench, Date of Order - 16th October, 2009.

Source: www.itatonline.org

42) Penalty Concealment- Satisfaction of the Assessing Officer- s 271 (1B), 274, 275.

- i. Section 271 (1B) is not violative of article 14 of the Constitution.
- ii. The position of law both, pre and post amendment is similar, as regards initiation of penalty proceedings.
- iii. Prima facie satisfaction of the Assessing Officer is a must.
- iv. Satisfaction need not be in respect of each and every disallowances.
- v. Due compliance would be required to be made in respect of the provisions of section 274 and 275 of the Act.
- vi. The proceedings for initiation of penalty can not be set a side only on the ground that the assessment order states that ‘penalty proceedings are initiated separately’ if otherwise it conforms to the parameters.

Ms Madhushree Gupta v UOI (2009) 183 Taxman 100 (Delhi)

43) Penalty- Concealment- s 271 (1) (c).

The A.O. has made addition in assessment of items disclosed by assessee in assessment proceedings and also levied penalty. High court held that penalty is not leviable. The Apex court remanded the matter to High Court to decide the matter considering the latter judgement of Supreme court UOI v Rajasthan Spinning and Weaving Processors (2008) 306 ITR277 (sc) and UOI v Dharmendra Textile Processors (2008) 306 ITR 277 (SC .)

CIT v Atul Mohan Bindal (2009) 317 ITR 1 (SC.) (2009) 225 CTR (SC) 248. (2009) 28 DTR (SC) 1.

44) Penalty – concealment -No penalty under Expl. 7 to s. 271 (1) (c) for bona fide transfer pricing adjustments- s 271 (1) (c).

(i) The question whether the provision for bad debt in respect of sum owed by the parent company is a matter falling in the ordinary course of trade or whether it is an extraordinary item warranting exclusion from operational cost is **a debatable point on which there can be two opinions. The fact that the assessee accepted the addition and did not challenge the same will not change this aspect;**

Penalty also cannot be imposed unless the party obliged either acted **deliberately in defiance of law** or was **guilty of conduct contumacious or dishonest**, or acted in **conscious disregard of its obligation;**

The conduct of the assessee was **not mala fide or contumacious**. The computation claiming exclusion of the provision for doubtful debts in arriving at comparable profit margins cannot be said to have been done **not in good faith or without due diligence**. Accordingly penalty under Expl. 7 to s. 271 (1) (c) could not be levied.



Dy. CIT vs M/s. Vertex Customer Services (India) Pvt. Ltd., ITA No. 1506/Del/2008, Bench – C, A. Y. 2003-04, Date of Order -21st Sep. 09, www.itatonline.org

45) Revision – Erroneous and Prejudicial order- S. 263

AO having taken a plausible view after investigation and proper enquiry, CIT cannot invoke revisionary power just to substitute his own view; assessment order cannot become erroneous where queries raised during the assessment proceedings are not recorded in final assessment order.

V.B. Construction (P) Ltd. V. Dy. Commissioner of Income Tax [2009 28 DTR (Kol) (Trib) 84]

46) Revision- On issue not mentioned in show cause notice- 263.

In revision proceedings, Commissioner can not travel beyond reasons given by him for revision in show cause notice.

Revision is not like reopening of assessment, entire assessment is not opened before the assessing officer.

Geometric Software Solutions Co .Ltd v Asstt CIT (2009) 32 SOT 428 (Mum).

Editorial- also see CIT v Contimeters Electricals Works P .Ltd (2009) 22 DTR 158 (Delhi).

47) Reassessment- Reasons- s.147, 148.

When notice under section 148 is sustainable on any reasons taken by Assessing Officer, initiation of reassessment can not be declared as invalid.

M.P.Ramachandran v DY.CIT (2009) 32 SOT 592 (MUM).

48) Reassessment- Change of opinion – s, 147,148.

Where the original assessment is farmed under section 143 (3), and subsequently ,it comes to the notice, of Assessing Officer ,that still some income chargeable to tax has escaped assessment , he can get assistance of provisions of section 147, provided it does not amount to change of opinion.

M.P.Ramachandran v DY CIT (2009) 32 SOT 592 (MUM).

49) Search and Seizure- Assessment- s 153 A, 132 A.

For invoking jurisdiction under section 153A, not only warrant of authorisation is to be issued in name of assessee but also search shall have to be necessarily conducted or in case of requisition under section 132 A, has to be made.

Rajat Tradecom India (P) Ltd v Dy CIT (2009) 120 ITD 48 (Indore)

50) Speculative Loss- derivatives- s 43 (5) (d).

Loss on account of futures and options has to be treated as speculative loss for the asst year 2004-05. Clause (d) of proviso to section 43 (5) is prospective in nature and is effective from is April 2006.

Shree Capital Services Ltd v Asst CIT (2009) 124 TTJ (Kol) (SB)/ (2009) 28 DTR (Kol) (SB) (Trib) 1.

Editorial – See Asst. CIT vs. Shreegopal Purohit (2009) 33 SOT 1 (Mum)



51) Succession to business otherwise than on death – S.170

The term “succession” in s. 170 has a somewhat artificial meaning. The tests of change of ownership, integrity, identity and continuity of a business have to be satisfied before it can be said that a person “succeeded” to the business of another;

Even if it is accepted that by a transfer of shares u/s 2(47), there is a transfer in the right to use the capital assets of the company, still s. 170 is not attracted because there is no “transfer of business”. A company is a juristic person and owns the business. The share holders are not the owners of the company. By a transfer of the shares, there is no transfer so far as the company is concerned.

CIT vs. Panchratan Hotels (HP High Court) ITA No 13 of 2004 dated 26-08-2009

Source - www.itatonline.org