



Digest of CASE LAWS (JAN, 2009) (Vol 1. Part 4.) KSA LEGAL.
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SUPREME COURT

A.

APPEAL – S. 261

Revenue having not filed any appeal in other assessment years. It is precluded from filing appeals in the relevant assessment years involving identical fact situation.

CIT vs. J. K. Charitable Trust (2008) 15 DTR 41 (SC)

M.

MANUFACTURE OR PRODUCTION - INVESTMENT DEPOSIT ACCOUNT – S. 32AB, 80HH, 80 I

Conversion of jumbo rolls of photographic films in to small flats and rolls in desired size amounts to manufacture or production eligible for deduction under section 32AB.

India Cine Agencies vs. CIT (2008) 15 DTR 121 (SC) / (2008) 220 CTR 223 (SC)

MANUFACTURE - SHIP BREAKING ACTIVITY – S. 80 HH, 80I

Ship breaking activity results in production of distinct and different article and therefore, assessee doing said activity would be entitled to deduction under section 80HH and 80I.

Vijay Ship Breaking Corp vs. CIT (2008) 175 Taxman 77 (SC)

P.

PURCHASE OF IMMOVABLE PROPERTY - S. 269UD

Bombay High Court in *Mrs. Amarjit Thapar and others vs. S. K. Laul and others* (2008) 298 ITR 336 (Bom), has held that for purchase of immovable property by Central Government the conditions precedent is that notice must give details which lead to interference of undervaluation. As there was no finding of undervaluation for evasion of tax, order of pre-emptive purchase held not valid.

UOI vs. Amarjit Thapar (SLP No CC. 8872 Rejected on 14th July, 2008) (2008) 175 Taxman 48 (MG)

HIGH COURTS

A.



APPELLATE TRIBUNAL - REASONED ORDER AND REASONABLE TIME - S. 254(2)

It is incumbent upon the Tribunal to appreciate the evidence and pass a reasoned order. Tribunal having passed the order more than four months after hearing the appeal, impugned order is set aside and the appeal is restored to the Tribunal with a direction to rehear the appeal and decide the fresh by a reasoned order. The President of the Tribunal is directed to frame and lay down guidelines for expeditious delivery of judgments.

Shivsagar Veg. Restaurant vs. ACIT & Anr. (2008) 16 DTR 30 (Bom.) / (2008) 220 CTR 563 (Bom.)

APPELLATE TRIBUNAL – RECTIFICATION OF MISTAKE – S. 254(2)

Non-consideration by the Tribunal of a Supreme Court judgment relevant to the point in issue would give rise to a mistake apparent from the record which can be rectified under section 254(2).

CIT vs. V.L.S. Finance Ltd. (2008) 15 DTR 180 (Del.)

C.

CAPITAL OR REVENUE EXPENDITURE – DEBENTURES – S. 37

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

CIT vs. Secure Meters Ltd. (2008) 16 DTR 53 (Raj.)

CAPITAL OR REVENUE EXPENDITURE – SOFTWARE – S. 37

Expenditure incurred on computer software packages though gives an enduring benefit, it does not result in acquisition of any capital asset and constitutes revenue expenditure.

CIT vs. Southern Roadways Ltd. (2008) 220 CTR 298 (Mad.)

CAPITAL GAINS - BUSINESS INCOME – INCOME FROM UNDISCLOSED SOURCES – S. 28(IV), 45, 48, 69

In case of transfer of shares to a group company at cost price, difference between market value of the shares and their cost price cannot be brought to tax as capital gains, there being no material to show that assessee had received more consideration than recorded in the books.

Purchase of shares at a particular price which was below the market price as an investment was not income under section 28(iv) as it was neither benefit nor perquisite that had arisen to the assessee from the business or in the exercise of a profession.

Assessee company purchasing shares at a price much lower than market price and the investment having been recorded in the books no addition could be made under section 69, there being no allegation that the apparent consideration was not the real consideration.



CIT vs. Rupee Finance & Management (P) Ltd. ITA No. 1208 of 2008 dt. 20/10/2008 (Bom.) (Unreported)

See Rupee Finance & Management (P.) Ltd. vs. ACIT (2008) 15 DTR 466 (Mum.) (Trib.) / (2008) 119 TITJ 643 (Mum.) / Source: www.itatonline.org

Capital Gains- Reference to valuation officer- s . 55A.

While computing long term capital gains, assessee adopted value based on the approved valuer which was higher than the fair market value as on 01-04-81 determined by the assessing officer on the basis of department valuer. The Honourable Mumbai Tribunal in Daulat Mota HUF vs. ITO, ITA No.322/M/2007, A. Y. 2003-04, Bench – D, dt 23-07-2007 has held that assessing officer assumes power under clause (a) of section 55A only when in his opinion fair market value disclosed by assessee is less. Accordingly reference held to be invalid. The Mumbai tribunal followed Ms. Rubab M Kazerani v J.C.I.T. (2004) 91 ITD 429 (Mum)(TM), Smt Krishnabai Tingre v ITO (2006) 101 ITD 317 (Pune) Appeal against the Mumbai Tribunal was dismissed by the Bombay High Court.

CIT v Daulat Mota HUF ITA no 1031 of 2008 dt 22-september 2008 (Unreported.).

I.

INCOME - REIMBURSEMENT OF EXPENSES – S. 4

Payment by way of reimbursement of expenses incurred on behalf of payer is not income chargeable to tax in the hands of payee.

CIT vs. Seimens Aktiengesellschaft (2008) 15 DTR 233 (Bom.)

P.

Precedent-Tribunal- s. 254 (1).

Tribunal can not take different view from the view taken by the co ordinate bench in respect of the same assessee for another year.

DLF Universal Ltd v CIT (2008) 306 ITR 271 (Delhi).

R.

Reassessment- Validity. - S, 142 (1), 143 (3).

Notices issued under sections 142 (1) and 143 (3), without disposing of the objections -raised in response to the reasons recorded, held to be invalid.

Premier Ltd v Dy CIT. W.P. no 2340 of 2008 DT 22-10-2008(Bom). (Unreported)



S.

SEARCH AND SEIZURE - BLOCK ASSESSMENT - RECORDING OF SATISFACTION – S. 158BD

No satisfaction by the Assessing Officer of the person searched having been recorded to the effect that undisclosed income belonging to assessee was found during search and no material relating to such undisclosed income found during search having forwarded by the Assessing Officer of the person searched to the Assessing Officer of assessee, proceedings under section 158BD read with section 158BC against assessee on the basis of report of Addl. Director of IT (Inv.) were without jurisdiction.

CIT vs. Dawn View Farms (P.) Ltd. (2008) 15 DTR 83 (Del.)

SEARCH AND SEIZURE – LIMITATION – S. 158BE

Panchnama dt. 3rd Jan., 2001, not showing that any search was conducted on that day and only depicting revocation of restraint order mentioned in Panchnama dt. 17th Nov., 2000, it is only the Panchnama dt. 17th Nov., 2000, which related to conclusion of search and relevant for computing limitation under section 158BE(1)(b), block assessment made on 30th Jan., 2003 was thus barred by limitation.

CIT vs. S. K. Katyal (2008) 16 DTR 285 (Del.)

Editorial Note: Nandlal M. Gandhi vs. ACIT (2008) 115 ITD 1 (Mum.)(TM) has also taken similar view.

SEARCH & SEIZURE - POWERS OF TRIBUNAL - VALIDITY OF SEARCH – S. 132(1), 254(1)

While hearing an appeal against an order of assessment, Tribunal cannot go into the question of validity or otherwise of any administrative decision for conducting search and seizure.

CIT vs. Paras Rice Mills (2008) 15 DTR 262 (P&H)

SEARCH AND SEIZURE – BLOCK ASSESSMENT – REASSESSMENT – S. 148, 158B(a)

No jurisdiction to reopen a Block assessment under section 148.

Cargo Clearing Agency (Gujarat) vs. Jt. CIT (2008) 307 ITR 1 (Guj.)

T.

TDS - TECHNICAL SERVICES – S. 194J

Services rendered by MTNL and other telecommunication companies qua interconnection / port access do not involve any human interface and therefore, the same cannot be regarded as “technical services” as contemplated under section 194J and payments made by the assessee to



them for the said services are not liable to TDS under section 194J.

CIT vs. Bharati Cellular Ltd. (2008) 15 DTR 73 (Del.)

TAX DEDUCTION AT SOURCE – S. 195, 201, 2(47), 5(2), 9(1)

Assessee a non-resident company, acquiring shares of another non-resident company, HTIL (which held 67 percent shares in Indian Company HEL). The effect of which is transfer to assessee of a capital asset in India in the form of right to enter in to telecom business in India with controlling interest in a company situate in India. There was prima facie, a transfer of capital asset by HTIL to assessee giving rise to capital gains in the hands of HTIL, hence, show cause notice issued to the assessee seeking to treat the assessee as in default for failure to deduct tax at source while making payment to HTIL could not be said to be without jurisdiction so as to be quashed at the threshold by issue of a writ.

Vodafone International Holdings B. V. vs. UOI (2008) 16 DTR 185 (Bom.)

AUTHORITY FOR ADVANCE RULINGS

CAPITAL GAINS - COMPUTATION – S. 112(i)

Benefit of proviso to section 112 (1) cannot be denied to non-residents and therefore, long term capital gains arising to the applicant, a non-resident company, on the sale of equity shares of an Indian Company, being listed securities is taxable @ 10 per cent as per proviso to section 112(i).

Burmah Castrol Plc., IN RE (2008) 16 DTR 145 (AAR)

CAPITAL GAINS - COST OF ACQUISITION – S. 48,55(2)

Interest paid by assessee to the transferor shareholders of the company in addition to the acquisition price as per the directive of the SEBI for the delay in making the open offer has to be treated as part of acquisition of the shares for the purpose of computing capital gains on the sale of said shares.

Burmah Castrol Plc. IN RE (2008) 16 DTR 145 (AAR)

TRIBUNAL

A.

APPEAL – CONDONATION OF DELAY OF 1045 DAYS - S 253(5)

Delay of 1045 days in filing appeals against revisional order of CIT directing Assessing Officer to assess capital gains in Asst. Year 1997-98 condoned as the advice of chartered accountant not to file appeal in view of findings of CIT(A) that capital gains were chargeable to tax in asst years 1998-99 to 2000-01 constituted sufficient cause.

Smt. Varanandhni Raghavan vs. ITO (2008) 15 DTR 140 (Chennai) (Trib.)



APPEAL (TRIBUNAL) – DECISION NOT RELIED BY THE PARTIES SHOULD NOT BE REFERRED – NATURAL JUSTICE

If any decision not relied upon by the parties at the time of hearing and the Bench desirous to apply the ratio of such decision, the natural justice demands that the Bench should confront the parties with such decision, and should give an opportunity to them so that they can make their submissions with reference to such decision.

Vindhya Telelink Ltd. vs. Jt. CIT (2008) 15 DTR 238 (Jab.) (TM) (Trib.)

Editorial Note: See Lakhmini Mewal Das vs. ITO (1972) 84 ITR 649 (Cal) (659)

APPEAL CIT (A) – POWERS – DIRECTION – S. 150, 251

Appellate authority can give finding and directions only in respect of year / period which is before that authority and no direction or finding can be given in respect of other years. While annulling block assessment for the period 1st April 1990 to 3rd Nov., 2000, CIT(A) was not justified in directing the Assessing Officer to reopen assessment for asst year 1999-2000.

Smt. Metal Factory (I) (P) Ltd. vs. ACIT (2008) 15 DTR 274 (Chennai) (Trib.)

ASSOCIATION OF PERSONS - SET-OFF OF LOSS - S 67A

A Company or Co-operative Society or Society appearing in parenthesis of section 67A qualify expression “Association of Persons or Body of Individuals” and they do not relate to a member of such an AOP/BOI and therefore, share of loss from an AOP deserved to be set-off in hands of assessee against its other income computed under various heads.

Mahindra Holdings & Finance Ltd vs. Dy. CIT (2008) 115 ITD 69 (Mum)(TM)

B.

BAD DEBTS - BUSINESS LOSS - SHARE BROKER – S. 28(i), 36(1)(vii), 36 (2)

Assessee a share / stock broker, claimed bad debts of certain amount representing the cost of scripts not recovered as well as brokerage not recovered. The Tribunal held that the assessee is entitled to deduction under section 36(1)(vii) only with regard to brokerage, which had been taken into account while computing total income. Since cost of scripts was never taken into account while computing income, it could not be called to be bad debt for purpose of section 36(1)(vii). However, the cost of scripts could be termed as “trading loss”, which could be allowed subject to fulfillment of other conditions prescribed in that regard.

G. R. Pandya Share Broking Ltd vs. ITO (2008) 26 SOT 431 (Mum.)

Editorial Note.: Reference is made to Hon’ble President of ITAT to refer the matter to Special Bench, as regards to allowability of bad debts in one of the matter of a Share Broker.



BLOCK ASSESSMENT – SATISFACTION – S. 158BD

No satisfaction of Assessing Officer within the meaning of section 158BD being discernible from the notice, proceedings under section 158BD were invalid.

Dy. CIT vs. C. S. L. Securities (P) Ltd. (2008) 15DTR 318 (Del.) (Trib.)

BUSINESS EXPENDITURE - DISALLOWANCE – S. 14A

Section 14A applies to all heads of income and gains at disallowing expenditure incurred in relation to income not forming part of total income even though such expenditure may be allowable under any other provision e.g. 36(1)(iii). Provisions of section 14A are applicable with respect of dividend income earned by the assessee engaged in the business of dealing in shares and securities, on the shares held as stock in trade. Provisions of Sub-S.(2) and (3) of section 14A are procedural in nature, hence, applicable retrospectively.

ITO vs. Daga Capital Management (P.) Ltd. (2008) 15 DTR 68 (Mum.) (SB) (Trib.) / (2008) 26 SOT 603 (Mum.) (SB) / (2008) 119 TTJ 289 (Mum) (SB) / Source.: www.itatonline.org

BUSINESS INCOME – INTEREST - PARTNERSHIP - S. 28(v)

When there is no clause in partnership for payment of interest to partners regardless of profits. Right to receive interest from firms not accrued. Notional additions on account of accrued interest from partnership not sustainable.

Minnnow Trading Company P. Ltd. vs. ITO (2008) 307 ITR (AT) 11 (Mum.)

C.

CAPITAL GAINS – INDEXATION – RATE OF TAX - S. 48, 112

As per section 48, option is with the assessee to or not to avail of benefit of indexation for computation of capital gains on transfer of long term capital asset.

If an assessee computes long term capital gains from sale of shares by availing of benefit of indexation. It has to offer same to tax at flat rate of 20 percent.

If an assessee does not avail of benefit of indexation then it has to offer capital gain to tax at rate of 10 percent.

Mohanlal N. Shah vs. ACIT (2008) 26 SOT 380 (Mum.)

CAPITAL GAINS - EXEMPTION – RE-INVESTMENT – S. 54F

The benefit of section 54F is available for construction of a house. Where a person purchases an old building, demolishes it and construct a new building, the entire exercise could be understood



as one of construction, so that relief need not be limited to the cost of the old building but the entire cost of construction.

M. Vijaya Kumar vs. ITO (2008) 307 ITR (AT) 4 (Bang.)

D.

Disallowance- s. 40A (2) (b)

Discount sales given to sister concern are not covered under the provisions of section 40A (2) (b) of the income tax Act, 1961.

DCIT v Orgo ChemGuj.Pvt Ltd. ITA no 7872 /Mum/2004 Bench H, Dt. 17-8-2007. (2008) 40-B BCAJ JAN 520(unreported).

I.

INCOME – MUTUALITY – NON-OCCUPANCY CHARGES – S. 4

Assessee housing co operative society is not liable to income tax in respect of excess occupancy charges recovered by it from its members on the principle of mutuality as the test of complete identity between contributors and participant is satisfied.

C. C. I. Chambers Co-operative Housing Society Ltd. vs. ITO (2008) 16 DTR 334 (Mum.) (Trib.)

INDUSTRIAL UNDERTAKINGS - MANUFACTURE – S. 80I, 80HHA

Process of standardization and pasteurization does not amount to manufacture / production for purpose of claiming deduction under section 80I and 80HHA.

B. G. Chitle vs. Dy. CIT (2008) 115 ITD 97 (Pune) (SB)

L.

LOSS – DERIVATIVE TRANSACTIONS - S. 43(5)

Loss claimed by assessee in derivative transaction is allowable as a business loss as the same is not covered by section 43(5). Clause (d) inserted in proviso to sub-section (5) of 43 by the Finance Act, 2005 w.e.f. 1st April 2006, is retrospective in application.

P. S. Kapur vs. ACIT (2008) 15 DTR 181 (JP) (Trib)

Editorial Note: Reference can be made to following judgments.

DCIT vs. SSKI Investors Services (P) Ltd. (2008) 113 TTJ 511 / 1 DTR 272 (Mum)

R.B.K. Securities (P) Ltd. vs. ITO (2008) 118 TTJ 465 / 13 DTR 255 (Mum)

P.



PENALTY – INITIATION – S. 271E R.W. SECTIONS 269T AND 275(1)(c)

Penalty proceedings under section 271E need not be initiated during course of assessment proceedings.

ACIT vs. Vinman Finance & Leasing Ltd. (2008) 115 ITD 115 (VSK.) (TM)

R.

REASSESSMENT – S. 148

Reassessment completed by an Assessing Officer on the basis of notice under section 148 issued by another Assessing Officer, who had no jurisdiction over the assessee held to be invalid. Reassessment is also held to be invalid for the reason that the jurisdiction over the assessee's case was not transferred by any order passed under section 127 by any competent authority to the Assessing Officer who has passed the order.

ITO vs. Krishan Kumar Gupta (2008) 16 DTR 1 (Del.)(Trib.)

S.

SERVICE OF NOTICE – RE-ASSESSMENT – S. 148

Assessing officer assumes jurisdiction to complete assessment / reassessment only after service of a legal and valid notice in accordance with law and mere participation of assessee in proceedings cannot validate assessment proceedings. On the fact of the case the notice was served on a person at shop belonging to firm in which the assessee was partner. As the notice was not served on him, or any authorized representative, the assessment held to be void ab initio in absence of valid service of notice.

Anil Kumar Goel vs. ITO (2008) 115 ITD 245 (Luck.)

SET OFF OF LOSSES - CAPITAL LOSS – S. 70

Capital loss computed from a source with indexation can be set-off from capital gain computed without indexation of another source.

Mohanlal N. Shah (HUF) vs. ACIT (2008) 26 SOT 380 (Mum.)

Article for reference.

- The Hindu Succession (Amendment) Act 2005. - Daughter's right in coparcenary by M.L.Bhakta advocate & notary. (2008) 40 –B- BCAJ January 509.
- Penalty.-Supreme court decision in Dharmendra Textile Processors – Does it change the law on section 271 (1) (c). By J.P.Shah, advocate Ahmedabad. (2008) 40 –B-BCAJ. January 2009 .p 505.