



DIGEST OF CASE LAWS (FEB, 2009) (VOL 1. PART 5.)

(KSA LEGAL: AJAY R. SINGH, PARAS S. SAVLA, RAHUL HAKANI AND SUJEET KARKALA ADVOCATES)

JOURNAL REFERRED

Direct Taxes Reporter Vol. 17 & Vol. 18 Part 3 / ITR 307 & 308 Part 3 / 120 TTJ Part IV / 175 TAXMAN Part 5 / 221 CTR Part V / SOT Vol. 27 Part 5 / ITD 116 Part 4

SUPREME COURT

C.

CAPITAL GAINS – COMPENSATION RECEIVED – NOT LIABLE TO TAX – LAW BEFORE APRIL 1, 2000 - S. 41(2), 45, 48, 50 , 55(2)(1)

The banking undertaking, inter alias, included intangible assets like goodwill, tenancy rights, man power and value of banking license. It was not possible to earmark the compensation received by the assessee item wise, therefore, it was not possible to compute the capital gains and the sum of Rs 10.20 crores was not taxable under section 45 of the Act, This was a case where the computation provisions could not apply.

PNB Finance Ltd. vs. CIT (2008) 307 ITR 75 (SC)

I.

Income – Accrual - S. 4

Resolution passed on last day of previous year forgoing interest, will not wipe out interest accrued during the year.

CIT vs. Sarabhai Holdings P. Ltd. (2008) 307 ITR 89 (SC)

P.

PENALTY – CONCEALMENT - SATISFACTION RECORDED BY ASSESSING OFFICER FOR INITIATION OF PENALTY PROCEEDINGS – S. 271(1)(c)

Department's special leave against Delhi High Court in Tax Appeal No. 807 of 2007



dt. 17-9-2007 where by the High Court dismissed the Department's appeal holding that the satisfaction had not been recorded. In the assessment order for initiation of penalty proceedings.

CIT vs. Mayur AIR Products (P) Ltd. SLP. No. 17635 of 2008 dt. 14-7-2008 (2008) 307 ITR (St.) 1 (SC)

Department's special leave petition against the judgment dt. 17-9-2007 of Delhi High Court in ITA NO 1596 of 2006, where by the High Court deleted the penalty imposed by the Assessing Officer under section 271(1)(c) of the Income-tax Act on the ground that no satisfaction was recorded by the assessing officer in the assessment order.

CIT vs. Surender Kumar Soni C.C. No. 13514 of 2008 dt. 3-10-2008 (2008) 307 ITR (St) 1 (SC)

PENALTY CONCEALMENT - INCOME ASSESSED ON ESTIMATE BASIS - S. 271(1)(c)

Apex Court dismissed the special leave petition of the department against the order of Punjab and Haryana High Court in ITA NO 470 of 2007 (2008) 303 ITR 53, where by the High Court dismissed the from the order of Tribunal canceling the penalty following 254 ITR 191 and 158 ITR 85 in which the Court had held that provisions of section 271(1)(c) are not attracted when the income of the assessee is assessed on estimate basis and additions are made thereon.

CIT vs. Sangrur Vanaspati Mills Ltd. SLP No. 31541 of 2008 dt. 19-12-2008 (2009) 308 ITR (St.) 18 (SC)

S.

SEARCH AND SEIZURE - BLOCK ASSESSMENT - SURCHARGE - S. 113

In view of the fact that the proviso was introduced by the Finance Act, 2002, w.e.f. 1st June 2002, with prospective effect, and having regard to the principles of law that taxing statute should be contrues strictly and ordinarily should not be held to have any retrospective effect, the question as to whether the said proviso is clarificatory and / or curative in nature and retrospective is referred to be



considered by a larger Bench. Case referred CIT vs. Suresh N. Gupta (2008) 214 CTR 274 (SC) / (2008) 297 ITR 322 (SC).

CIT vs. Vatika Township (P) Ltd. (2009) 17 DTR 353 (SC) / (2009) 221 CTR 409 (SC) / www.itatonline.org

HIGH COURTS

A.

APPELLATE TRIBUNAL – POWERS - NEW GROUND BY THE REVENUE – S. 254(1)

A new ground may be allowed to be raised only when it arises from the facts, which are on record. The revenue sought to raise additional ground before the Tribunal, which required the Tribunal to restore to the file of the Assessing Officer or the Commissioner (Appeals) the point regarding assessability of certain amount of interest. The Tribunal rejected the revenues, application on the ground that issue of taxability of the interest was not part of the subject matter of the assessment order or of the order of first appellate authority for the assessment under appeal. The High Court held that the revenue was seeking new source of income which was not there in assessment proceedings hence the Tribunal was correct in not permitting revenue to raise additional ground.

Dalmia Dairy Industries Ltd vs. CIT (2009) 176 Taxman 169 (Delhi)

APPEAL TO TRIBUNAL – CROSS OBJECTION – S. 253(4)

Memorandum of cross objection to be considered as an appeal and has to be disposed, it cannot be held to be anfractuous and has become academic.

Tata Sponge Iron Ltd. vs. CIT (2008) 307 ITR 441 (Orissa)

APPEAL – CIT (A) – REVISION – ASSESSMENT – S. 143(1)(a), 246(1)(a), 264. ARTICLE 265 OF THE CONSTITUTION OF INDIA.

As per explanation to section 143(1), which was on the statute up to 1st June, 1999 on intimation sent to the assessee under sub-sec. (1) or sub-sec. (1B) of 143 was deemed to be an order for the purposes of section 246 and 264, and therefore, appeal against intimation relating to asst year 1995-96 was maintainable.



Article 265 of the Constitution of India in unmistakable terms provides that no tax shall be levied or collected except by authority of law. Acquiescence cannot take away from a party the relief that he is entitled to where the tax is levied or collected without authority of law. In the case on hand, it was obligatory on the part of the AO to apply his mind to the facts disclosed in the return and assess the assessee keeping in mind the law holding the field.

Balmukund Achrya vs. Dy. CIT (2009) 17 DTR 34 (Bom.) / www.itatonline.org

ASSESSMENT - INTIMATION – S. 143(1)(a), 143(2)

Intimation under section 143(1)(a) cannot be issued after notice was given under section 143(2) of the Income-tax Act.

Tata Sponge Iron Ltd. vs. CIT (2008) 307 ITR 441 (Orissa)

B.

**BUSINESS EXPENDITURE - SALES TAX DEFERRED SCHEME –
DISALLOWANCE – S. 43**

Amount of sales tax deferred under the State Government's Deferred Scheme cannot be disallowed under section 43B.

CIT vs. Jyoti Jain (2009) 17 DTR 286 (Raj.)

C.

COMPANY - DIRECTORS LIABILITY – S. 179

Revenue having not established that a director or directors were responsible for the conduct of the company and taken no effective steps to effect recovery of outstanding dues from the company, impugned order made under section 179 in the case of the three petitioners directors is quashed and set aside.

Amit Suresh Bhatnagar vs. ITO (2009) 221 CTR 70 (Guj.)

D.

**DEDUCTION - NEW INDUSTRIAL UNDERTAKINGS - AUDIT REPORT – S.
80IA**



Failure to furnish the audit report along with return disqualified the assessee for deduction under section 80IA. Deduction cannot be claimed on the ground that report cannot be claimed on the ground that report was filed during the course of assessment.

CIT vs. Jyoti Jain (2009) 17 DTR 286 (Raj.)

E.

EXEMPTION – INTEREST EARNED – ELIGIBLE – S. 10B

Interest income received by the assessee from its sister concern will be eligible for exemption under section 10B. Profit and gains of business or profession and income from other sources are different species of income. Section 2(24) of the Income-tax Act does not categories separately profits and gains of business or profession. The expression “profits and gains” as used in section 2(24) is wider and is not confined to “profits and gains of business or profession”. Section 10B provides for exemption with respect to any “profits and gains” derived by the assessee, and is not confined to “profits and gains of business or profession”.

CIT vs. Hycon India Ltd. (2009) 308 ITR 251 (Raj.)

I.

INCOME – CASH CREDIT - GIFT – NRI - INCOME FROM UNDISCLOSED SOURCES – S. 68 & 69

There is no reason to doubt the genuineness of the gift by K to the assessee. The assessee was able to establish the nature and source of money, just because the letter addressed by the A.O. having been returned unserved, additions cannot be made.

Kanchan Singh vs. CIT (2009) 17 DTR 389 (All) / (2009) 221 CTR 456 (All)

Editorial Note:- Judgment of Supreme Court in *CIT vs. P. Mohankala (2007) 291 ITR 278 (SC)*, considered.

INCOME – GIFT RECEIVED BY POLITICIANS - S. 4

It was found that the money received by the agent was spent on the expenditure of



jeeps required for the election campaign of the assessee. The Court held that every receipt is not taxable as income. It may be receipt, but not necessarily "income". Hence, the order of Tribunal was confirmed.

CIT vs. Rajesh Pilot (2008) 175 Taxman 8 (Delhi)

INCOME FROM HOUSE PROPERTY - ARREARS OF RENT-INCOME FROM OTHER SOURCES – S. 22, 56

Arrears of rent on account of retrospective enhancement, in Hamilton's case it was laid down that retrospective increase of rent shall be the annual rent of the said past year or years but can not be said to be the annual rent of the year in which the said amount was received and can not be brought under income from other sources. On the other hand in Hope (India) case it was laid down that a mere claim for enhanced rent cannot amount to income receivable within the meaning of section 5, hence, there is no conflict between the decisions in hope (India) Ltd. vs. CIT (1999) 238 ITR 740 (Cal.) and Hamilton & Co. (P) Ltd. vs. CIT (1992) 194 ITR 391 (Cal.)

P.G.& Sawoo (P) Ltd. & Anr. vs. ACIT (2008) 16 DTR 401 (Cal.) (FB) / (2009) 221 CTR 36 (Cal) (FB)

INCOME DEEMED TO ACCRUE OR ARISE IN INDIA – S. 9(1), (9)(1)(vii), 90

Assessee, UK firm having fulfilled the condition of presence in India for 90 days or more as provided in Art. 15 of DTAA between India and UK, fee received by it for legal services rendered to its clients in India is chargeable to tax under section 9(1)(vii) only to the extent referable to services rendered in India to the exclusion of services rendered from abroad.

Clifford Chance vs. Dy. CIT (2009) 17 DTR 1 (Bom.) / (2009) 176 Taxman 458 (Bom.) / www.itatonline.org

P.

PENALTY – CONCEALMENT - REVISED RETURN - S. 271(1)(c)

On the basis of information received the A.O. issued notice under section 148, the



assessee filed the revised return surrendering the capital gains as income to buy peace and avoid litigation. Return was accepted. The Court held that levy of penalty under section 271(1)(c) of the act was not valid.

CIT vs. Rajiv Garg (2008) 175 Taxman 184 (P & H)

PENALTY – CONCEALMENT – SATISFACTION – S. 271(1)(c)

Power to impose penalty under section 271(c) depends upon satisfaction of Assessing Officer in course of assessment proceedings and it cannot be exercised if he is not satisfied in Clause (a), (b) and (c) of sub section – (1) of section 271 before proceedings concluded. Such a satisfaction must be spelt out from order of Assessing Officer as to concealment of income or deliberately furnishing of inaccurate particulars and in absence of a clear finding as to concealment of income or deliberately furnishing of inaccurate particulars, initiation of penalty proceeding under section 271(1)(c) would be without jurisdiction.

CIT vs. Rampur Engg. Co. Ltd. (2009) 176 TAXMAN 211 (Delhi) (FB) / (2009) 221 CTR 32 (Del) (FB)

Editorial:– See *CIT vs. Indus Valley Promoters Ltd. (2008) 307 ITR 142 (Delhi)*

R.

REASSESSMENT – VALIDITY – S. 143(2), 147, 148

Period for issue of notice under section 143(2), not expired, reassessment held to be invalid.

CIT vs. Qatalys Software Technologies Ltd. (2009) 308 ITR 249 (Mad.)

REASSESSMENT - RECORDING REASONS - ISSUING NOTICE – S. 147, 148

Assessing officer recording reasons for assessment and assessing officer issuing notice under section 148 must be the same person. Successor assessing officer cannot issue notice under section 148 on the basis of reasons recorded by predecessor assessing officer. Notice issued invalid and deserves to be quashed.

Hyoup Food and Oil Industries Ltd. vs. ACIT (2008) 307 ITR 115 (Guj.)



REVISED RETURN - CLAIM IN ASSESSMENT PROCEEDINGS - S. 139(5), 80-IB

Assessee having duly furnished the documents and submitted form no 10CCB during assessment proceedings, claiming deduction under section 80IB which was not claimed in the return, deduction is admissible even in the absence of a revised return.

CIT vs. Ramco International (2009) 17 DTR 214 (P& H)

Editorial note:- Gietage (India) Ltd. vs. CIT (2006) 284 ITR 323 (SC)

S.

SEARCH AND SEIZURE - BLOCK ASSESSMENT - SURCHARGE - RECTIFICATION - S. 113, 154

When Tribunal has passed the order, question about retrospective applicability of amendment made to Section 113, was debatable hence, impugned order of Tribunal did not require any interference. The revenue relied on the judgment of Supreme Court in CIT vs. Suresh N. Gupta (2008) 297 ITR 322 (SC).

CIT vs. Kirti Kumar Shah (2008) 176 Taxman 29 (Raj.)

SEARCH AND SEIZURE - BLOCK ASSESSMENT - SURCHARGE - RECTIFICATION - RETROSPECTIVE OPERATION OF LAW - S. 154

Levy of surcharge debatable when assessing officer passed the order. Rectification is not permissible. After referring Supreme Court Suresh N Gupta (2008) 297 ITR 322.

CIT vs. M. S. Agrawal (2009) 308 ITR 69 (Delhi)

SEARCH AND SEIZURE - BLOCK ASSESSMENT - LIMITATION - S. 132, 158BE

Search of office assessee's office and business premises conducted on 12th Dec., 1995 same concluded on that very day. Cash seized prohibitory order passed and panchanama drawn was the last Panchanama evidencing conclusion of search for purposes of limitation under section 158BE and not Panchnamas drawn on further



searches conducted on 19th Jan., 1996 / 7th Feb., 1996 on which dates no seizure took place.

CIT vs. T.S. Chandrashekar Through LRs (2009) 17 DTR 194 (Kar.)

SURVEY – CHARTERED ACCOUNTANT’S OFFICE – S. 133

Survey on Chartered Accountant’s office held to be illegal and ordered return of impugned documents to the chartered accountants within two weeks.

U. K. Mahapatra and Co. vs. ITO (2009) 308 ITR 133 (Orissa) / (2009) 221 CTR 328 (Orissa)

T.

TRANSFER PRICING - OPPORTUNITY OF HEARING - S. 92, 92CA, 92C

Provisions of sub-section (3) of section 92CA cast an obligation on TPO to afford a personal hearing to assessee before he proceeds to pass an order of determining of ALP in terms of said section whether assessee demands or not. TPO must refer the documents or materials available with the assessing officer in relation to international transaction in issue.

Moser Baer India Ltd vs. Addl. CIT (2009) 176 Taxman 473 (Delhi)

TRIBUNAL

A.

ASSESSMENT – LIMITATION – S. 153(2A) & 153(3)(ii)

Tribunal having merely upheld the order of CIT (A) for Asst years 1989-90 to 1991-92, consequential order passed by A.O. on 10th March, 2004 for Asst. Year 1989-90, which was partially set aside by CIT (A) on receipt of the order of the Tribunal is anfractuous and honest in the eyes of law and there is no question of applicability of section 153(2A) or 153(3)(ii). CIT (A) having fully set aside the assessment orders for Asst. Years 1990-91 and 1991-92 vide order dt. 10th October 1996, the A.O. had to pass the fresh assessment orders within time limit prescribed under section 153(2A) and therefore, orders of fresh assessment passed by the A.O. on 12th March, 2004 were barred by limitation.



Raghava Health Care Ltd. vs. Dy. CIT (2009) 120 TTJ 124 (Visakha)

B.

BAD DEBTS - SHARE BROKER – S. 36(2)

In the case of share broker the loss is allowable as bad debts, though only brokerage has been credited to profit & loss account.

Canon Capital & Finance Ltd. vs. ACIT ITA No. 1119/Ahd/2005 Asst. Year 2001-_____ Bench 'D' dt. 7-11-2008. Ahmedabad Chartered Accountant Association December P 583.

Editorial Note:– Matter is referred to Special Bench at Mumbai.

BUSINESS EXPENDITURE - CAPITAL OR REVENUE - DEVELOPMENT OF WEBSITE – S. 37(1)

Expenses incurred for development of website to promote various business activities of assessee and for display of its information, products were allowable as revenue expenditure.

Polyplex Corpn. Ltd. vs. ITO (2009) 176 Taxmann (Magz.) 56 (Delhi)

Editorial Note:– Refer CIT vs. Indian Visit Com (P) Ltd (2008) 13 DTR 258 (Del.)

BUSINESS EXPENDITURE – PENALTY – S. 37(1)

Penalty paid by assessee a share broker, for excess utilization limits comparable to it for doing trade of its clients at a particular time was allowable under section 37(1) of the Income-tax Act.

ITO vs. VRM Share Broking (P) Ltd. (2009) 27 SOT 469 (Mum.)

BUSINESS EXPENDITURE - KEYMAN INSURANCE – S. 37(1)

Premium paid by firm in respect of insurance policy of partners under Keyman Insurance Policy is an allowable deduction under section 37(1).

ITO vs. Modi Motors (2009) 27 SOT 476 (Mum.)

BUSINESS INCOME – VIS-À-VIS CAPITAL GAINS – INVESTMENT IN SHARES



- S. 28(1), 36(1)(iii), 45

Assessee's business being investment in shares and interest on capital borrowed for purposes of said investment having been claimed and allowed as deduction under section 36(1)(iii) assessee cannot at the same time, be allowed to return said profits as capital gains by taking benefit of indexation and the said profits have to be assessed as business income.

Peninsular Investments Ltd. vs. Dy. CIT (2009) 120 TTJ 96 (Hyd.)

Editorial Note:- _____ M. Shah Brokers _____

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

Assessee dealing in shares both as business as well as investment and inter alias, keeping separate accounts in respect of the two portfolios, profits from sale of shares in investment portfolio after holding them for two to four years were taxable as capital gains and not as business income.

Saranath Infrastructure (P) Ltd. vs. ACIT (2009) 120 TTJ 216 (Luck.)

BUSINESS LOSS - DEDUCTION – S. 28(1)

Where assessee executed a security transactions, in violation of provisions of section 15 of Security Contracts (Regulation) Act, 1956 and loss generated out of said transaction were undisputedly, borne out of books of assessee, such a loss would be allowable loss.

Bank of America vs. Dy. CIT (2009) 27 SOT 97 (Mum.)

C.

CAPITAL GAIN - INVESTMENT IN RESIDENTIAL HOUSE - BORROWED FUNDS – S. 54F

In case assessee constructs or purchases a residential house out of borrowed funds, he is not eligible for deduction under section 54F.

Milan Sharad Ruparel vs. ACIT (2009) 27 SOT 61 (Mum.)



CAPITAL GAIN - FAMILY ARRANGEMENT – TRANSFER – S. 45

Surrender of shares of a company by the assessee, as a daughter of her paternal family in terms of an arbitration award to settle the disputes between two family groups was transfer in the course of family arrangement and did not result in any capital gain.

Mrs. P. Sheela vs. ITO (2009) 17 DTR 415 (Bang.) (Trib.) / (2009) 308 ITR (AT) 350 (Bang.)

Editorial Note:- See the judgment of Apex Court in _____

CAPITAL GAINS - INVESTMENT IN CONSTRUCTION OF HOUSE – S. 54F

Assessee having invested long term capital gains with a company for purchase of a residential house under construction after canceling the earlier deal for purchase of a row house, the same was for construction of a house and not for purchase, hence, allocable limit for investment was three years and not two years.

Mukesh G. Desai (HUF) vs. ITO (2009) 18 DTR 71 (Mum.)(Trib.)

CAPITAL GAINS – COST OF ACQUISITION – INTEREST ON BORROWED MONEY – S. 14A, 48

Interest on funds borrowed for acquisition of shares is to be taken into account towards the cost of acquisition for the purpose of computation of capital gains as prescribed under section 48(11).

Capital gain on sale of shares being part of the total income of the assessee and not an exempted income, section 14A has no application.

S. Balan Alias Shanumugam Balkrishnan Chettiar vs. Dy. CIT (2009) 120 TTJ 397 (Pune)

D.

DEPRECIATION – LEASE OF ASSETS – S. 32

Assets purchased and leased back to same person. Assessee entitled to depreciation.

ICICI Ltd. vs. Jt. CIT (2008) 307 ITR (AT) 262 (Mum.)



DEPRECIATION - EARTH MOVING MACHINERY - S. 32

Though JCB has been categorized as an excavator and its main function is removing soil or earth, yet at the same time, JCB's another function is to carry or transport removed soil and dump it at another site to discharge function like transshipment and loading into another vehicle and therefore, for the purpose of depreciation, JCB can be treated as a motor lorry and it would be eligible for higher depreciation at 40 percent.

Gaylord Constructions vs. ITO (2008) 175 Taxman (Magz.) 99 (Cochin)

E.

ESTOPPEL - ADMISSION BY ASSESSEE'S COUNSEL - S. 250

Department can not invoke the principle of estoppels by acting on the request made by the assessee's counsel to postpone the assessment proceedings for giving effect to CIT (A)'s order till the receipt of order of the Tribunal. Assessing Officer should have acted accordance with law.

Rahghava Health Care Ltd. vs. Dy. CIT (2009) 120 TTJ 124 (Visakha)

EXPORT – PROFIT OF THE BUSINESS – DEPB – S. 80HHC

If an assessee sells the DEPB credit in the open market, then the entire sale proceed becomes profit since no specific expenditure is incurred in obtaining such credit and 90% of the sale value is to be excluded in computing the profits of the business as per cl. (baaa) of explanation to section 80HHC.

Assessee was entitled to deduction with reference to profit on sale of DEPB entitlement only and not with reference to all the three export incentives received by the assessee i.e. (1) profit on sale of DEPB entitlements (2) duty draw back and (3) NOE quota transfer fee.

Yasmeen Silk Corporation vs. ITO (2008) 16 DTR 507 (Mum.) (Trib.)

Editorial note:- On the issue of taxability of DEPB matter is pending before special bench in M/s. Tanmay Exports & Kalpatara Colours & Chemicals



EXPORT - COMPUTATION - DEPB – S. 28(iiid), (iiie) 80 HHC(3)

What treatment should be given to DEPB license benefits / receipts by the assessee while computing deductions under section 80HHC(3) of the Income -tax Act. Matters were set aside to the assessing officer.

Dy. CIT vs. Zaveri and Co. Exports (2008) 307 ITR (AT) 1 (Ahd.) (SB)

I.

INCOME - CASH CREDIT - GIFT FROM NRI – S. 68

Assessee having produced an affidavit from the Donor copy of NRI account in the name of Donor, certificate affirming gross salary of the donor and the copy of the official cheque in the name of the assessee from his brother, an NRI has to be treated as genuine in the absence of any contrary evidence to refute the same.

Dy. CIT vs. Vijay Prakash (HUF) (2009) 120 TTJ 429 (Asr.)

Editorial Note:- After considering the judgment of Apex Court in P. Mohankala & Ors. (2007) 291 ITR 278 (SC)

INDUSTRIAL UNDER TAKING - DEDUCTION – INTEREST ON FIXED DEPOSITS - S. 80IB

Interest derived by the assessee on fixed deposits kept as margin money with the bank could only held as business income and the assessee would be entitled to the inclusion of the same for the purpose of computing the deduction under section 80IB.

Dy. CIT vs. Sudhir Genset Ltd. (2009) 17 DTR 496 (Del.) (Trib.)

INTEREST- S. 234B

Assessee's entire income being subject to TDS, it was not liable to pay advance tax and hence, no interest under section 234B could be charged.

Asstt. Director of Income-tax (International Taxation) vs. Chiron Behring GmbH. & Co. (2009) 17 DTR 131 (Mum.) (Trib.)

INTEREST TAX – FINANCE LEASE – S. 2(5B) & 2(7)



Transactions of assessee having already been held to be transactions in the nature of finance / loan transactions and such finding having attained finality. Interest earned by assessee from lease transactions is chargeable to interest tax.

Maruti Countrywide Auto Financial Services Ltd vs. ITO (2009) 18 DTR 23 (Del.)(SB)(Trib.)

N.

NOTICE – ASSESSMENT – S. 143(2), 292BB

Section 292BB inserted by the Finance Act, 2008, w.e.f. 1st April, 2008 has no retrospective operation and applies to and from Asst year 2008-09 only, therefore, assessee could challenge the validity of block assessment in appellate proceedings on the ground of non issuance of notice under section 143(2) for the block period 1st April 1988 to 25th Jan., 1999.

Kuber Tobacco Products (P) Ltd. vs. Dy. CIT (2009) 18 DTR 1 (Del.) (SB) (Trib.) /
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NOTICE - ASSESSMENT – S. 143(2), 292BB

Section 292BB makes no reference to any date before or after which the notice should have been issued or served to attract the applicability of that section and therefore, legal fiction created by section 292BB would govern all cases irrespective of whether the notices were issued / served or after 1st April 2008, and whether the assessee has participated in any proceedings or co-operated in any preceding or succeeding assessment year.

ITO vs. Varia Pratik Engineering (2009) 17 DTR 1 (Ahd.) (Trib.) / (2009) 120 TTJ 1 (Ahd.)

Editorial Note:- Special Bench Delhi has taken contrary view. *Kuber Tobacco Products (P) Ltd.* www.itatonline.org

R.

REVISION – MANUFACTURE OR PRODUCE - REPAIR OF TRANSFORMERS WITH ADDITION OF PARTS – S. 80IA, 263



Assessee engaged in repair of burn transformers by using only the cabinet and lamination of burnt transformers and replacing various parts by parts manufactured by it, which were independently saleable in the market, granted exemption from payment of excise duty on such manufactured parts, was rightly granted deduction under section 80IA(2)(iv)(c) by the A.O. and the view of AO being a possible view, CIT was not justified in holding that the same was erroneous and prejudicial to interests of revenue and revision order was not justified.

Pal & Pal Electromechanical (P) Ltd. vs. CIT (2009) 17 DTR 424 (Agra) (TM) (Trib.)

S.

SEARCH AND SEIZURE - BLOCK ASSESSMENT - S. 158BD

Proceedings under section 158BD initiated after 19 months of completion of proceedings under section 158BC, cannot be sustained. There being no reference of any seized material relatable to assessee in the note for initiating proceedings under section 158BD, such proceedings were invalid.

Bharat Bhusan Jain vs. ACIT (2009) 17 DTR 498 (Del.) (Trib.)

SEARCH AND SEIZURE – SATISFACTION – S. 158BD

Provision of section 158BD does not indicate that satisfaction should be of same person occupying office and who has initiated proceedings under section 158BC against person searched, rather it has to be Assessing Officer having jurisdiction over person searched who has to record satisfaction that undisclosed income pertains to a third person who is not subjected to search and books of account and other documents have to be handed over to the Assessing Officer having jurisdiction over that person.

In view of provision of section 147, which are held to be similar to provisions of section 158BD, initiation of proceedings under section 158BD beyond period of six years cannot be regarded as valid.

Saroj Nursing Home vs. ACIT (2009) 116 ITD 311 (Luck.)

SPECULATION – LOSS - SHARE BROKER – S. 73



Where assessee a share broker, had incurred loss on trading transactions of shares entered into on its own Account, and said loss was to be treated as speculation loss as assessee would be deemed to be carrying on speculative business to extent of business of purchase and sale of shares of other companies with in meaning of Explanation to section 73.

B. L. K. Securities (P) Ltd. vs. ITO (2009) 27 SOT 142 (Delhi)

T.

TAX DEDUCTION AT SOURCE – DEEMED DIVIDEND – S. 2(22)(e), 194, 201 & 201(1A)

Payment or advances to non–shareholder does not require TDS under section 194 and assessee cannot be held to be in default under section 201 so as to attract interest under section 201(1A).

ANZ Reality (P) Ltd. vs. ITO (2009) 120 TTJ 142 (JP)

W.

WEALTH TAX.

ASSET - BUILDING – STOCK-IN-TRADE - S. 2(ea)(1)

Building constructed by assessee, a builder and given on rent to a party pending registration and clearance of agreement for sale of the property to the same party constituted stock in trade of the assessee and therefore, it cannot be included in assets as defined in section 2 (ea).

Dy. CWT vs. Brilliant Estate Ltd. (2009) 17 DTR 406 (Ind.)(Trib.)

Articles for Reference.

1. Rule 8D read with section 14A is unjust, arbitrary and ultra vires (2008) 307 ITR (Journal) 1 by Mr. S. K. Tyagi.
2. Penalty under section 271(1)(c) and the decision in Dharmendra Textile Processors (2009) 221 CTR (Articles) 66 by Mr. P. V. R. Prabhakar.