



DIGEST OF CASE LAWS (September 2009)

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JOURNALS REFERRED

119 ITD part 6, 7; 124 TTJ; 182 Taxman part, 1, 2, 3; SOT, 26 & 27 DTR;. 314 ITR, 315 ITR, 224 CTR

1) Appeal – High Court-Maintainability- Tax effect less than four lakhs- s, 260A, 268A.

CBDT instruction no 5 of 2008 dt 15th May 2008 (2008) 217 CTR (ST)(1), applied to the cases filed before that date i.e. Pending cases also and therefore all appeals ,having tax effect less than 4 lakhs are dismissed.

CIT vs. Madhukar K. Inamdar (HUF) (2009) 27 DTR 132 (Bom).

2) Appeal – Tribunal -Maintainability- Clearance from committee on disputes - s 253 (1), 253 (2), 255.

Clearance from Committee on Disputes is not required for dispute between department of Central and a State Government undertakings. Appeals filed by a public sector undertaking of Gujarat and /or by IT department (Revenue) could not, therefore, be rejected by Tribunal as not admitted on the ground of absence of clearance from COD.

Gujarat Mineral Development Corp Ltd vs. ITAT & Anr. (2009) 25 DTR 241 (Guj).

3) Appeal (Tribunal) –Jurisdiction- s 254 (1).

Appeal having been decided by CIT (A), following earlier order of Tribunal , while considering present appeal, the tribunal can not assume jurisdiction to modify the earlier order of the Tribunal. Finality of that order could be disturbed only under section 254 (2) or under section 260A.

Oriental Hotels Ltd vs. Dy. CIT (2009) 26 DTR 39 (Chennai) (Trib).

4) Appeal (Tribunal)-Power – s. 132(1), 254 (1).

Tribunal can go into the question of limitation being extended or not on account of subsequent alleged warrant of authorisation not being executed by the competent authority.

Additional CIT v Dr. D.P. Agrwal (2009) 26 DTR 63 (Lucknow) (Trib).

5) Appeal (Tribunal) - Reasoned Order- s 254.



Even where merely affirming Commissioner (Appeals), the tribunal without recording reasons affirming order of Commissioner (Appeals). The order was set aside and matter remanded.

CIT v India Carbon Ltd (2009) 315 ITR 315 (Gauhati).

6) Appeal (Tribunal) Rectification of mistakes. s 254 (2).

Tribunal can not recall its final order under section 254 (1), simply because on the basis of an order passed subsequently by the President of Tribunal directing that the appeals be heard and determined by the Mumbai Bench together with the appeal filed by one M.

Apex Metchem (P) Ltd v Income Tax Appellate Tribunal & Ors (2009) 26 DTR 1 (Ra).

7) Appeal (Tribunal) –Third member-Reference- s- 254 (3).

Both AM and JM, having dismissed assessee's appeal, though with serious differences on reasoning; it should be taken that assessee's appeal stood dismissed by the Division Bench.

Asstt .CIT v Sarv Prakash Kapur (2009) 124 TTJ 433 (Agra) (TM).

8) Appeal- Avoidance of repetitive appeals- s 158A, 254 (1).

When similar issue is pending before other High Court, if assessee makes application under section 158 A, tribunal can not dismiss the appeal. The tribunal has to accept the declaration under section 158 A and proceed further as per section 158A (5), after the adjudication of the appeals pending before the Delhi High Court.

Titanor Componets Ltd v CIT (2009) 26 DTR 43 (Bom).

9) Assessment- News paper report on market conditions - S. 143.

News paper report and market conditions relied by the assessee can be considered for deleting the additions made by the assessing officer.

Addl CIT v Ratan Cold Storage (2009) 118 ITD 31 (Agra) (TM).

10) Appeal(Tribunal-Pendency of writ petition before the High Court- s.254(1)

Hearing and disposal of the appeal by the tribunal cannot be deferred simply because some person has filed a writ petition before the high court seeking release of seized ornaments.

Asst. CIT v. Rajendra Kumar Agarwal & Ors. (2009) 26 DTR 219 (Agra) (Trib)

11) Appeal (Tribunal)-Additional ground – s. 254 (1)

The facts pertaining to claim of deduction of salary paid to doctors, staff and depreciation on car, furniture, etc .were not available on record. Tribunal was justified



in declining to entertain the said claim made before it for the first time, more so when the assessee did not maintain the books of account and the professional income of the assessee was refixed by the tribunal on estimation basis by granting additional deduction towards overhead expenditure over and above the relief granted in the first appeal .

Dr. R.P. Patel v. Commissioner of Income Tax [2009 26 DTR 266 (Ker)]

12) Appeal –High Court - Condonation of Delay- Applicability of s.5 of the Limitation Act-s. 260A.

The scheme of the ITAct, 1961 supports the conclusion that the time-limit prescribed u/s. 260A to file an appeal before the High Court is absolute and unextendable by the Court u/s. 5 of the Limitation Act. Since all the appeals herein have been preferred beyond the prescribed period of 120 days u/s. 260A the same are dismissed on the ground of limitation.

Asst. CIT v. Mahavir Prasad Verma & Ors. 2009 26 DTR 105 (Chhattisgarh)

**Editorial- refer-(CIT v Grasim Industries Ltd (2009) 27 DTR 130 (Bom).
Commissioner of Customs and Central Excise v Hongo India (P) Ltd (2009) 315 ITR 449 (SC).**

13) Assessment- Notice- s 143 (2).

Notice issued after expiry of 12 months from filing of return of income-The tribunal annulling the assessment- High court affirmed the order of Tribunal.

CIT v P.L. Gandhi (2009) 315 ITR 110 (Mad).

14) Bad Debts – Share Broker is eligible to claim ‘bad debts’ u/s 36(1)(vii)/36(2)

The contention of the Revenue that the said amount was not a “debt” u/s 36 (2) and, therefore, could not be treated as a “bad debt” was not acceptable because there was a valid transaction between the assessee and the sub-broker. The brokerage was offered to tax and assessed. The assessee had to make payment on behalf of the sub-broker and as he could not recover to the extent of Rs.41,37,881/-, that sum had to be treated as a “debt”.

**CIT vs. DB (India) Securities (Delhi High Court)
(Source: www.itatonline.org)**

15) Business expenditure- Issue of shares under ESOP at below market price- not allowable- s 37.

Issue of shares under ESOP at less than market price only results in short receipt of share premium and not incurring of any expenditure within the meaning of section 37, and therefore such notional loss is not allowable as deduction.

Ranbaxy Laboratories Ltd v Addl CIT (2009) 26 DTR 420 (Del) (Trib).



16) Business Expenditure - Commission to government doctors - s 37(1).

Commission payment to Government doctors for obtaining a favour there from by prescribing medicines in which assessee is dealing will come within category of "illegal gratification or bribe" therefore can not be allowed as business expenditure.

CIT v Pt. Vishwanath Sharma (2009) 182 Taxman 63 (All).

17) Business Expenditure- ad-hoc disallowance- No personal use in the hands of Company- s. 37 (1).

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

Rajat Tradecom India (P) Ltd. v Dy. CIT (2009) 124 TTJ 53 (Ind).

18) Business Expenditure- replacement of old machine-enduring benefit – Repairs- s, 31, 37.

Replacement of an old machine in a textile mill with a new one amounts to bringing in to a new asset and it also gives an enduring benefit to assessee hence such expenditure can not be considered as repair of old machinery hence neither deduction can be allowed under section 31 nor under section 37.

CIT v Sri Mangayarkarsasi Mills (P) Ltd (2009) 315 ITR 114 (SC); (2009) 182 Taxman 141 (SC).

19) Business expenditure- Payment to Veda Bhavan- s 37 (1).

Expenditure incurred by assessee –company towards payment to Veda Bhawan for conducting Vedic education classes for its employees is an eligible expenditure under section 37 (1).

Dalmia Cement (Bharat) Ltd v Addl. CIT (2009) 32 SOT 164 (Delhi).

20) Business expenditure- Lull in business - setoff of loss- s 37, 71,

When the assessee has neither permanent office, nor any other office in India, nor any contract was in execution during the relevant period, it can not be said that there was merely lull in business, there being no business, assessee was not entitled to deduction on account of expenses, depreciation etc, and setoff under section 71.

CIT & Anr. v Foramer France (2009) 27 DTR 15 (Uttarakhand).

21) Business expenditure - Provision for Warranty- s 37,

Provision for warranty is deductible provision is not a contingent liability. The provision will depend upon, the nature of business, nature of sales, nature of product manufactured and sold and the scientific, method of accounting adopted by the assessee besides, the historical trend in the quantum of articles produced and sold.



Rotork Controls India P .Ltd v CIT (2009) 314 ITR 62 (SC).

22) Business –Disallowances- s 40 A (3).

Disallowance under section 40A (3) is applicable for each payment and not aggregate of the various payments made to same party during one day. In view of the above, disallowance under section 40A(3) sustained by CIT(A) was not justified.

Shanti Ram Mehata v ACIT (2009) 119 ITD 62 (Kol) (TM).

23) Business Income- waiver of loan – s 28 (iv), 41 (1).

Waiver of loan by creditor not being in respect of trading liability, neither section 28 (iv) nor 41 (i) would apply.

Mindteck (India) Ltd v ITO (2009) 26 DTR 125 (Mumbai) (Trib).

24) Block assessment- Search and Seizure- Limitation-last warrant of authorisation - s. 158BE,

In view of re-designation of Dy CIT , as Jt CIT by section 3 of Finance (no 2,) Act, 1998 , w.e.f. 1st October, 1998, all the power which vested in DY CIT automatically got vested in the JT.CIT and circular F. No. 286 /343/1989-IT (inv) dt. 11th Oct, 1990, became applicable to the substituted authorities in terms of s. 24 of the General, clauses Act, and therefore, the last warrant authorization dt 7th Sept 1999, signed and executed by the Jt Director of IT (Inv) being a valid authorisation, limitation for block assessment was to be reckoned from the said date and hence the assessment order limitation.

Additional CIT v DR. D.P. Agarwal (2009) 26 DTR 63 (lucknow) (Trib).

25) Block Assessment- surcharge- Larger Bench - s. 113.

In relation to block assessment in search cases, a proviso was added with effect from 1st June 2002, to section 113 of the Act, to the effect that the tax shall be increased by a surcharge. The matter is referred to larger bench to decide whether the proviso was retrospective.

CIT v Vatik Township P. Ltd (2009) 314 ITR 338 (SC).

26) Book profit- s - 80 HHC,115JB.

In case of s 115JB, deduction, under section 115JB, deduction under section 80 HHC, would be available in its entirety to an assessee even if the relief under s 80HHC, is eliminated in a phased manner.

Godrej Industries Ltd v Asstt CIT (2009) 124 TTJ 499 (Mumbai).

Editorial note- Tribunal decided in favour following the judgement of Tribunal in Asstt v Ajanta Pharma Ltd (2008) 118 TTJ (Mumbai)101 Judgement of Ajanta Pharma Ltd is reversed by the Bombay High court. (2009) 23 DTR 1 (Bom).



27) Business loss-Loss incurred in share transaction- S. 28(i)

Claim for loss incurred by the assessee company in share transaction could not be disallowed by treating the transaction as non-genuine merely relying upon the report of the auditor of the assessee company that the accounts do not reflect a complete and true affairs of the company ' which was made in the wake of seizure of the assessee's records, when there is no allegation that the transaction were not made at the market price and something over and above the declared price was received by the assessee.

CIT v. H.B. Stock Holdings Ltd. [2009 27 DTR (Del) 45]

28) Capital gains- Land Acquisition Act- Enhanced Compensation- s. 2(47), 45(1), 45(5), 155(16).

Even in cases where pending appeal, Court/Tribunal /Authority before which appeal is pending , permits claimant to withdraw, against security or otherwise , enhanced compensation (which is in dispute), same is liable to be taxed under section 45(5) in year of receipt. Additional amount under section 23 (IA), the solatium under section 23(2), and interest on excess compensation under section 28 of Land Acquisition Act, form part of enhanced compensation under section 45 (5)(b) and therefore are taxable under section 45(5), in year of receipt.

CIT v Ghanshyam (HUF) (2009) 315 ITR 1 (SC), (2009) 182 Taxman 368 (SC); (2009) 224 CTR 522 (SC).

29) Capital gains- capital asset - Indira Vikas Patra- s 2(14), 2(47), 5, 45 & 48.

Indira Vikas Patra is a deposit scheme framed by the Government of India for making deposits in the post offices for a specific period at specified rate of interest and not a capital asset and, therefore, interest accrued thereon is not assessable as capital gains.

DR. R. R. Patel v CIT (2009) 26 DTR 266 (Ker).

30) Capital gains- Accrual-Development agreement – s. 2 (47) (v), 45.

Under the development agreement, rights having been assigned to the developer who had made substantial payment and entered in to the property and was willing to perform his part contract, capital gains accrued to the assessee during the relevant year itself and not when a new agreement was entered in to after some years when disputes between the parties got resolved.

Taher Alimohammed Poonawala v Addl CIT(2009) 124 TTJ 387 (Pune); (2009) 26 DTR 403 (Pune) (Trib).

31) Capital gains- Reconstruction vis-a-vis –dissolution- 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 section 2 (47), attracting s 45 (4).



CIT vs Gurunath Talkis (2009) 26 DTR (Kar.) 314.

32) Capital or revenue expenditure- current repairs - s. 31(i) 37(I).

Replacement of machinery in a textile mill neither amounts to current repairs nor revenue expenditure as each separate machine is an independent entity and replacement brings into existence a new asset and an enduring benefit to the assessee and can not be claimed as deduction under section 37 (I).

CIT v Sri Mangayarkarsi Mills (P) Ltd. (2009) 315 ITR 114 (SC), (2009) 26 DTR 58 (SC), (2009) 224 CTR (SC) 513.

33) Cash credits- VDIS- sale of jewellery- s 68, 69.

Sale transaction of diamond jewellery declared under the VDIS, 1977, can not be assessed as undisclosed source, when the identity of the person to whom the sale was made and his creditworthiness and accounted for sale proceeds.

CIT v Uttamchand Jain (2009) 182 Taxman 243 (Bom) (2009) 26 DTR (Bom) 23: Editorial see third member case Uttamchand Jain .

34) Capital Gains-Land in rural area converted to non-agricultural land - s. 45 & s. 2(14) (iii)

The agricultural land in rural area was transferred whereas the non-agricultural permission was granted to the assessee after making the payments of conversion charges as per the receipt issued by Collector's Office of Treasury Department. The CIT (A) as well as the AO have wrongly presumed that the property was transferred as non-agricultural land and as on the date of transfer the property was agriculture land and it is not the case of the Revenue that it is not a rural land falling in the definition of capital assets and not as agricultural land as per the definition of s. 2(14) (iii) has defined specified urban areas and if the land does not fall in this specified urban areas that does not constitute capital asset. As the facts are very clear that the land does not fall in the specified urban area as held by the lower authorities, the sale of agricultural land does not attract any capital gain tax.

Ramjibhai P. Chaudhry v. Dy. Commissioner of Income-tax (2009) 26 DTR 310 (Ahd) (Trib)

35) Deduction –Industrial Undertaking- Insurance claim – s. 80 IA.

Amount received from insurance company for loss of goods is derived from the business of industrial undertaking and therefore same is includible in profits and gains for computing deduction under section 80 IA.

CIT v Sportking India Ltd (2009) 27 DTR 187 (Del).

36) Deduction – Housing Project- s 80 IB (10).

Assessee having constructed Wing 'E' after obtaining commencement certificate in 2002, and 2003, though similar certificates had been obtained prior 1998, in respect of A, B, C



and D wings. Wings 'E' was a separate housing project and same having been completed before 31st March 2005, the assessee was entitled to deduction under section 80 IB (10) in respect of E wing.

Vandana Properties v Asstt CIT (2009) 27 DTR (Mumbai) (Trib) 282.

37) Deductions- Industrial Undertakings-Conversion charges from third parties- sale of scrap- interest for delayed payment- S 80 IB.

Conversion charges received from third parties for undertaking contract, manufacturing by using its own machinery and other facilities is eligible deduction under section 80 –IB. Profit on sale of scrap and interest received on delayed payments also be regarded as directly related to industrial undertakings and eligible deduction under section 80 IB.

Asstt. CIT v Biotech Medicals (P) Ltd (2009) 119 ITD 143 (Hyd).

38) Deductions-Industrial Undertakings- Cold storage plant-s-80 IB (11).

Assessee running a cold storage plant for preservation of agricultural produce is entitled deduction under section 80 –IB (11).

ITO v Ambika Sheet Grah (P) Ltd (2009) 119 ITD 235 (Agra).

39) Deductions- Industrial Undertaking –splitting up or reconstruction sec. 80 IB (2) (i).

Assessee which was running a business in rented premises , had established a new undertaking at other place by taking a big premises on lease and buying a latest machinery for quality production. The A.O disallowed the claim on the ground that the undertaking has been formed by splitting up or reconstruction of a business already in existence. The tribunal held that when the assessee had acquired new plant and machinery which were more than 80 percent of total cost and also installed new electrical installations and other installations, it could not be said that industrial undertaking was formed by splitting up or reconstruction of a business already in existence.

Dy CIT v Shamrock (2009) 32 SOT 1 (Mum).

40) Deduction- Business of banking- interest income from investment in Kisan Vikas Patra(KVP), Indira Vikas Patra (IVP). s. 80 P (2) (a) (i).

Where the surplus funds not immediately required for day to day banking were kept in voluntary reserves and invested in KVP/IVP ,the interest income received from KVP/IVP would be income from banking business eligible for deduction under section 80 P (2) (a) (i).

CIT v Solapur Nagari Audyogic Sahakari Bank Ltd (2009) 26 DTR 67 (Bom).

41) Deduction – CO-Operative society- s 80P (2) (e), 81 (iv).



Assessee, a co operative society, carrying on composite business of dealing in non – controlled commodities as well as distribution of controlled commodities under the control of State Government having stored the controlled commodities in its godowns as part of its own trading stocks and earned a fixed commission on the principle of netting i.e. by setting off issue price against sale price, is not entitled to deduction under s 80P (2)(e) in respect of the commission received by it from the government for storage of controlled commodities.

Udaipur Sahkari Upbhokta Thok Bhandar Ltd v CIT (2009) 315 ITR 21 (SC); (2009) 224 CTR (SC) 538; (2009) 26 DTR (SC) 82.

42) Deduction – Professional income from foreign sources-Author- s 80 RR.

A professional author and freelance writer can claim deduction under section 80 RR. “Author” appearing in section 80 RR includes a co author or a collaborator also who has contributed intellectually to writing.

A. Kaleshwar v Asstt. CIT (2009) 119 ITD 303 (Hyd).

43) Depreciation – Block of assets- s 32 (i)(ii) , 43(6).

Depreciation is to be allowed on the balance in the block of assets as at the end of the year after reducing the “scrap value if any” in respect of the scrapped assets, though unsold.

Mindteck (India) Ltd v ITO (2009) 26 DTR 125 (Mumbai)(Trib).

44) Deduction of Tax at source - salary- s. 190(5). 192.

The employer is under no statutory obligation to collect ,the evidence to show that its employees have actually utilised the amounts paid towards leave travel concession/conveyance allowance for purpose of TDS under section 192.

CIT v Larson & Turbo Ltd (2009) 181 Taxman 71(SC).

45) Deduction of Tax at source - direct demand on assessee- s. 199, 205.

In view of section 205, assessee can not be denied the benefit of TDS on the sole ground that the tax so deducted has not been paid to the credit of the Central Government.

Ahluwallia & Associates v ITO (2009) 123 TTJ 972 (Ahd).

46) Depreciation-written down value – assets acquired under the scheme of demerger- u/s. 32 & 43(6).

In case of demerger, only the WDV (as per taxation) of the transferred assets of the demerged company shall constitute the WDV of the assets of the resulting company and not the book value ; omission of the words “ as appearing in books of accounts” in Expln. 2 B of s. 43(6) by the Finance Act,2003 w.e.f. 1st April, 2004 is retroactive.



Godrej Industries Ltd v. Asst Commissioner of Income Tax [(2009) 26 DTR 184 (Mumbai)(Trib)]

47) Deduction –Co-operative societies – s. 80 P. (2)(a) (i).

Surplus funds not immediately required for day to day business were kept by assessee in voluntary reserves and were invested in KVP/IVP, interest income received from KVP/IVP would be income from banking business eligible for deduction under section 80P(2)(a)(i).

CIT v Solapur Nagari Auyogic Sahakari Bank Ltd (2009) 182 Taxman 231 (Bom)

48) Exemption -Deduction – Export Oriented Unit- Management of electronic data- S 10B, read with s. 10BB.

Management of electronic data is entitled to deduction under section 10 B, read with section 10 BB.

Dy CIT v Tecnimont ICB (P) Ltd (2009) 119 ITD 151 (Mum)

49) Exemption- Splitting up or reconstruction of existing business – s 10A.

Shifting of existing business place from a domestic area to STPI does not amount to forming a business by spitting or reconstruction or by transfer of plant and machinery previously used so as to disqualify for relief under section 10A, by operation of cls. (ii) of sub –s (2) thereof.

SRA Systems Ltd v DY CIT (2009) 24 DTR 633 (Chennai) (Trib).

50) Exemption –Manufacture or Production- s 10BA.

Assessee having purchased raw material in the shape of pure wood or semi finished furniture and made various types of additions by making artistic designs, fitting of brass and iron items, inlay carvings etc, various govt departments also recognised the assessee as a manufacturer, the conditions laid down in section 10BA stand fully satisfied and therefore, assessee being engaged in the manufacture and production of eligible articles is entitled to exemption under section 10BA.

Goverdhan Prasad Singhal v ITO (2009) 27 ITR 1 (JP) (Trib).

51) Income – Accrual- Interest on Indira Vikas Patras - s 5.

Interest on Indira Vikas Patras is taxable on accrual basis and can not be assessed only on maturity.

DR. R.P. Patel v CIT (2009) 26 DTR 266 (Ker).

52) Income- Accounting-Accrual- Interest- s, 4, 145.

Income accrued not became due can not be taxed, though shown in profit and loss account. Where assessee had taken credit for interest accrued, but not became due and



sought exclusion of such interest from liability in computation of taxable income, the court upheld the computation of the assessee.

CIT v Fal Industries Ltd (2009) 314 ITR 47 (Mad).

CIT v Lucas Indian Services Ltd (2009) 315 ITR 273 (Mad).

53) Interest- Book profit- Deemed Income- s 115JAA, 234A, 234B, 234C.

Credit under section 115JAA, should be given effect to before charging of interest under sections 234A, 234B and 234C of the Act.

CIT v Chemplast Sanmar Ltd (2009) 314 ITR 231 (Mad).

54) Interest prior to commencement of business- s, 56

The nature of the funds which were invested in the bank may indicate that it has such nexus to the creation of depreciable assets, that may go to reduce the pre-operative expenses required to be capitalised on the date of commencement of business. Such interest can not be taxed but to be capitalised by setting it off against pre-operative expenses. [The court explained the ratio of Tuticorin Alkali Chemicals and Fertilizers Ltd V CIT (1997) 227 ITR 172 (SC), CIT v Bokaro Steel Ltd (1999) 236 ITR 315 (SC), and CIT v Autokast Ltd (2001) 248 ITR 110 (SC)]

Indian Oil Panipat Power Consortium Ltd v ITO (2009) 315 ITR 255 (Delhi).

55) Income- Mutuality - s. 4.

Transfer fees received by the assessee, whether from outgoing or from incoming members , was not liable to tax on the ground of mutuality subject to limitation prescribed by the Govt notification.

Sind Co-Operative Society v ITO (2009) 182 Taxman 346(Bom); (2009) 26 DTR 149 (Bom).

56) Income from undisclosed sources- receipt of on money- s 69A, 292C.

Amount allegedly paid by the purchasers to the managing partners of the assessee firm could be brought to tax in the hands of the firm, and whether the amount was assessable in Asst year 1993-94 or had to be spread over different years remanded to the AO for fresh consideration in accordance with law.

Fifth Avenue v CIT & Anr (2009) 26 DTR 17 (SC).

57) International Taxation- Double taxation Agreement between India and Germany- Reimbursement of expenses- Technical services- Permanent Establishment- s 90, art 5.12,

Reimbursement of expenses does not involve the element of income and therefore could not be taxed under Art. 12 of the DTAA between India and Germany. Amount received by assessee German company for inspection of compressor of ammonia tank belonging



to Indian Company constituted fee for technical services within the meaning of art 12 of the DTAA between India and Germany. For computing the period of six months for constituting PE within the meaning of art 5 (2) (i) of DTAA between India and Germany, various sites can not be considered together, in case of supervisory contract for commissioning of a project, it is not the date of commencement of the project itself but the date of commencement of supervisory contract which is relevant . Further, the period of six months has to be counted cumulatively irrespective of the fact that it falls in more than one financial year.

Joint Director of Income Tax (International Taxation) v Krupp UHDE GmbH. (2009) 26 DTR 289 (Mumbai) (Trib); (2009) 124 TTJ 219 (Mumbai).

58) International Taxation – Income from operation of ship- Double Taxation – India and Brazil- s 90, art .8.

Assessee Brazillian company engaged in International traffic , by ships is not eligible for exemption under art .8 of the Indo –Brazil tax treaty in respect of profits from transportation of goods from Indian port to Duban by feeder vessels not owned ,leased or chartered by assessee , however benefit will be available to assessee in case of further transportation from Brazil to destination in foreign country by ships owned ,leased or chartered by assessee or by members of consortium.

Dy Director of IT (International Taxation) vs CIE de Navegacao Norsul (2009) 124 TTJ 124 (Mumbai).

59) International Taxation- Transfer Pricing-Arm's length price- 92, 92CA (1).

The most appropriate method in most cases for arriving at the arm's length pricing under the transfer pricing is comparable uncontrolled price (CUP), method. Where the Assessing officer based his decision on the basis of trading results shown by a Government enterprise without showing any instance of transfer by the assessee to related concerns at lower price, comparison of trading results by themselves is not proper. The addition made under section 92 was therefore deleted.

Fabula Trading Co Pvt Ltd v ITO (2009) 314 ITR 272 (AT)(Mum).

60) Income from other source - Expenditure incurred for maintain the status as a society- S.57 (iii).

The claim of the assessee that the expenditure incurred for maintaining its status as a society being incurred for the purpose of allowable. Matter is remitted to the file of AO to determine the nature of expenditure incurred by the assessee and allow deduction accordingly.

Jai Hind Co-operative Housing Society Ltd. v. Income Tax Officer [2009 26 DTR 377 (Mum) (Tribunal)]

61) Jurisdiction - Transfer of Cases- Centralization of group cases for proper investigation – S.127



Transfer of petitioner's group cases from Delhi to Meerut for co-ordinated investigation following the searches made in group cases in Delhi and several parts of Uttar Pradesh under the CIT, Kanpur is neither malafide nor arbitrary as Meerut is in close proximity both of Delhi as well as Noida where the directors of Petitioner are residing.

ATS Infrastructure Ltd & ors. v . Commissioner of Income Tax [(2009) 26 DTR 71 (Del)]

62) Penalty Concealment-Satisfaction - constitutional validity- 271 (1) (c), 271 (1B)

S. 271 (1B) inserted by the Finance Act, 2008 with retrospective effect from 1st April, 1989 is not violative of Art 14; position of law both pre and post amendment is similar, in as much, the AO will have to arrive at a prima facie satisfaction during the course of proceedings with regard to the assessee having concealed particulars of income or furnished inaccurate particulars, before he initiates penalty proceedings.

Ms. Madushree Gupta v. Union of India. (2009) 26 DTR 217 (Del)

63) Penalty – Concealment- Loss - s. 271 (1) (C).

Penalty is leviable even when the returned and assessed income is loss - Matter remanded to tribunal to decide on merit.

CIT v Moser Baer India Ltd (2009) 315 ITR 460 (SC).

64) Reassessment- Validity of notice- s 148.

Notice under section 148 issued by an officer other than one who had recorded the reasons is illegal hence bad in law.

Asstt CIT v Rajendra Kumar Agarwal & Ors (AOP).(2009) 26 DTR 219 (Agra)(Trib).

65) Recovery- Attachment- Securitisation Act. S 281B.

Section 281B of the income Tax Act, read with Rule 16 of Schedule II there to has overriding effect, on sub-(2) of section 13 of the Securitisation Act. Assessee having created equitable mortgage with the bank while the property was already under attachment with the IT department and an order of attachment had been passed by invoking the provisions of rule 48 of Sch II, notice under section 13 (2) of the Securitisation Act has no overriding effect and there is no illegality in the impugned notice issued by TRO to the bank demanding the sale proceeds of the property over which the department holds charge.

UCO Bank Regional Office v UOI (2009) 27 DTR 195 (Guj).

66) Reassessment- Change of opinion- with in four Years- s, 143 (3), 147 & 148.



Where the assessee has disclosed material facts, merely from the perusal of the records available the AO is not empowered to reopen the assessment completed under section 143(3), though within four years as this amounts to mere change of opinion.

Glaxosmithkline Pharmaceuticals Ltd v ITO (2009) 27 DTR 124 (Mumbai) (Trib).

67) Rectification – intimation- s, 143 (1) (a), 154.

Intimation issued under section 143 (1) (a) can not be rectified under section 154 after issue of notice under section 143 (2).

CIT v Nicco Corporation (2009) 24 DTR 271 (Cal).

68) Return- Not signed by managing director- not invalid- s, 139, 139 (9) 140, 292B.

Return signed by the company secretary would amount to irregularity, but such return would be treated as defective, and such defect can be cured by virtue of section 139 (9). Such return can not be held as invalid, though the section 140 mandates that return of income has to be signed by managing director and where managing director is not available by any director thereof.

Prime Securities Ltd v Varinder Mehata Asstt CIT. (2009) 182 Taxman 221 (Bom).

69) Revision – Merger- s 263.

Once the issue of allowability of exemption under section 10A, stood decided by CIT (A), CIT exceeded his jurisdiction in revising the said order on the ground that there was violation of cls. (ii) of sub –s (2) of that section.

SRA Systems Ltd v DY CIT (2009) 24 DTR 633 (Chennai) (Trib).

70) Settlement of Cases-Full and True disclosure- s, 245C, 245D, & 245H.

There being piecemeal, disclosures and additional offers made by the assessee, there was no full and true disclosure of income, however. Confidential information having been available to Revenue because of admission of application, it would not be proper to set aside the order accepting application, matter remanded to Commission for hearing parties and to pass fresh orders as per law.

CIT v Income Tax Settlement Commission (2009) 27 DTR 1 (Bom).

71) Speculation business- Share broker- s 73.

Loss suffered by the assessee in the trading of shares is speculation loss and can not be set off against non – speculative income i.e., brokerage income of the assessee.

Priyasha Meven Finance Ltd v ITO (2009) 119 ITD 163 (Mum).



72) Search and Seizure – Power of the Tribunal to examine validity of search- u/s. 132(1) & u/s. 254.

The tribunal exercise its jurisdiction u/s. 254 in respect of appeal arising from the block assessment proceedings. Therefore what is not decided/ cannot be decided by the AO cannot be the subject matter of the appeal before the Tribunal. The jurisdiction of the AO under Chp. XIV-B arises from the provisions of s. 158BA. The AO can proceed to assess the undisclosed income if search is initiated and completed u/s. 132. Once it is found that the search u/s. 132 was conducted at the premises of the assessee, he is bound to process and assess the undisclosed income. It is a settled legal position that the powers of the tribunal are limited to the subject matter arising from the assessment proceedings. Consequently, tribunal cannot look into validation of search initiated u/s. 132 (1).

Asst CIT v. Chilka Vyankatesh Sidhram & ors. [(2009) 26 DTR 207 (Pune) (Trib)]

73) Tax Deduction at source- Credit for TDS- s 199 , 205.

In view of section 205, assessee can not be denied the benefit of TDS on the sole ground that tax deducted has not been paid to the credit of the Central Government.

Ahlwallia & Associates v ITO (2009) 26 DTR 109 (Ahd) (Trib).

74) Transfer Pricing- Computation of arm's length price -s 92C.

75) Tax avoidance- transaction in securities - s 94 (7) (b).

In view of express elucidation in the Finance (no 2) Act, 2004, itself that the amendment to section 94(7) (b) is applicable w.e.f. 1st April, 2005, the same applied to asst year 2005-06, notwithstanding the fact that Finance (no 2) Act, 2004, received the assent of the President on 10th Sept., 2004, i.e. after the end of first six months of the financial year 2004-05.

Suri Sons v Addl CIT (2009) 27 DTR 306 (Asr)(Trib).

76) Writ – Alternative remedy - Tribunal – s 254 (1), 260A, Art 226.

If final order under section 254 (1), is recalled and the matter is reheard a fresh, it can not be said to be an order under section 254(1), appealable under section 260A, and ,therefore , writ petition can not be dismissed on the ground that the petitioners have an alternative remedy of appeal under section 260A. If the order is without jurisdiction, it can certainly be assailed under writ jurisdiction of the High Court.

Apex Metchem (P) Ltd v Income Tax Appellate Tribunal (2009) 26 DTR (Raj) 1.